



<u>Decision Ref:</u>	2022-0123
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the customer service provided to the Complainants in relation to a long-term repayment arrangement for their mortgage with the Provider.

The Complainants' Case

The Complainants hold a joint mortgage account with the Provider. The Complainants received correspondence dated **12 March 2018** stating that their payment arrangement was due to expire, and that their monthly repayments would return to the full amount. The letter stated that they should contact the Provider if they foresaw difficulty in making these payments. This letter did not contain the new repayment figure.

On **12 April 2018**, the Complainants wrote to the Provider to seek a Standard Financial Statement ('SFS') and to obtain the full repayment figure. The Complainants state that on **17 April 2018** the first Complainant received a phone call from the Provider to inform her that the SFS would be sent in the post, and to note the repayment figure of €817 (eight hundred and seventeen Euro). The Complainants amended their standing order to the amount of €850 (eight hundred and fifty Euro) to avoid falling into arrears. The Complainants sought assistance from family to meet this payment.

The Complainants received the SFS with correspondence dated **21 April 2018**, but this did not quote the full repayment figure. They received another SFS with correspondence dated **28 April 2018**. Similarly, this did not contain the full repayment figure. On **9 May 2018**, the Complainants wrote to the CEO of the Provider to seek the full repayment figure.

On **22 May 2018**, the Complainants received correspondence from the Provider dated **12 May 2018**, which stated that their full repayment figure would be €1,020.34 (one thousand and twenty Euro and thirty-four Cent) as they had not contacted the Provider to seek assistance or to discuss alternative payment arrangement ('ARA') options. The Complainants submitted that they had "*repeatedly tried to engage with the bank regarding the end of their repayment arrangement*". The Complainants stated that "*even if [they] had been able to afford*" this figure, they had not been given sufficient time to amend their standing order.

The Complainants received correspondence in **June 2018** informing them that they had missed a payment on their mortgage. The Complainants submitted that they had not missed a payment. Instead, they had made a payment of €850 (eight hundred and fifty Euro) instead of €1,020.34 (one thousand and twenty Euro and thirty-four Cent).

On **11 June 2018**, the Complainants met with an Agent of the Provider ('Agent A') to discuss long-term mortgage solutions. Agent A stated that the figure of €1,020.34 (one thousand and twenty Euro and thirty-four Cent) was incorrect, and that this should have been €1,007 (one thousand and seven Euro).

Agent A phoned the Complainants at the end of **June 2018** to inform them that "*the bank didn't have time to deal with their case at that time*", and therefore offered a temporary repayment arrangement of €850 (eight hundred and fifty Euro) for 10 months. The Complainants submitted that they had made Agent A aware that they were only able to afford a repayment figure of €650 (six hundred and fifty Euro), and that they had to borrow from family members to make the higher payment. The Complainants stated that they "*didn't question*" the arrangement as it had coincided with the death of the first Complainant's parent.

The Complainants received a letter dated **12 July 2018** confirming the new ARA in place, which was to last for eight months, and noting an arrears balance of €298.47 (two hundred and ninety-eight Euro and forty-seven Cent). The Complainants submit that the arrears were caused by the delay of the Provider at the end of the previous agreement.

On **11 January 2019**, the Complainants received correspondence from the Provider noting that the ARA was due to expire on **17 February 2019**. Agent A had stated that he would revert to the Complainants at the end of the ARA to discuss a sustainable, long-term repayment schedule. On **14 January 2019** the Complainants contacted the Provider to request a meeting with Agent A. The Complainants were not contacted in the fortnight following this. The Complainants sourced the Agent A's contact card, but the phone number was not in service. As a result, the Complainants again contacted the Provider to arrange a meeting.

On **6 February 2019**, Agent A phoned the first Complainant to arrange a meeting. The Complainants note that the Provider has "*been informed, repeatedly and in writing, not to contact [the first Complainant] due to her disability*" which impedes her ability to communicate over the phone.

The meeting was scheduled for **15 February 2019**, with Agent A to confirm his attendance on **14 February 2019**. The Complainants submitted that Agent A "*regularly confirms or cancels these appointments at the last minute, making it very difficult to arrange for a third party to attend*". On **14 February 2019**, Agent A confirmed the meeting and requested certain documents. The Complainants were not able to obtain hard copies of these documents by the following day. The Complainants submit that they expected this meeting to proceed with the ideas discussed at their previous meeting, for a sustainable repayment schedule, but that this "*was not the case*".

The Complainants state that they had previously understood Agent A's role to be a 'Key Account Manager'. They submitted that the fact that he is a collections agent "*changes things considerably*" and that he did not have assistance as his primary objective.

On **15 February 2019** the Complainants made a subject access request to the Provider. They received no response.

The Complainants wrote to the CEO of the Provider on **4 March 2019** to highlight their issues with the bank. They submit that the only response they received to this letter was "*further harassment*" in the form of phone calls, including to "*berate*" them for writing to the CEO.

In **April 2019** the Complainants received a modified mortgage offer. The Complainants state that on **8 May 2019**, the second Complainant received a phone call from the Provider, wherein it "*attempted to coerce him into verbally agreeing to*" the offer. The Complainants wrote to the CEO on **13 May 2019** to outline their problems with the offer. They noted that they were paying a higher interest rate than that advertised by the Provider and that they believed the valuation of their house to be inaccurately low.

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The Complainants stated that they hadn't received a response to their subject access request, that the time frames allowed for responding to the Provider, noted as 20 days and 24 days, were not long enough to allow the Complainants to seek third-party advice. The Complainants stated that they were receiving harassment via phone calls, and requested all further correspondence to be via letter.

In **May 2019**, the Complainants received correspondence from the Provider, which advised that no subject access request had been received. This letter referred to a previous letter from the Provider which the Complainants had not received. The Complainants responded to this correspondence with another subject access request & sought a copy of the other letter referred to. They did not receive a response to this letter.

The Complainants submit that they never received an acknowledgment of their letter to the CEO, marked 'STRICTLY PRIVATE AND CONFIDENTIAL'. They noted that they did receive correspondence from the Arrears Support Unit, received on **11 June 2019** and dated **5 June 2019**, which appeared to refer to this confidential letter. It allowed the Complainants 20 days to respond, in order to set up a valuation. The Complainants wrote to the CEO to query the content and tone of this correspondence.

The Complainants received another letter from the Arrears Support Unit on **24 June 2019**, dated **17 June 2019**, which notified the Complainants to "*take urgent action*" to complete the financial assessment. The Complainants stated that that were still within the time limit, and had already posted this information to the Provider. The first Complainant rang the Provider to inform it of this.

The Complainants note that their correspondence to the CEO was only acknowledged in a letter from the Provider which stated that a complaint had been noted. In relation to the Provider's final response letter of **23 July 2019**, the Provider maintained that a subject access request had not been received. However, when the Complainants did eventually receive this information, their subject access request was included in the documents and stamped as received on **28 May 2019**.

The Complainants complain that they received correspondence from the Provider requesting information dated **11 September 2019**, and a reminder letter to provide the information, dated **18 September 2019**. The second letter advised that they may be considered as "*not co-operating*" if they did not respond. The Complainants received a further letter, dated **14 October 2019**, noting that they must engage to avoid being classed as not co-operating. It advised the Complainants to fill out another SFS.

The Complainants received a '**Notice of Intended Legal Action**' from the Provider, dated **23 October 2019**, on **30 October 2019**. On **1 November 2019**, the first Complainant called the Provider to discuss the correspondence. She was informed that the Complainants had not provided payslips and bank statements for the first Complainant. The first Complainant explained that the Complainants are a single income household, and that this has always been the case. She questioned how the Complainants could be deemed as 'not co-operating', when they had been in regular correspondence with the Provider over the course of their complaint. The Provider's Agent informed the first Complainant that certain information regarding the valuation of the house was still outstanding. The first Complainant informed the Provider that this had already been sent, and the Agent subsequently confirmed that this had been an oversight on the part of the Provider.

On **8 November 2019**, the Complainants received a further '**Notice of Intended Legal Action**', dated **5 November 2019**. The second Complainant received a call from the Provider on **22 November 2019**, and he reminded the Provider's Agent that they had requested all correspondence to be in writing.

The Complainants have complained about the quantity surveyor that had been sent by the Provider to complete the valuation on their house.

In **January 2020** the Complainants were contacted again by the Agent A, in order to complete an SFS. The Complainants submit that he was unaware that an SFS had been provided to the Provider in **November 2019**. This was noted and confirmed in **February 2020**.

In response to the Provider's submissions to this Office, the Complainants noted that they never missed a payment on their mortgage. They simply made part payments, which was due to the delay of the Provider in sending the correct figures to the Complainants. The Complainants state that the Provider was aware of the first Complainant's disability and requests to accommodate it, and that it was also aware that the second Complainant would often be unavailable to answer calls, due to his employment. The Complainants stated that the first Complainant is the person who deals with the family finances, and the second Complainant "*is not always up to date*" with the appropriate information.

The Complainants have reiterated their submissions, and note that they were harassed by the Provider for six months leading to **September 2019**, for documents that had been provided in **March 2019**, as acknowledged by the Provider in a phone call of **20 March 2019**. They noted that they received requests for information in **October 2019** for information that had been given in **September 2019**.

The Complainants outlined their problems with the modified mortgage offer that was given by the Provider, and noted that the second Complainant was “*pressured*” to explain the non-acceptance of this offer, during a phone call of **8 May 2019**, when the Complainants wished instead to send written correspondence setting out their position.

The Complainants say they are “*mystified*” as to why missed phone calls are relied upon by the Provider to explain their delays, as the Complainants have repeatedly requested correspondence to be in writing.

The Complainants state that they have always been proactive with their engagement with the Provider, and regularly called the Provider between **January 2018** and **December 2019**.

The Complainants submit that the Provider’s correspondence became more aggressive in **September 2019**, after it was made aware of the Complainants’ complaint to this Office.

The Complainants state that the Provider continues to call the Complainants to incorrectly state that their account is in arrears. The Complainants have been informed that “*the only way to stop the calls was to pay our mortgage by Direct Debit*”, instead of standing order.

The Complainants submit that the ongoing harassment and stress has had a huge effect on the Complainants and their family.

In the Provider’s Final Response Letter of **22 September 2019**, which the Complainants received on **26 November 2019**, the Provider made an offer of €600 (six hundred Euro) for its customer service failure in relation to the subject access requests. The Complainants responded that they would only accept this figure as recompense for their out of pocket expenses incurred as part of the complaint, and not in relation to the substance of their complaint.

On **14 December 2021**, the Provider offered the Complainants €2,000 (two thousand Euro), as a gesture of goodwill, in full and final settlement of the matter. The Complainants rejected this offer, stating that this could not cover the costs incurred in having to engage with the Provider over the previous years.

The Provider’s Case

The Provider states that the Complainants were first informed of the new repayment figure, which would become due on **27 May 2018**, by way of letter dated **12 May 2018**. This letter encouraged the Complainants to contact the Provider if they had any difficulty in making this payment.

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The Provider says that when the first Complainant phoned the Provider on **17 April 2018**, the Provider's Agent explained that €817 (eight hundred and seventeen Euro) was the current repayment figure on the system. This would be re-calculated after **27 April 2018**, and the Complainants would then be notified of the full repayment figure. During this call, the Agent additionally explained that an SFS would be sent to the Complainants. If they were in a position to meet the full repayments, then the SFS would not have to be completed.

The Provider says that its letter of **12 May 2018** stated that "*as [the Complainants] have not notified us of any ongoing financial difficulties*", the repayment figure would revert to the full amount. Although the Complainants had requested an SFS in **April 2018**, this had not been completed and returned, and no arrangement was made with the Provider to assist in completing the SFS.

The Provider submits that the Complainants did have sufficient notice of the new repayment figure to allow for amendment of their standing order. It stated that, in the alternative, the Complainants could have contacted the Provider with any concerns about meeting this repayment. These options were set out in the letter of **12 May 2018**, with contact details provided. As the Complainants did not avail of either option, the Provider does not accept the contention that the subsequent arrears on the Complainants' account was due to an error in its part. The Provider notes that a short-term reduced payment arrangement was put in place in **July 2018**, and backdated to **May 2018**. As a result, the arrears were re-adjusted to zero.

The Provider states that the Complainants fell into arrears in **April 2019**, following the expiry of this arrangement. The Complainants were issued with Missed Payments correspondence.

In relation to the Complainants' submission that the Provider didn't have time to deal with their case in **June 2018**, the Provider utterly refutes this assertion. It refers to the correspondence between Agent A and the Complainants during this period, noting that he made himself available at all times.

The Provider was asked by this Office why correspondence was issued to the Complainants in **January 2019** stating that they should return to the full repayment if they could do so, in circumstances where the Complainants were advised that Agent A would contact them in **February 2019** regarding a long-term payment arrangement. The Provider stated that the correspondence was a 'pre-expiry' letter, to inform the Complainants that their arrangement was coming to an end. It noted that the Collections Agent did have a meeting with the Complainants in **February 2019**.

The Provider submits that this letter stated that the repayment amount would revert to full payments unless a new repayment arrangement had been agreed. It states that the Complainants had agreed to a temporary alternative repayment arrangement (TARA) of one month, following their meeting in **February 2019**.

The Provider strongly refutes the contention that Agent A did not work to assist the Complainants. The Provider states that it tried to assist the Complainants wherever possible, and it says that this is borne out by the various calls and letters attached to its submission.

In relation to the meeting of **15 February 2019**, the Provider states that a third party attended via phone call. During this meeting, the Complainants "*insisted*" that they could afford to make payments of €850 (eight hundred and fifty Euro), which relied on "*ongoing non repayable family assistance*". (The Complainants refute that the term 'non repayable' was used in this meeting.)

The Provider says that its Agent informed the Complainants that the ARA about to expire, and that it had been backdated to account for the arrears to date. He asked the Complainants to complete an SFS. The third party then stated that she would complete the SFS with the Complainants later, as circumstances had changed. The third party would not explain what circumstances had changed. The third party asked what options would be available to the Complainants, but Agent A stated that he could not speculate until the SFS and supporting documentation had been received. A one-month TARA was put in place to allow the documents to be sent. The Provider submits that reminders were still being sent to the Complainants in September, as some documentation was still outstanding.

The Provider refutes the contention that the Agent A had arranged and cancelled meetings at short notice. It stated that the Agent had arranged, confirmed, and attended the meetings during this period. The Complainants did have a third party attend via phone call, which Agent A was not informed of in advance. The Complainants confirmed that they wanted their business to be discussed openly with the third party.

In relation to the modified mortgage offer, the Provider confirmed that a call was made to the second Complainant on **8 May 2019**. The second Complainant was asked if he wanted to discuss his issues with the offer, and he responded that he would send a letter instead. The Provider stated that its Agent did not attempt to coerce the second Complainant into discussing the matter, but offered to discuss any matters that he may wish to raise. One of the issues identified related to the valuation of the Complainants' property. The Provider states that a full valuation was later carried out on the property.

The Provider submits that a time period of 20 to 24 days was sufficient for the Complainants to consider matters. It also notes that there is always an option to engage with the Provider, and it encourages its customers to do so.

The Provider reiterates that it had informed the first Complainant during the phone call of **17 April 2018** that she could contact the Provider if she needed assistance in completing the SFS. This was noted in the letter accompanying the blank SFS. The Provider notes that the Complainants were given an opportunity to complete the SFS with Agent A in **February 2019**, but did not do so. It submits that the wait for this SFS "*slowed matters down*".

This Office asked the Provider if the Complainants had been informed of a more appropriate contact point to correspond with, in light of the letters sent to the CEO. The Provider states that the Provider's letters contained a web address that would have allowed them to retrieve a complaint form. Further, there was a freephone number in the correspondence, which could have been used to discuss arrears.

In regard to the outstanding documents that the Provider sought from the Complainants throughout **2019**, the Provider states that the specific documents required were outlined in a letter dated **5 June 2019** and the Complainants were reminded that documents were outstanding in a letter of **17 June 2019**. In correspondence of **11 September 2019**, the Provider wrote to the first Complainant to outline additional information that was required. This included pay slips, bank statements, proof of social welfare and another other income. The Provider says that it reminded the Complainants that documentation was outstanding in a letter of **18 September 2019**.

The Provider says that during this period, the Complainants were sent two letters to discuss their arrears, and two further letters noting their missed payments.

The Provider says that it wrote to the Complainants on **14 October 2019**, to inform them that they needed to take certain action to avoid being deemed as not co-operating. This letter set out the steps to be taken and referred to external organisations that may be able to assist the Complainants. At this point, the Complainants had missed several mortgage repayments, and had been contacted by the Provider regarding this, by letter, on a number of occasions.

In relation to the 'drive by valuation', the Provider states that this type of valuation had initially been requested in error. A full valuation was later carried out on **27 December 2019**, as the Complainants had made internal improvements to the property. In relation to the lower interest rate, referred to by the Complainants for the modified mortgage offer, the Provider states in its Final Response Letter that it does not have any records of the Complainants requesting this option.

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The Provider submits that it engaged with the Complainants throughout the process, and that Agent A followed up with them to find a suitable solution. The Provider has also said that the Complainants are now in an agreement with the Provider.

The Provider refutes assertions that it attempted to coerce the Complainants or that Agent A told them that it didn't have time to deal with them. It noted that the delay stemmed from the documentation required in **2019**.

In response to the Complainants' submissions that 20 days is insufficient to seek independent advice, the Provider states that this was a sufficient amount of time. However, it further noted that there is always an option to engage with the Provider, and that this is encouraged.

In response to the Complainants' further submissions, the Provider reiterates its arguments. It states that the call of **8 May 2019** between the parties "*speaks for itself*". The Provider noted that the "*aggressive*" correspondence was part of the Provider's regulatory duty to contact customers who had missed payments or were in arrears. This is an obligation of the Provider, which it says, did not relate in any way to the complaint.

The Complaint for Adjudication

The complaint is that the Provider failed to provide adequate customer service or effectively communicate with the Complainants as a means of finding a long-term sustainable resolution for the Complainants' mortgage loan.

The Complainants want the Provider to end "*the threats, harassment, intimidation and bullying which has caused unending and severe stress to our family*", and find a long-term sustainable solution "*in order to alleviate some of the financial pressure*".

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 **11 March 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 the Complainants have complained that the Provider did not provide adequate customer service, or effectively communicate with them. They have submitted that the Provider has harassed and bullied them. In support of their complaint, the Complainants have referred to a number of incidents. I will address each in turn.

The Complainants have argued that the Provider did not inform them of the full repayment figure until receipt of the letter dated **12 May 2018**, by which time it was too late to amend their standing order. The Complainants had contacted the Provider on numerous occasions prior to this, seeking the full figure.

I have listened to the call of **17 April 2018**, in which the first Complainant asks the Provider's Agent for the repayment figure. The Agent notes that the system currently shows the figure of €817 (eight hundred and seventeen Euro) however, this would be updated after **27 April 2018**. The Complainants had received correspondence in the interim, informing them that they should contact the bank or complete an SFS, if they would have trouble in paying the full repayment figure. I note that the Complainants did not do so, on the basis that they would need to know the full figure before coming to that decision.

The Complainants received the letter dated **12 May 2018** on **22 May 2018**. The full figure would become due on **27 May 2018**. Even if the notice period of five days was not sufficient time to allow the Complainants to amend their standing order, I believe that it was sufficient time for the Complainants to make contact with the Provider. The Complainants could have communicated either that they would not be able to meet the full payments, or that they had set up a standing order for part of the figure, and that they would pay the balance in due course. The Provider's correspondence had urged the Complainants to make contact if there was any difficulty in making the payments, but they did not do so.

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If the Complainants needed to know the new figure as soon as possible, following the update of **27 April 2018**, I do not believe that writing to the Provider's CEO was the most expedient course of action. The Provider's correspondence had included both a freephone number and an address for contact.

I additionally note that the Complainants have stated that they required assistance from their family to make this payment. If the Complainants had set up a standing order above their ability to make payments, in anticipation of what the full figure would be, they should have expected that they may have difficulty in making the full figure payments. In those circumstances, as the Complainants were finding it difficult to pay €850 a month, in my opinion, the Provider gave the Complainants sufficient notice to submit a new SFS in advance of the existing ARA's expiration. I do not accept that the Provider failed to communicate with the Complainants in this regard. As it readjusted the relevant arrears to zero, I take the view that it provided the Complainants with a high level of customer service.

The Complainants have complained that they were told by Agent A that they bank did not have time to deal with them. I have listened to the relevant phone call between Agent A and the second Complainant of **25 June 2018**. The second Complainant was informed that the Provider had a backlog of cases, and that Agent A was trying to escalate their matter to have it processed. I do not accept that the Provider failed to give adequate customer service in this regard.

The Complainants have complained that Agent A cancelled appointments at short notice, and did not have their assistance as his primary motive. I have found no evidence that Agent A cancelled appointments within the period of time encompassed by this complaint. I have listened to the calls and voicemails made between the parties, and I have noted that Agent A was in consistent contact with the Complainants. As a result, I do not believe that the Provider failed to give adequate customer service in this regard.

The Complainants have complained that they received harassing calls following their letter to the Provider's CEO in **March 2019**. The Complainants did not refer to any specific dates in this regard. I have listened to all of the telephone calls between the parties in this date range, and I did not note any evidence of harassment or beratement for contacting the CEO.

The Complainants state that they complained in their letter to the Provider's CEO that 20 days and 24 days are not sufficient periods of time to allow the Complainants to seek third party advice. The Provider did issue a letter dated **1 April 2019**, which noted that the Complainants had 20 days to get in touch to discuss their arrears repayment options. This was in advance of the ARA expiring on **27 April 2019**.

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As the Complainants had agreed to an ARA, in my opinion, they were on notice of the expiry date, and could have sought independent financial advice in advance of this date. The Provider issued a letter to remind the Complainants of the impending expiry. This 20-day period did not obligate the Complainants to make any decisions, but simply to contact the Provider. As a result, I do not accept that the Provider failed to effectively communicate in this regard.

The Complainants had further complained in their letter to the CEO, the concerns that they had with their modified mortgage offer. The details of this correspondence do not strictly fall within the confines of this complaint, as they relate to the negotiation of interest rates and property valuations. Insofar as the issues raised relate to the quality of communication between the parties, and customer service to the Complainants, I note that the Provider does not hold a record of the lower interest rate having been requested.

The Provider further acknowledged that the incorrect type of valuation was requested, and an appropriate valuation of the property was organised. In circumstances where the error was identified and corrected in a timely manner, I do not accept that the Provider failed to provide adequate customer service to the Complainants.

The Complainants complained that they were harassed by the Provider for six months to send documents which had been provided in **March 2019**. During a phone call of **1 November 2019**, the Provider acknowledged that documents relating to the valuation had been received. However, the Provider's Agent stated that certain documents were outstanding: three months of bank statements for the first Complainant and proof of income for the first Complainant. The first Complainant stated that she had not been informed that this was required, and that the Provider's attempts to call her were not sufficient, as she required information in writing, due to her disability. She stated that she could not provide proof of income as she did not work, but she did receive Children's Allowance. She noted that the Provider had always been aware of the Complainants' circumstances.

On **5 June 2019**, the Provider had written to the Complainants to request certain information. The Complainants responded to this on **20 June 2019**. On **11 September 2019**, the Provider wrote to the first Complainant to seek more detailed information. This letter stated that they had 20 days to respond. On **18 September 2019** the Provider wrote to the Complainants to inform them that they may be deemed as not co-operating if they failed to engage with the Provider. The formal warning letter was sent to the Complainants on **14 October 2019**.

I note that the Complainants engaged with the Provider following its letter of **5 June 2019**. However, the Complainants did not respond to the letter of **11 September 2019** requesting information relating to the SFS within the required time period.

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Consequently, I accept that the Provider was entitled to send correspondence to remind the Complainants to engage with the Provider, and was indeed obliged, under the Code of Conduct on Mortgage Arrears, to send a warning letter before the Complainants could be considered as not co-operating.

In those circumstances, I do not accept that the Complainants were harassed about documentation that had already been provided. The Complainants received a reminder letter on **17 June 2019**, prior to their response of **20 June 2019**. They also received reminder letters to provide the documentation relating to the request of **5 June 2019**, and I note that they had not responded to this correspondence.

The Complainants have complained that they received threatening correspondence from the Provider, and that they could not be considered 'not co-operating', as they had been in consistent contact with the Provider regarding their complaint. Although the Complainants had contacted the Provider regarding their complaint, they had not adequately engaged with the Provider regarding their arrears. For this reason, the Provider's letters were issued in accordance with its regulatory obligations, and I find no evidence to suggest that these letters were connected in any way to the Complainants' complaint.

Although the Complainants say that they never missed a mortgage payment, and they always ensured that a partial payment was made, it is worth noting that their contractual obligation (in the absence of an agreed Alternative Repayment Arrangement or a Temporary Alternative Repayment Arrangement) was to meet the full repayment amount falling due pursuant to their mortgage terms. It was not open to them, as a matter of contract to simply choose to make a partial payment instead, albeit that this of course demonstrated their ongoing commitment to service the debt.

The Complainants have complained that the first Complainant received calls, despite her request for written correspondence due to her disability. I am satisfied that the Complainants received their requests for documentation via written correspondence. I am further satisfied that the second Complainant was the primary contact point for Agent A's calls, where necessary and indeed on occasion she initiated telephone communication. I do not therefore accept that the Complainants were prejudiced by the Provider's attempts to call the first Complainant.

Finally, the Complainants note that they made a subject access request. The Provider acknowledged that this was not fulfilled and made an offer of €600 (six hundred Euro) as recompense. The Provider subsequently complied with the request, but this aspect of the matter does not fall within the jurisdiction of the FSPO and is appropriate instead to be referred to the Data Protection Commission.

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Having regard to the above, I do not accept that the Provider failed to provide adequate customer service or effectively communicate with the Complainants. On the basis of the evidence, I do not accept that there is any reasonable basis upon which it would be appropriate to uphold the complaint.

Conclusion

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

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



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

7 April 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension providers in such a manner that—

/Cont'd...

(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.

