



<u>Decision Ref:</u>	2022-0171
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication Level of contact or communications re. Arrears
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Provider's communication with the Complainants.

The Complainants' Case

The first Complainant contends that she and her partner sold a property in **2002**, and that the Provider contacted the Complainants by telephone in **November 2014** *"to discuss payments in relation to this mortgage account"*.

The Complainants submit that they advised the Provider that they were *"pure sick of the numerous phone calls"* they received in relation to the associated mortgage loan.

The Complainants state they were subsequently told by an agent of the Provider that *"he had dealt with this problem"*.

At the time of making this complaint the Complainants said that they wrote to the Provider *"but to date... had not received [a] definite response"*.

The Provider's Case

The Provider, in an email to the Complainants on **15 December 2014** advised:

"As per our recent telephone conversation please be advised that our Securities Department has confirmed to me that we do not any longer hold any legal charge over the property".

In its Final Response Letter, dated **9 November 2017**, the Provider states:

"Please note on checking our records your Mortgage account [xxxxx503] was never in the Mortgage arrears process. I note you were contacted regarding your Mortgage account [xxxxx282] on the 29 November 2014 to discuss your Standard Financial Statement with you regarding this Mortgage account

I trust the above clarifies matters...."

The Complaint for Adjudication

The complaint is that the Provider subjected the Complainants to an *"onslaught of nuisance telephone calls (mobile & landline) after call"*, over a period of 7 years, causing them *"untold stress"*.

The Complainants want the Provider to accept its *"mismanagement"*, apologise and assure them that *"this nightmare never occurs again"*.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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A Preliminary Decision was issued to the parties on **26 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.

The following chronology is relevant to the issues which give rise to this complaint:

2002

The Complainants took out a mortgage loan (reference number *****503) in **2002** for €157,000.00. Security for this loan was to be “number 26”.

The loan offer was accepted by signature of the Complainants on **12 November 2002**. A new letter of offer dated **19 December 2002** issued to the Complainants to reflect the change in the address of the Property which would form the security for the loan. The security for this loan was now to be “number 22” (not “number 26”).

Loan account *****503 for €157,000.00 was opened on **20 December 2002**.

2006

Some four years later, on **23 May 2006**, the Provider approved a mortgage loan – described as an “Equity Release” – for €55,000.00 to be secured over number 22. This loan was drawn down on **4 July 2007** under account number *****760.

On **19 December 2006**, “P”, solicitor, wrote to the Provider to take up the title deeds for number 22 on accountable trust receipt.

2007

On **14 February 2007** the Provider approved a mortgage loan – described as a “Bridging Loan” – for €190,000.00 to be secured over number 22 (and “number 13”) and to be repaid in full after 12 months. This loan was drawn down on **4 July 2007** under account number *****282.

Also on **14 February 2007**, the Provider approved a mortgage for €400,000.00 to be secured over “number 16”. This loan was drawn down under account number *****536. Number 22 did not form part of the security for this loan.

On **10 July 2007** P furnished a solicitor’s undertaking to the Provider in respect of number 22, taking over from the previous solicitor’s undertaking.

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On **25 October 2007** P wrote to the Provider to confirm that the Complainants had instructed him in respect of the sale of number 22 and to seek confirmation that €310,000.00 would be sufficient proceeds of sale to obtain “clear title” for number 22 – in other words, that the Provider would release its security over number 22, on receipt of that amount.

On **1 November 2007** the Provider wrote to P to advise that it would release its security over number 22 subject to its existing security over number 13 and receipt of the ***Deed of Partial Discharge***. It advised that this consent was valid for a period of one year from the date of the letter.

[It is now evident that this letter (“the November 2007 letter”) went unanswered.]

An internal email dated **12 December 2007** noted the Provider’s understanding that “*the remaining of Bridging will be cleared*” in the new year with the proceeds of sale of number 13.

On **17 December 2007** the Provide issued a letter to the Complainants advising of redemption figures as follows:

Account *****282	€196,512.04
Account *****503	€142,181.45
Account *****760	€54,283.22

I note that loan account *****503 (the original home loan) and Loan *****760 (the equity release loan) were paid off in full and closed with a zero balance in **December 2007**.

[The intended full repayment date for the Bridging Loan xxxxx282 passed in **February 2008**. In the event, no repayments were made until €2,800.00 was lodged in October 2009, and then somewhat sporadic repayments of €500.00 were made periodically to the account in the period from May 2011 to September 2021. Thereafter, no repayments were made until the loan was ultimately paid in full with a €166,208.57 repayment, in **December 2017**.]

2008

On **5 March 2008** P wrote to the Provider to ask that the Provider release its security over number 22 “*as quickly as possible*”.

On **4 April 2008** the Provider furnished P with vacated deed of mortgage in respect of number 22. At this stage, the Provider no longer held security over number 22, and the original home loan and equity release loan were fully paid. From this point onwards, there is no doubt that the Provider should not have been contacting the Complainants with regard to the closed accounts *****503 or *****760 (or regarding number 22 as a security), in an arrears context.

Provider Contact with Complainants

When any mortgage falls into arrears, the Code of Conduct on Mortgage Arrears (CCMA) requires a provider to contact the borrower(s) to ascertain the reason why and to assist where appropriate in identifying any appropriate restructure options.

I would note that, in respect of accounts *****282 and *****536, when they were in arrears the Provider was at all times entitled to make contact with the Complainants (in accordance with the CCMA).

I can see no evidence to suggest the Provider's contact regarding these accounts (or the securities held in relation to these accounts) was excessive, having regard to the requirements of the CCMA.

Due to the elapse of time, the Provider was unable to provide recordings of telephone calls which took place prior to 2012, and has noted that not all calls are recorded. This Office has however, been furnished with detailed contact logs from May 2011 to July 2020 in respect of accounts *****503, *****536, *****061, *****703, and *****282. These include details of contact made with the Complainants by the Provider mentioning the accounts that were closed in 2008 (*****503 and *****760) and number 22 as security for other loans.

The log notes for *****536 show that on **26 February 2014** a query was raised regarding a standard financial statement that the Complainants had prepared. The query was:

*"The security we hold for a/c [*****282] is [number 22]. There is no mention of this property on the SFS. Please confirm what the situation is with this property. Branch to resubmit SFS with query answered."*

No evidence has been furnished to explain what happened in response to this query. However, I note that this appears to be the only mention of number 22 over hundreds of pages of contact log notes, and that there is no indication in those notes that this issue hampered, in any meaningful way, the Complainants' attempts to submit an SFS.

On **28 November 2014** the Provider telephoned the Complainants. The Provider states that this call was made to discuss arrears which had arisen on account *****536. The contact log states that the Provider left a message asking for the Complainants to make contact.

It is noted that on **1 December 2014** the first Complainant told the Provider's agent the situation – that number 22 was still appearing on the Provider's system as security held by it.

By email dated **1 December 2014** the Provider's agent "A" sought confirmation internally that the Provider no longer held security over number 22. This was confirmed to him on **5 December 2014**. A then requested that the Provider's internal records be amended accordingly. This was done and A notified the Complainants of this on **15 December 2014**.

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The Complainants immediately requested a written explanation of what had happened, and complete statements for accounts ****503 and *****760. I have been supplied with no evidence that any such written explanation was furnished at that time.

The Complainants submitted a data access request in **February 2017**.

On **29 March 2017** the Complainants sought all copies of correspondence relating to ****503 and *****760 from 2007 onwards to be sent to them.

On **24 July 2017** the Complainants submitted a complaint in writing to the Provider asking *“why [the Provider has] taken 7 years to confirm they no longer hold any legal charge over [number 22]”*.

The Provider issued a Final Response Letter on **9 November 2017** which stated:

*“Please note on checking our records your [account ****503] was never in the Mortgage arrears process. I note you were contacted regarding your [account ****282] on the 29th November 2014 to discuss your Standard Financial Statement regarding this mortgage account”*

I note that loan account ****282 (“the Bridging Loan”) was paid off in full and closed with a zero balance on **21 December 2017**.

It is clear that the Complainants held a number of mortgage borrowings with the Provider. The property at Number 22 was held by the Provider as security over three of these borrowings. In **April 2008** the Provider provided a vacated deed of mortgage in relation to number 22 – thereby releasing that property as security for any loans held.

After 2008, the Provider was in regular contact with the Complainants regarding arrears on loan accounts which were not secured over number 22. However, it seems that it had not removed number 22 from the records on its systems, as security for the Bridging Loan.

I do not, however, accept that this error represented *“the ongoing problem [the Complainants] had with [the Provider]”* or that the error was only resolved *“following numerous years of telephone calls from [the Provider] pertaining to same”*, as contended by the Complainants.

The extent of contact that the Provider had with the Complainants seems to me to have arisen due to ongoing arrears on numerous mortgage loan accounts (in accordance with the CCMA) and not because the Provider had incorrectly maintained a record of number 22 as security on its system in the period from 2008 to 2014.

I have been furnished with no evidence to suggest that this incorrect record, prejudiced the Complainants in their dealings with the Provider in respect of the arrears which arose on the outstanding loan accounts after 2008. It was, nevertheless, a situation that should not have arisen.

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Once the issue was raised by the Complainants with the Provider – in or around December 2014 – I note that it was dealt with in the space of two weeks, and the reference to number 22 as security, was removed from the Provider’s systems.

I am satisfied, in the circumstances, that the error was resolved with reasonable efficiency once it was raised by the Complainants.

The Provider has stated in its responses to this Office that the reason number 22 was not removed from its system as security in 2008, was that the Complainant’s solicitor, P, did not respond to a letter it sent to him in November 2007. The Provider states that the onus was on the solicitor to respond to that letter. I do not accept however that this exonerates the Provider entirely for the error. I accept that there remained some onus on the Provider to ensure it had received the relevant documentation, in order to ensure that an accurate record of security held, was maintained on its systems.

Crucially, when the Complainants sought an explanation for what had happened – in other words, why was number 22 still listed as a security on the systems in December 2014 – they did not receive a clear response. In fact, it was not until the Provider’s responses to this Office that an explanation was given that the Provider’s system had not been updated, because its November 2007 letter to the Complainants’ solicitor had not been answered.

If a full investigation had been carried out and this explanation given to the Complainants in December 2014 or shortly thereafter, or indeed in response to the formal complaint letter in 2017, the complaint to this Office may not have become necessary. In my opinion, the Provider’s failure to follow up on this aspect of the matter, as a result of which its records remained incorrect over an extended period, was conduct that was unreasonable and unjust to the Complainants, within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

In light of all of the foregoing, I am satisfied that:

- the Provider mismanaged the Complainants’ accounts by failing between 2008 and 2014, to update its system to reflect the fact that it no longer held number 22 as security for the bridging loan.
- an explanation for the conduct complained of was not given when it should have been given.

In my opinion however, there is no adequate evidence available of an “onslaught” of nuisance telephone calls to the Complainants by the Provider, and accordingly, I do not uphold the complaint in relation to the level of contact which the Complainants have received from the Provider.

For those reasons, I consider it appropriate to partially uphold the complaint and to direct pursuant to **s60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Provider to make a compensatory payment to the Complainants as directed below, for the inconvenience caused to them.

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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)**.
- Pursuant to **Section 60(4)(d) 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 Complainants in the sum of €500, 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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

20 May 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

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(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.

