



<u>Decision Ref:</u>	2022-0153
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide calculations Settlement amount (mortgage) Wrongful consideration of forbearance request
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant had a mortgage loan with the Provider.

The Complainant's Case

This complaint involves a mortgage loan which was previously the subject of a complaint to this Office which gave rise to a Decision issued on **22 March 2018**, regarding that earlier matter.

The Complainant asserts that after this Decision the Provider appointed Agent 1 in **April 2018** as a designated point of contact for the Complainant to communicate with, whilst the Complainant appointed his son in law as his Representative (also referred to in this Decision as the Complainant). The Complainant says he found it difficult to get in touch with Agent 1 and he relies on telephone records which he says demonstrate that 17 telephone calls were made to the Provider between **9 April 2018** and **11 April 2018**.

The Complainant says that the Provider suggested having an in person meeting and that "[he] awaited an appointment, which never arrived." The Complainant says that he "had to continuously chase" the Provider regarding the loan. The Complainant asserts that after a change in the Provider's point of contact around **May 2018** a Standard Financial Statement was sent to him which he duly returned, but that it was 3 weeks later when the Provider informed him that he had omitted to include the attachments.

In **October 2018** the Complainant proposed a deal whereby he would clear the mortgage loan, on the basis that the deeds to the property secured by it, would be released and the Provider would have no further contact with the Complainant. He sought redemption figures so that he could pay the mortgage loan but says that these were not received until **11 December 2018**, and were "*by then, out of date.*" The Complainant submits that he was assured that the final redemption figure was €72,880.00 (seventy-two thousand, eight hundred and eighty euros) which he paid but it transpired that this was in fact more than was required to be paid. The Complainant contends that on **13 December 2018** the loan was "*repaid in full*" and in an email to the Provider, of the same date, he asserts that the loan could have "*been discharged months ago.*"

According to the Complainant, after clearing the loan, the Provider notified the Complainant that the loan was still in arrears of €660.73 (six hundred and sixty euro and seventy-three cents) and then informed him that it "*agreed to waive this portion on interest.*" The Complainant contends that on **9 January 2019** the Complainant received "*another letter demanding a further €161.64*" of interest charged to the mortgage loan account and he says that this caused considerable "*distress and upset*" to the Complainant. The receipt of this letter resulted in his representative contacting the Provider by email on **11 January 2019** and saying "*I am appalled that my father in law has now received the enclosed correspondence. You seem to be determined to chase an elderly man to his grave.*" The Complainant submits, by email dated **11 October 2019**, that "*the bank's dismissive reaction to this shows an outrageous amount of apathy.*" The Complainant also complains about the cost of contacting the Provider by telephone.

The Complainant submits, by letter to the Provider dated **3 January 2019**, that:

"The amount requested by the bank was repaid in full on 13th December, and as of today's date, I have heard nothing from them by way of acknowledgement, or confirmation that their charge has been removed from my property. My son-in-law sent several emails disputing the fact that the bank could help themselves to interest while dragging the matter out, and requested a final letter, to enable us to lodge this complaint, which as of now, has not been received... it appears to be completely unjust that the bank can exploit its position, and penalise me, where they have variously led me to believe that negotiations were an option, and then left it to my representatives to chase them to bring the matter to a conclusion, which in turn they dragged out by delaying their responses, all the while charging interest."

By earlier letter to the Provider dated **27 March 2018**, the Complainant's representative said:

"I further note that [Complainant] is now 78 years of age and that this dispute is causing him the greatest of anxiety and stress. It would appear to be very much in the interest of his health that this issue should be resolved at the earliest date."

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The Complainant wrote to the Provider, by email dated **12 December 2018**, and said that:

"I have been in position to pay off this loan since May of this year, and we only received redemption figures on 11th December."

The Complainant wants the Provider to refund "interest amounting to €660 per month for the duration of [his] dispute with [the Provider]. [He] would like to have the interest refunded due to [the Provider's] delay."

The Provider's Case

The Provider, in its **Final Response Letter** on **6 March 2019**, sets out that debt forgiveness is not a debt resolution policy that it employs. It says the Complainant continued to impose debt write off as part of the proposed resolution. It says the Complainant's representative wrote to the Provider's CEO with regard to this and was "*dissatisfied*" with the response. The Provider asserts that the "*acceptance of any proposal is at [its] commercial discretion.*" The Provider denies that it was difficult to get in contact with the Complainant's representative and it says that "*it responded efficiently*" and "*it engaged fully with the Complainant's Representative's queries.*"

The Provider refutes the Complainant's assertion that Agent 2 said that an in-person meeting would be set up, during a telephone call of **11 April 2018** and points to the contents of this phone call as evidence of same.

The Provider accepts that whilst redemption figures were requested from the Provider on **22 October 2018**, an internal request was not actioned and in fact the redemption quote did not go out to the Complainant until **27 November 2018**, arriving by post on **11 December 2018**. The Provider accepts that this delay occurred due to "*human error,*" and it apologises and offers compensation in this regard. In terms of the postal delay from **27 November 2018** to **11 December 2018**, the Provider states that "*the delay further to issuance does not rest with the Provider.*"

The Provider submits that on **14 December 2018**, a sum of **€72,880.04** (seventy-two thousand, eight hundred and eighty euro and four cent) was lodged into the mortgage loan account, clearing the balance and leaving a surplus of €660.73 (six hundred and sixty euros and seventy-three cents). The Provider submits that this €660.73 (six hundred and sixty euros and seventy three cents) was a surplus and that it is "*unsure what communication led the Complainant's Representative to the belief that the sum of €660.73 constituted arrears.*"

The Provider further submits that on **14 December 2018**, €822.34 (eight hundred and twenty-two euros and thirty-four cents) in interest accrued for the period from **27 November 2018** to **14 December 2018** and was charged to the account “*automatically.*” The Provider outlines that when the overpayment was set against the interest, the balance on the account was minus €161.61 (one hundred and sixty-one euros and sixty-one cents). The Provider sent the Complainant a letter on **9 January 2019** advising that there was an outstanding balance on the loan account of €161.61. Ultimately, the Provider reversed the interest accrued in the sum of €822.34 (from the account on **22 January 2019** “*as a gesture of goodwill.*” The Complainant’s Representative was advised of this, as well as the refund of €660.73 (six hundred and sixty euros and seventy-three cents) by email from the case manager on **22 January 2019**.

The Provider submits that a redemption certificate was issued to the Complainant on **31 December 2018**.

The Provider says it is party to the **Law Society of Ireland Certificate of Title System** and submits that it has not breached the **Law Society Guidelines & Agreement** as the mortgage loan account was not fully redeemed until **21 January 2019** and the E-discharge was completed by the Provider, the following day.

The Provider submits that the Complainant’s account was designated inactive on **22 January 2019** and that no further correspondence or contact occurred after this point and it submits that “*the Provider is not aware of any communication had with the Complainant or his Representative.*”

In relation to the cost of telephone calls, the Provider asserts that most of the calls were outbound to the Complainant and that in relation to calls made by the Complainant to the Provider that it doesn’t have a freephone number and that “*all of its customers incur charges when making telephone calls whether it be to the Provider or any other business.*” The Provider additionally submits that the Complainant could have visited a branch and made a call from the branch, for free.

When replying to this investigation, the Provider advised that it wished to offer the Complainant €1,000.00 (one thousand euros) in compensation. This compensatory figure was offered by the Provider in circumstances where it took the view that a full and proper customer service had not been made available in relation to:-

1. The delay that arose between the Complainant requesting a redemption quote on 22 October 2018, and the quote letter issuing on 27 November 2018.
2. The wording of the letter dated 9 January 2019, which did not clearly explain how the outstanding balance had arisen on the account.

3. The explanation of letter of 9 January 2019, not having been given in a full and wholesome way by the Provider when the Complainant's representative made contact on 11 January 2019, and the ensuing stress and inconvenience caused by this letter and subsequent interactions arising from it.

The Complaint for Adjudication

The complaint is that the Provider maladministered the Complainant's mortgage loan account in the period April **2018** to **January 2019** including:

- failing to furnish redemption figures in a timely manner;
- failing to release title deeds in a timely manner;
- furnishing the Complainant with below standard customer service; and
- being poor in its communications with the Complainant.

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 Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **11 April 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 **Central Bank's Consumer Protection Code, 2012 (as amended) ("CPC")** says, at pages 7, provisions 2.1, 2.2, 2.6 and 2.8, as follows:

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"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market

2.2 acts with due skill, care and diligence in the best interests of its customers

....

2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;"

2.8 corrects errors and handles complaints speedily, efficiently and fairly."

The following provision of the **CPC** is also relevant:

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

The Law Society Guidelines & Agreement (2011 Edition) sets out at Clause 23 of the Guidelines, in respect of "Release, Discharges and Vacate," as follows:

"It is acknowledged that delays in lodging completed Certificates of Title with title deeds on behalf of a Borrower may occur due to delays in obtaining a vacate of the Borrower's previous mortgage or a vacate of a mortgage on title belonging to a previous owner of the relevant property. In order to eliminate this possible source of delay, the lenders agree that:

(a) on payment of the sum requested to redeem a Borrower's outstanding mortgage and a written request to release the Mortgage, release/discharge/vacate (as appropriate) will be furnished to the requesting solicitor within one month of receipt of payment or the request whichever is later;

(b) if the Mortgage to be released or discharged covers other property not being released or if the Lender does not wish to release the Borrower's covenant to repay the loan, the Lender will execute a deed of partial release or a partial discharge, provided a draft of such partial release or partial discharge (with map as appropriate) satisfactory to the Lender is provided by the Borrower's solicitor."

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The audio evidence of telephone discussions, between the Provider and the Complainant's representative during a telephone call on **11 April 2018** confirms the following interaction:

Agent 2: *"Would you [Representative] like to come up here at some stage then and sit down with us?..."*

Complainant's Representative: *"I have no problem going up to meet you."*

Agent 2: *"if and when."*

Complainant's Representative: *"Do you want me to bring [Complainant]."*

Agent 2: *"No need."*

...

Agent 2: *"I'll come back to you and we will see then if we need a meeting or what we can get out of a meeting, but let me have a look first and I'll come back to you and we can take it from there."*

The Provider submits that:

"the nature of the conversation was a general enquiry on how discussions may take place in future, rather than actually arranging a meeting at that point ... the Provider was satisfied with the assessment to offer forbearance in the form of the AALOO of 10 July 2018 without requiring the Representative to come to [location 1] from [location 2]"

[AALOO is understood to be an "Agreement to Amend Loan Offer Letter"]

In terms of whether the Provider acted in accordance with provision 2.1 of the **CPC** *"fairly and professionally"* and *"in the best interests of its customers"* and provision 2.2 *"with due skill, care and diligence,"* the Complainant's representative says he found it difficult to get in touch with Agent 1 and relies on telephone records which he says demonstrate that he made 17 telephone calls to the Provider between **9 April 2018** and **11 April 2018**. I note that evidence of 17 calls has been submitted detailing that during this period, 17 calls were made to the same telephone number. I note that the representative wrote, by email dated **30 April 2018**, to the Provider seeking a call back and that he made further contact on **12 December 2018** and **13 December 2018** noting his difficulty getting through to the Provider.

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The representative submits by email, dated **11 October 2019**, as follows:

"My father-in-law omitted some documentation when returning his SFS. It took three weeks for the bank to alert us to this. I followed up on 4th and 6th July, and eventually spoke to [Agent 3], who had taken over the matter, on 13th July. I followed up again on 23rd and 24th July, 8th August and 9th August, eventually reaching her on 10th August, at which point she emailed to say she would contact me 'on Monday.' I eventually received a call-back on Tuesday 21st August."

The Provider states that it received a letter from the Complainant's solicitor in **April 2018** and contacted the Complainant's representative on **11 April 2018**, with a follow up call the following day seeking more time to review the file. The Provider contacted the Complainant's representative on **2 May 2018** seeking for a Standard Financial Statement to be completed to assess the proposal for dealing with arrears with such paperwork being completed and returned to the Provider on **28 June 2018**.

The Provider says that on **10 July 2018**, it issued an **Agreement to Amend Loan Offer Letter** and made further contact with the Complainant's representative on **12 July 2018**, **13 July 2018**, **23 July 2018** and **24 July 2018**. The Provider apologised to the Complainant's representative on **21 August 2018** for a 6 working day delay in responding to a voicemail of **10 August 2018**.

The Provider submits that the reason for this delay was that the employee involved was engaged in a different project at that time but that such delay *"did not prejudice the Complainant or his Representative over the course of the negotiations."* The Provider states that it received the Complainant's representative's letter of complaint to the Provider CEO on **24 September 2018** and that the Provider responded to it on **27 September 2018**. The Complainant's representative contacted the Provider on **19 October 2018** and was responded to on **22 October 2018**.

The Provider says that it issued a follow up letter on **23 October 2018**. The representative contacted the Provider on **12 December 2018** and a series of emails was exchanged between **12 December 2018** and **13 December 2018**. The Complainant emailed the case manager on **11 January 2019** concerning the letter issued by the Provider on **9 January 2019** and the Provider says that this was responded to by the Provider on the same day.

I note that the Provider refutes the Complainant's assertion that Agent 2 said that an in-person meeting would be set up during a call of **11 April 2018** and points to the contents of this phone call as evidence of what occurred. On an assessment of the audio evidence, I accept that the in-person meeting was only a suggestion. The Provider apologised to the Complainant's representative on **21 August 2018** for a 6 working day delay in responding to a voicemail of **10 August 2018**. I note the delay on the Provider's part which was far from ideal, but I accept the Provider's explanation although I note that the Complainant states that he does not do so.

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I am not satisfied that the Provider breached provision 2.1 and 2.2 of the **CPC** in respect of its communication with the Complainant's representative and in its overall customer service to the Complainant and in my opinion, there is insufficient evidence available to establish that it acted unprofessionally or without care or diligence.

In terms of whether the Provider acted in accordance with provision 2.6 of the **CPC** to make "full disclosure of all relevant material information, including all charges" and provision 2.8 to "corrects errors and handles complaints speedily, efficiently and fairly" the following is relevant. Whilst redemption figures were requested from the Provider on **22 October 2018**, an internal request was not actioned and in fact the redemption quote did not issue to the Complainant until **27 November 2018**, arriving on **11 December 2018**. I note that the Complainant states that he does not accept the explanation for the Provider's delay. The Provider says that this delay occurred due to "human error," and it has apologised and offered compensation in this regard. In terms of the postal delay from **27 November 2018** to **11 December 2018**, the Provider states that "the delay further to issuance does not rest with the Provider" although I note that the Complainant states that he does not accept this explanation.

I note that on **29 November 2018** the following emails were exchanged. The Complainant's representative emailed the Provider, on **12 December 2018**, and said "I am proposing to lodge €74,480.04 which is the figure I received yesterday." The Provider responded on the same day by email and said "A payment of €1,600 was received as you pointed out in your email since the redemption quote issued so you can [de]duct that and lodge **€72,880.24**. We will release the charge held on the security upon receipt of the funds." I note that the Provider gave the incorrect redemption figure of €72,880.00 resulting in an overpayment of €660.73.

Furthermore, on **14 December 2018**, €822.34 (eight hundred and twenty-two euros and thirty-four cents) on interest accrued from **27 November 2018** to **14 December 2018**, was charged to the Complainant's account "automatically." When the overpayment of €660.73 was set against the interest, the balance on the account was €161.61 (one hundred and sixty-one euros and sixty-one cents). The Provider states that it reversed this interest charge on **22 January 2019** "as a gesture of goodwill." The Provider accepts that the interest of €822.34 accrued from **27 November 2018** to **14 December 2018**, should not have been applied to the Complainant's account because the Complainant was furnished with redemption figures after a delay on the Provider's part. I am satisfied on the Provider's own account that the reversal of €822.34 and refund of the surplus amount paid, was an appropriate step but, regrettably, it was not clearly explained to the Complainant:-

*"The Provider recognises that its explanation on **22 January 2019** of the refund and reversals that took place on the mortgage loan account did not fully explain where the overpayment and interest. The Provider could have provided a clearer explanation of same, and for failing to do so, the Provider wishes to apologise to the Complainant."*

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I note that the Provider says that in relation to the €660.73, it was a surplus and that it is “*unsure what communication led the Complainant's Representative to the belief that the sum of €660.73 constituted arrears.*” However, I note that the Provider’s **Final Response Letter** said that “*an amount of €72,880.04 was received. This put the mortgage account into an arrears position of €660.73. It was agreed to waive this portion of interest and €660.73 was refunded to you on **22 January 2019.***” I am satisfied that the information given by the Provider in relation to this matter was confusing and contradictory and remained so in nearly every explanation of the matter given. I note that the Provider has since apologised for any inconvenience caused to the Complainant as a result of the **9 January 2019** letter, which caused considerable worry and inconvenience to the Complainant who was an elderly customer, a fact that was highlighted by the Complainant’s representative on numerous occasions.

The Provider is party to the **Law Society of Ireland Certificate of Title System** and submits that it has not breached the **Law Society Guidelines & Agreement (2011 Edition)** as same requires that once a loan is fully discharged the Provider has one month to discharge the mortgage. The Provider submits that:

“the mortgage loan account was not considered to be redeemed in full on 14 December 2018, as there was interest applied to the account on the same day as discharge in the amount of €822.34. The issue of the interest charge of 14 December 2018 was dealt with by way of a reversal on 21 January 2019. At this stage, the loan account was considered fully redeemed. The E-discharge was completed by the Provider the following day, 23 January 2019, in compliance with the time limits set out above.”

Although I accept this, I am conscious that part of the timeline was contributed to by the Provider’s delays in issuing redemption figures, that had been requested.

I accept the Provider’s comments regarding the telephone call charges and I note that business calls often incur charges. I am also satisfied that the Provider rendered the Complainant’s account inactive once it discharged the mortgage loan and it has no case to answer regarding these aspects of the complaint.

I note that by letter **dated 15 March 2019**, the Complainant’s representative says that he “*advised them in August that I was in a position to loan the monies to my father-in-law, in order to have done with this matter.*” I note however, that the redemption figures were not mentioned until **27 October 2018** and that the Complainant’s representative’s suggestion that he was in a “*position to pay off this loan since May*” is not evidenced from the parties’ communications. The evidence shows that the resolution to the mortgage loan arose around **October 2018**, and I don’t accept that the interest that arose throughout the duration of the dispute, should be refunded.

Overall, I note that the Provider recognised its failure to issue redemption quotes in a timely manner, to offer adequate explanation in its **9 January 2019** letter and its hand in further inadequate explanations being offered around **11 January 2019** in relation to the contents of the **9 January 2019** letter. I accept that there was a lapse in customer service provided to the Complainant and a number of breaches of the Provider's obligations pursuant to the **CPC**. I am conscious however, that when the Provider responded to the formal investigation of this complaint on 1 March 2021, it made clear that it accepted those lapses in customer service and it made what I consider to be a reasonable offer in the circumstances, insofar as a figure of €1,000 has been offered to the Complainant with a view to resolving this complaint.

In those circumstances, taking account of all of the circumstances giving rise to this complaint, and on the basis that this figure remains available to the Complainant for acceptance, I take the view that it is not necessary or appropriate to make any further direction in this matter. Rather, it will be a matter for the Complainant to now make direct contact with the Provider if he wishes to accept the compensatory measure of €1,000 from the Provider, in order to conclude, and in that event, he should proceed expeditiously, as the Provider cannot be expected to hold that offer open, indefinitely.

Accordingly, for the reasons outlined above, this complaint is not upheld.

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)

6 May 2022

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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—

(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.