



<u>Decision Ref:</u>	2022-0187
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears Delayed or inadequate communication Dissatisfaction with customer service Incorrect information sent to credit reference agency
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants have a mortgage with the Provider.

The Complainants' Case

The First Complainant says that she attended a branch of the Provider in **October 2014**, and she made a request for her contact details, in particular her address, to be updated on its system, such update being subsequently confirmed with a written confirmation from the Provider.

The First Complainant made requests to the Provider, in **2016** and **2018**, for the repayment date on mortgage account ending 101 to be amended. However, the First Complainant submits that she did not receive any response from the Provider in respect of these requests. The First Complainant contends that she called the Provider in **December 2018** and requested information about one of her loan accounts ending 203. However, the First Complainant says that despite the Provider committing to send her the information she had requested, she did not receive it.

The First Complainant says that she received a letter from the Provider, in **March 2019**, notifying her that due to a recent reorganisation of its customer service teams it would like to welcome her to a Specialist Department of the Provider. The First Complainant asserts that this letter did not make any reference to arrears on the mortgage account ending 101.

The First Complainant submits that she received another letter, dated **5 April 2019**, which noted that the Provider was undertaking a review of their facilities with a view to restructuring their debt and offering a sustainable solution and it requested a full disclosure of certain information. The First Complainant submits that the letter of **5 April 2019** was the first indication she had received in respect of any arrears on the mortgage account, and she informed the Provider of this. On review of the account statements for account ending 101, the First Complainant noticed three missed payments (**July 2017, August 2017 and November 2018**).

The First Complainant says that missed payments arose due to "*administrative oversight*." The First Complainant states that the Provider confirmed to her that these were the missed payments that resulted in the arrears on the account. The First Complainant submits that she transferred funds, in **April 2019**, to cover the outstanding arrears on the account and that she received a letter from the Provider confirming that all arrears had been cleared and that payments were up to date on the account. The First Complainant made a formal complaint to the Provider, in relation to the matter.

On **18 April 2019** the First Complainant received an email from the Provider which said that the First Complainant's facilities had been recently transferred for management, as there was an arrears position on the home loan for some time. The First Complainant responded by email of **18 April 2019** and noted her disappointment and frustration with how the Provider had treated her and she noted, in respect of account ending 203, that the details provided did not reflect the information she had requested from it.

The First Complainant received the Provider's letter of **17 May 2019** which referred to previous correspondence in relation to the review of her facilities, with a view to exploring the possibilities for a restructuring of same. This letter stated that notwithstanding that the arrears position of facility ending 101 had been addressed and cleared in full, it still required the requested information in order to complete a review of her facilities.

The First Complainant responded by email of the **17 May 2019** and queried the basis for the review. The Provider, by email of **20 May 2019**, stated that it was the historic account performance that was driving the review. The First Complainant also asked that the matter be moved out of the Provider's Specialist Department into a normal department, but the Provider confirmed it could not do this without her up to date financial information.

The First Complainant further asserts that the Provider's complaint handling is inadequate, and she has expressed concern that her credit rating has been negatively impacted, by the Provider's actions.

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The First Complainant argues that:

"I have done everything that I possibly can. I specifically visited the [Provider] in person in October 2014, to ensure that they were kept fully up to date of my address change. I contacted the [Provider] immediately upon receipt of their first letter in April 2019. I paid all arrears within days of being notified by the [Provider]. All subsequent payments have been fully up to date. I've responded promptly to every piece of correspondence from the [Provider], and in fact on many occasions I've had to chase them for responses to my emails. I've lost massive amounts of time to engagement with the [Provider] on this issue (upwards of 50 hours, which, based on the rate for which I bill my time to my clients, equates to more than €20,000 in lost productivity). I've patiently awaited the outcome of a formal complaint procedure, whereby [Provider] effectively took 7 months to confirm that the [Provider] had not updated my correspondence address as I had instructed them to do."

The First Complainant submits that interacting with the Provider has caused her *"huge amounts of distress, stress, and frustration."* The First Complainant further submits that she is

"reduced to feelings of utter helplessness in dealing with a large financial institution that refuses to engage in logic, refuses any request for common sense or flexibility, is now refusing to resolve the impacts of its own error, and instead to punish its customer."

In resolution of the complaint, the Complainants seek *"financial compensation for distress and upset caused, and for the huge amount of time I have already invested in trying to sort out this issue."* The First Complainant estimates her time spent on this matter as calculated against her billable hours charged in a professional capacity, as €20,000.00 (twenty thousand euros). Furthermore, the Complainants seek restoration of the banking relationship to the same status as a customer who had never had arrears and removal from the Specialist Department within the Provider. The Complainants also seek confirmation that there has been no adverse impact on their credit rating and they seek rectification of their credit rating if it has been impacted.

The Provider's Case

The Provider confirms that the First Complainant's request in October 2014, to update the address for account ending 101 was not actioned on its system, because a joint authority was required to action this but that this was not communicated to the First Complainant when she requested the address change and a letter was sent in error, confirming that the new address was updated on the system with the overall impact that regular arrears letters were issued to the First Complainant's old address.

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The Provider asserts that in respect of requests made in **2016** and **2018** for the repayment date on the account to be amended, as this account is held jointly, it required a signed authority, from both parties to the loan, before processing any amendment.

The Provider states that the First Complainant requested a history of the prime rate since inception of loan account ending 203. It says that the Provider's statements that issue in the normal course of business, address this, by accurately reflecting the actual interest rate that applies over the term of the loan, and the level of the fixed repayment being made. The Provider submits that these statements issue to the nominated address.

The Provider has apologised that information requested in its branch was not provided promptly but it believes that the matters are now addressed. The Provider says that its policy is that an annual review is carried out on all borrowings held with it and in particular where arrears arise, and that in order to facilitate this annual review, it is a standard requirement that up to-date financial information is sought from the Borrower to assist in the review of the outstanding borrowings and to identify any potential for future arrears. The Provider argues that annual reviews can be carried out on all accounts even when they are up to date and performing in accordance with the terms and conditions of their borrowings. The Provider asserts that it reserves the right to determine which customer manager or department will manage a particular account and that all accounts receive the same level of service regardless of which area the account is managed by. The Provider stated that it was sorry that the First Complainant felt as though its communication of **5 April 2019** was unclear, but it highlights that there was an appendix attached which identified her mortgage account by its account number.

The Provider submits that:

*"On 28 October 2014 [the Complainant] attended her local branch and requested that he address be changed on her bank accounts. The Complainant was present with confirmation of her new address...at this time the [Provider] staff member changed the address on all the Complainant's accounts including her joint mortgage account ****101. The [Provider] policy to change the address on a joint mortgage account was to send a signed authority from all parties to the account directly the [Provider's] home mortgage department. Whilst the [Provider's] system had allowed the branch staff member to change the address on all accounts on 28 October 2018, an advice subsequently issued to the branch from the home mortgage department. On 04 November 2014 and 06 November 2014, the [Provider's] home mortgage department made contact, by internal memo, with the branch staff member and the branch to advise that they required the joint authority of both parties to the mortgage to change the address."*

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The Provider submits that it is sorry that the First Complainant is unhappy with the treatment she received from it. The Provider acknowledged that there were service failings on its part, and, when it sent its formal response to the investigation of this Office, on **19 May 2021**, it offered the Complainants compensation in the sum of **€13,750**, in recognition of its customer service failings.

The Complaint for Adjudication

The Complainants' complaint is that the Provider mal-administered the Complainants' accounts by:

- Failing in **2014**, to update the contact details on their mortgage account ending 101, which resulted in correspondence relating to the account, including arrears letters, issuing to the former address including notifications in respect of a number of missed payments dating from **2017** and **2018** and in respect of arrears arising on the account.
- Failing and/or wrongfully/unreasonably declining the First Complainant's requests, made in 2016 and 2018, for the repayment date on their mortgage account/s to be amended.
- Wrongfully/unreasonably transferring their mortgage account ending 101 to a particular department and carrying out a review on the account (in circumstances where the Complainants contend that this only occurred as a consequence of the Provider's earlier mal-administration/error).
- Furnishing poor service during these events between **2017** and **2019**, including poor communication and delays in its communication and/or inconsistent and confusing information to the Complainants and/or failing to supply information they requested in respect of accounts ending 101 and/or 203 and mishandling the complaint, including a failure to address/adequately address elements of the complaint.

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 **12 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The Central Bank of Ireland's **Consumer Protection Code, 2012 (as amended) ("CPC")** is relevant and says, at page 7, provisions 2.1, 2.2 and 2.8, as follows:

"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.

...

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

Provision 3.3 of the **CPC** is also relevant and says, at page 9, as follows:

"3.3 A regulated entity must ensure that all instructions from or on behalf of a consumer are processed properly and promptly."

Provisions 4.1 and 4.2 of the **CPC** say, at page 21, as follows:

"4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:

- a) the urgency of the situation; and
- b) the time necessary for the consumer to absorb and react to the information provided."

Provisions 8.4, 8.6, 8.8, 8.9 and 8.13 of the **CPC** deals with arrears handling and, at pages 53-55, it says as follows:

"8.4 Where an account remains in arrears ten business days after the arrears first arose, a regulated entity must immediately communicate clearly with the personal consumer to establish in the first instance why the arrears have arisen.

...

8.6 Where an account remains in arrears 31 calendar days after the arrears first arose, a regulated entity must within three business days inform the personal consumer and any guarantor of the loan, on paper or on another durable medium, of the status of the account. This information must include the following:

- a) the date the account fell into arrears;
- b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts);
- c) the amount of the arrears to date;
- d) the interest rate applicable to the arrears;
- e) details of any charges in relation to the arrears that may be applied;
- f) the importance of the personal consumer engaging with the regulated entity in order to address the arrears;
- g) relevant contact points;
- h) the consequences of continued non-payment, including where relevant, sharing of data relating to the consumer's arrears with the Irish Credit Bureau or any other credit reference agency;
- i) if relevant, any impact of the non-payment on other accounts held by the personal consumer with that regulated entity including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and
- j) a statement that the personal consumer may wish to seek assistance from MABS and contact details for the MABS National Helpline and the link to the MABS website.

...

8.8 Where the arrears persist, an updated version of the information required in Provision 8.6 must be provided to the personal consumer, on paper or on another durable medium, every three months.

...

8.9 *In respect of a mortgage, where a third full or partial repayment is missed and remains outstanding and an alternative repayment arrangement has not been put in place, a regulated entity must notify the personal consumer, on paper on another durable medium, of the following:*

- a) the potential for legal proceedings and proceedings for repossession of the property, together with an estimate of the costs to the personal consumer of such proceedings;*
- b) the importance of seeking independent advice, for example from MABS; and*
- c) that, irrespective of how the property is repossessed and disposed of, the personal consumer will remain liable for the outstanding debt, including accrued interest, charges, legal, selling and other related costs, if this is the case.*

...

8.13 *A regulated entity must ensure that the level of contact and communications from the regulated entity, or any third party acting on its behalf, with a personal consumer in arrears, is proportionate and not excessive."*

Provision 11.5 of the **CPC** deals with *Records and Compliance* and, at page 69, says as follows:

"11.5 A regulated entity must maintain up-to-date records containing at least the following:

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information and documentation concerning the consumer."*

Provisions 10.7 to 10.12 of the **CPC** deals with *Complaints Resolution* and, at pages 67-68, says as follows:

"10.7 A regulated entity must seek to resolve any complaints with consumers.

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10.8 When a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity's complaints process.

10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

- a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;
- b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;
- c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;
- d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and
- e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:
 - i) the outcome of the investigation;
 - ii) where applicable, the terms of any offer or settlement being made;
 - iii) that the consumer can refer the matter to the relevant Ombudsman, and
 - iv) the contact details of such Ombudsman.

10.10 A regulated entity must maintain an up-to-date log of all complaints from consumers subject to the complaints procedure. This log must contain:

- a) details of each complaint;
- b) the date the complaint was received;

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- c) *a summary of the regulated entity's response(s) including dates;*
- d) *details of any other relevant correspondence or records;*
- e) *the action taken to resolve each complaint;*
- f) *the date the complaint was resolved; and*
- g) *where relevant, the current status of the complaint which has been referred to the relevant Ombudsman.*

10.11 A regulated entity must maintain up to date and comprehensive records for each complaint received from a consumer.

10.12 A regulated entity must undertake an appropriate analysis of the patterns of complaints from consumers on a regular basis including investigating whether complaints indicate an isolated issue or a more widespread issue for consumers. This analysis of consumer complaints must be escalated to the regulated entity's compliance/risk function and senior management."

Provisions 9, 12, 22, 23 and 27 of the **Code of Conduct on Mortgage Arrears 2013 (as amended)** ("**CCMA**") is relevant to this complainant as says, at pages 8-14, as follows:

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

...

12. A lender must ensure that:

- a) all communications about arrears and pre-arrears are provided to the borrower in a timely manner;*
- b) all information relating to a lender's handling of arrears and pre-arrears cases must be presented to the borrower in a clear and consumer friendly manner, and*
- c) the language used in communications must indicate a willingness to work with the borrower to address the situation and must be in plain English so that it is easily understood.*

...

22. A lender must ensure that:

- a) the level of communications from the lender, or any third party acting on its behalf, is proportionate and not excessive, taking into account the circumstances of the borrowers, including that unnecessarily frequent communications are not made;*
- b) communications with borrowers are not aggressive, intimidating or harassing;*

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- c) *borrowers are given sufficient time to complete an action they have committed to before follow up communication is attempted. In deciding what constitutes sufficient time, consideration must be given to the action that a borrower has committed to carry out, including whether he/she may require assistance from a third party in carrying out the action; and*
- d) *steps are taken to agree future communication with borrowers.*

23. *When arrears arise on a borrower's mortgage loan account and remain outstanding 31 calendar days from the date the arrears arose, a lender must:*

a) *inform each borrower and any guarantor on the mortgage, unless the mortgage loan contract explicitly prohibits such information to be given to the guarantor, of the status of the account on paper or another durable medium, within 3 business days. The letter must include the following information:*

- (i) *the date the mortgage fell into arrears;*
- (ii) *the number and total monetary amount of repayments (including partial repayments) missed;*
- (iii) *the monetary amount of the arrears to date;*
- (iv) *confirmation that the lender is treating the borrower's situation as a MARP case;*
- (v) *relevant contact points (i.e., the dedicated arrears contact points not the general customer service contact points);*
- (vi) *an explanation of the meaning of not co-operating under the MARP and the implications, for the borrower, of not co-operating including:*
 - A) *the imposition of charges and/or surcharge interest on arrears arising on a mortgage account and details of such charges;*
 - B) *that a lender may commence legal proceedings for repossession of the property immediately after classifying a borrower as not co-operating; and*
 - C) *a warning that not co-operating may impact on a borrower's eligibility for a Personal Insolvency Arrangement in accordance with the Personal Insolvency Act 2012;*
- (vii) *a reminder that borrowers who have purchased payment protection insurance in relation to the mortgage account which subsequently went into arrears may wish to make a claim on that policy;*
- (viii) *how data relating to the borrower's arrears will be shared with the Irish Credit Bureau, or any other credit reference agency or credit register, where permitted by contract or required by law, and the impact on the borrower's credit rating; and*

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- (ix) a link to any website operated by the Insolvency Service of Ireland which provides information to borrowers on the processes under the Personal Insolvency Act 2012.

and

- b) provide the borrower with the information booklet required under Provision 14.

...

27. Where three mortgage repayments have not been made in full in accordance with the original mortgage contract and remain outstanding and an alternative repayment arrangement has not been put in place, the lender must notify the borrower, on paper or another durable medium, of the following:

- a) the potential for legal proceedings for repossession of the property where a borrower is not co-operating, together with an estimate of the costs to the borrower of such proceedings;
- b) the importance of taking independent advice from his/her local MABS or an appropriate alternative; and
- c) that irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case."

I note that the Provider's policy document **Mortgage Arrears Resolution Process ("MARP")** reiterates its commitment to MARP and notes under the heading *[Provider] Group Communications Policy for Borrowers in Mortgage Difficulties*, at page 9 that:

"[The Provider] commits to communicating promptly and clearly with borrowers to establish reasons for their financial difficulty ... [The Provider] will communicate with borrowers in an open and transparent manner...communications with borrowers will be resolution focused and conducted in a timely and professional manner. [The Provider] commits to act with the highest standards of professionalism, integrity, honesty and fairness in dealing with its customers."

I note that the First Complainant attended a branch of the Provider in October 2014, and the provider's records indicate that this occurred on **28 October 2014**. She made a request to the Provider that her contact details, in particular her address, be updated on its system, such update being subsequently confirmed with a written confirmation from the Provider.

I note that some five years later, by letter dated **26 November 2019**, the Provider, referring to the **28 October 2014** request to change address, said as follows:

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"appropriate system amendments were made to all accounts apart from one. Unfortunately, the address for account - 101 was not updated and so correspondence relating to this account, including regular arrears letters, continued to issue to the prevailing [location] address, in error."

Although the above explanation notes that the address in relation to account ending 101 was not updated in *error*, the Provider later says that in fact it was correctly updated but that the branch were later informed by a different department that a the joint account owner's authorisation was required and so I note that in that version of events, the *error* lay in incorrectly informing the First Complainant that the change of address had occurred in *all* of the accounts, or in changing the address back, without telling the First Complainant.

I note the confirmation letter from the Provider dated **28 October 2014** listing the new address and thus confirming the change of address. I note that this letter did not specify an account number, which in my opinion, implied that the change of address had been applied to all of the First Complainant's accounts.

In its final response letter dated **26 November 2019**, the Provider said that *"the mailing address remains as [First Complainant's Old Address]. As outlined by your case manager in her mail of 9 May 2019, please send a new request, signed by both you and the joint party, so that we can update our records."* The First Complainant submits the following, in that regard:

"[the] statement in the final response letter doesn't make any sense. [Provider] already acknowledged earlier in the letter that I had sought to update my address for all accounts to be the same as the coborrower's address. Therefore, [Provider] already held another address for my coborrower, which was separate and different to my old address, and which I was not seeking to change. This being the case, I don't see why the co borrower's joint authority would be needed to change my own address?"

The Provider submits that:

"[the Provider] advises that all arrears letters were issued in the joint names of the [First Complainant] and the [Second Complainant]. These letters were issued from the [Provider's] Arrears Support unit and addressed to the Complainants jointly at the correspondence address for the Complainants recorded on the [Provider's] system at the time."

I note that the First Complainant was seeking to change her address to that of the Second Complainant who is her relative, and I note her submission that it is unclear why joint authority would be required if the Second Complainant's address was already on the account.

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As the request was however to change the contact details on a joint account, I accept that both parties' consent was required by the Provider, but in this instance, when this came to light in early **November 2014**, I am satisfied that the Provider utterly failed to take the necessary steps to communicate directly with the First Complainant to explain the need for the joint consent to the change of the contact details she had requested. In my opinion, had it done so, this would have prevented the issues which subsequently arose from relevant communications not being sent to the address, which the First Complainant had identified to the Provider.

I note that by letter dated **26 November 2019**, the Provider noted that the mailing address was still the First Complainant's old address, whilst acknowledging that its use of this address had led it to have to report the incident to the Data Protection Commission. In the letter dated **26 November 2019** the Provider asked the First Complainant to send a new request to change the address, signed by both parties to the joint account, so that the address could be changed.

The First Complainant states that:

"it is apparent from [Provider's] letter of 26 November 2019, that they have been issuing correspondence to an address where I expressly told them that I would no longer be living, and that they perhaps continue to do so. By [Provider's] own admission, this constitutes a breach of the Data Protection Act."

I accept that the Provider is entitled to have a policy which requires joint authority to change an address on a jointly held bank account. However, I am satisfied that the Provider's error led to the First Complainant being incorrectly informed that her address had been updated on the Provider's system, when it had not been. The Provider's failure to alert the Complainants to the issue which had arisen, ultimately led to communications not reaching the address which the First Complainant had intended.

In relation to the failure to communicate the mortgage arrears position to the Complainants, the Provider submits that:

"The annual mortgage statements received by the [Complainants] at the end of 2017 and 2018 afforded the Complainants the opportunity to view all transactions on the account including the unpaid direct debits. Mortgage Loan account statements do not state arrears on the loan and are not intended to represent arrears notification... The [Provider] is cognisant of its duties and obligations under both Consumer Protection Code (CPC) and the Code of Conduct on Mortgage Arrears (CCMA). Its duties and obligations are in no way absolved or mitigated where customers have access to online account systems or being in receipt of account statements."

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The First Complainant submits that *"it is unreasonable in the extreme for [the Provider] to present their regular annual mortgage statement as an arrears communication"* and further notes that this *"falls far short"* of the level of information required by the **CPC** and **CCMA** and that such obligations are not *"absolved or mitigated by virtue of the customer having internet access, or being in receipt of bank statements."*

I note that the Provider accepts that arrears notifications are not available to view on its online system and I accept that it is not reasonable to suggest that a consumer will infer their arrears position from bank statements or their online account.

The First Complainant submits that:

"[Provider's] approach to communicating with me was not proportionate to the gravity of the situation. Asides from the lack of regulatory communications, [Provider] did not attempt any other means of communicating with me on this issue, omitted to refer to the arrears on several occasions when we were in communication, and did not communicate with my co borrower/guarantor. It is also difficult to understand why [Provider] did not try at an earlier stage to contact me at the alternative (correct) address that they clearly had on file and finally used in April 2019."

I note that all letters regarding arrears were in fact issued to the Complainants but to the incorrect address, such that they did not receive those letters. I note the Provider's submission that it made hundreds of unsuccessful automated phone calls to the First Complainant, and I note the First Complainant's assertion that these calls should have instigated an alternative form of communication. The First Complainant also submits that the Provider *"did not issue any letters whatsoever to [First Complainant]"* in relation to the arrears. It seems that a letter dated **5 April 2019** was the first reference to arrears the First Complainant received, and the First Complainant paid the three arrears amounts on **18 April 2019**.

I note in particular that the Provider wrote to the First Complainant on **17 May 2019** and noted that all arrears had been cleared and then advised on **7 June 2019** that there was a subsequent outstanding payment from **March 2017**. This was the second incorrect affirmation about the First Complainant's account. The First Complainant paid the **March 2017** arrears on **10 June 2019** and she submits that the **7 June 2019** position contradicts the **17 May 2019** position, that the **March 2017** arrears were not communicated to her in correspondence from 2017-2019 and that they were not referenced during a telephone call in **December 2018**. The Provider acknowledges that it confirmed to the Complainants on **17 May 2019** that arrears had been cleared in full and then subsequently said that the account was one further payment in arrears. The Provider's explanation is that the conversation in **December 2018** was in connection to a matter unrelated to the joint mortgage account, and not the subject of the complaint.

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I am conscious that the First Complainant made great efforts to clear arrears balances in a timely manner once notified, and that missed repayments occurred on account ending 101, fifteen times from **4 January 2016** to **1 April 2019**. If the direct debit payment had been moved to the requested dates, and if the First Complainant had been aware of the arrears position, there is every possibility that this state of affairs would not have arisen or continued. Overall, I take the view that the Provider's failure to communicate the arrears position was a breach of provision 4.2 of the **CPC** insofar as there was no timely supply of this urgent information to the joint owners of the account.

I note that the Provider issued correspondence to the old address in line with its legal and regulatory obligations but that due to its own error, this correspondence was not received which meant ultimately that legal and regulatory obligations were not met. It seems that the Complainants did not know about the arrears until **April 2019**. I don't accept therefore that information was sent by the Provider to the Complainants regarding mortgage arrears on a phased and regular basis, or that contact with the Complainants was "*proportionate*." I also note that the requirement in 11.5 of the **CPC** to "*maintain up-to-date records*" was not met by the Provider in circumstances where the Provider knew that the address on file was incorrect and neither amended it nor made contact with the First Complainant, to explain the situation.

The Provider also stood in breach of a number of provisions housed within the **CCMA** including 3.9, 3.12, 3.22, 3.23 and 3.27 which detail the obligations of a Provider towards a consumer in mortgage arrears. In particular, the Provider did not communicate promptly and clearly with the Complainants regarding the arrears and did not present arrears information in a timely or consumer friendly manner. In particular, I note the First Complainant's submission regarding the lack of clarity about the subject matter in the **5 April 2019** letter which included a single reference in an appendix to the relevant account. I take the view that this letter is likely to have been a confusing letter to receive without any context. Additionally, the Provider failed to adhere to provisions 3.22 and 3.23 of the **CCMA** which obliges it to communicate proportionately and make phased updates regarding mortgage arrears to the consumer and to inform the consumer of important rights and warnings related to its arrears.

I note that the First Complainant was not updated of the risk of legal action should she not make payments and I note that this was a breach of the Provider's obligations pursuant to provision 3.27 of the **CCMA**. I am further satisfied that the Provider is in breach of its own policy as outlined in its **Mortgage Arrears Resolution** policy document in that it failed to communicate promptly and clearly with the First Complainant to establish reasons for her financial difficulty, and it failed to communicate in an open and transparent manner with the Complainants.

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I note the First Complainant's submission that in **January 2016** she sent a letter to the Provider requesting to change her mortgage direct debit, to align with receipt of her rental income. I note that the First Complainant submits that she received no reply to her request and that she contacted the Provider in **March 2018** again, in relation to her request.

The Provider submits by letter dated **26 November 2019** that:

*"I note from the file that you had sent requests to our Home Mortgages Department on both 14 January 2016 and 8 March 2018 for the repayment date on mortgage account ****101 to be amended. As this account is held jointly with a third party, Home Mortgages require a signed authority, from both parties to the loan, before processing any amendment.*

As we had only received a signed authority from you, a letter was issued, on both occasions, requesting a signed written authority from all parties to the loan, authorising the [Provider] to process the amendment. I am attaching these for your reference and as you can see, both letters issued to the address at [First Complainant's Old Address]. I appreciate that given you were no longer living at this address that you would have been unaware this correspondence had issued and that there was a need to supply both signatures."

The Complainant submits the following:

"How can it be the case that the [Provider] required authorisation from both borrowers before processing a simple payment date change request - although the [Provider] was clearly aware that all mortgage payments were coming from my current account with [Provider], not from my co-borrower's account - while at the same time the bank did not communicate with my co-borrower regarding the arrears? I would like to understand why the [Provider] Imposed a higher burden of joint authorisation compliance on its customer than it applied to its own operations."

The First Complainant also submits that she attended a branch in **December 2018** seeking information regarding account ending 203 including historic interest rates and the balance of this account, but that she didn't receive this information. I note that contact was made by the Provider in relation to her request, by email dated **18 April 2019**, however, I note that this was four months later and that the First Complainant says that the information furnished "*was not what I had requested.*" The First Complainant submits that the absence of this information, delayed her in the selling of this house. She further submits that "*a 6-month delay for confirmation of a mortgage balance is utterly unacceptable.*"

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The Provider submits that this information was issued to the First Complainant's old address and apologises that the information was not promptly issued after her visit and also submits that the information was "*clarified*" in the **26 November 2019** letter.

I am satisfied that the Provider is entitled to impose a requirement that both joint owners of the account together authorise changes to the account. The Provider's failure to change the mortgage direct debit date (to align with receipt of rental income) without dual joint authority was not inappropriate and did not constitute a breach of 3.3 of the **CPC** which requires that the Provider ensure consumer instructions are processed properly and promptly. However, the Provider's contact with the First Complainant about this important piece of information was not communicated due to the incorrect address being on file. I am further satisfied that the Provider's failure to furnish the First Complainant with the requested information in relation to account ending in 203 was a breach of Provider's obligations under provision 2.2 of the **CPC** to act with *due skill, care and diligence in the best interests of its customers*

On **1 March 2019**, the First Complainant received a letter welcoming her to a Specialist Department of the Provider who "*work with our customers to provide specialist support and dedicated credit expertise.*" The First Complainant submits that her loan being assigned to the Specialist Department "*imposes elevated credit scrutiny and pursues financial information and credit reviews which would not apply to other borrowers.*" The First Complainant contends that this assignment impacts her ability to conduct business with the Provider and impacts future credit applications. The First Complainant asserts that requests for information from the Provider to complete the review were "*disproportionate to the bank's business purposes*" and amount to "*prejudicial treatment.*"

The First Complainant submits by email, dated **28 May 2019**, as follows:

"I would like to understand exactly which provision of [Provider's] terms of business, or of the Consumer Protection Code, or which other provision, entitles [Provider] to pursue this review against a customer who is not in arrears, and who cleared prior arrears within a matter of days of being made aware of them. And in particular, if there is such a provision which could permit [Provider] to conduct this review, I would like to understand exactly [Provider] is choosing to enforce it in circumstances where [Provider] has failed to follow its own processes and as far as I can tell, failed to comply with regulatory requirements."

The Provider submits, by letter dated **17 April 2019**, that its policy was to conduct an annual review on all borrowings especially where arrears arise and that it is a standard requirement that up to date financial information is sought from the borrower to assist in the review and notes that "*annual reviews can be carried out on all accounts even when they are up to date and performing in accordance with the terms and conditions of their borrowings.*"

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The First Complainant's position on this, is that it is "*disingenuous*" and that this is not a "*standard requirement of all borrowers*" and that "*in practice such reviews are clearly not carried out on all accounts.*"

The Provider confirmed that the process of transferring the Complainants' facilities out of this department "*has commenced.*" In my preliminary decision, I noted that although it is the Provider's prerogative and right to review any of its accounts, in this instance, in my opinion, the transfer of the Complainant's account to the Specialist Department appeared to have arisen out of the issue with the address, with the consequent issue around the changing of the date for the monthly mortgage payment, and miscommunication regarding arrears. I note however that the Provider maintains that it arose from a wider customer connection.

The situation that arose in relation to missed payments does not appear to have been one of financial difficulty as evidenced by the First Complainant's swift re-payment of missed mortgage repayments, once she became aware of the situation. I note in particular the First Complainant's submission that "*it is incredibly frustrating that, having acknowledged its fault as the root cause of this issue, the [Provider] is nonetheless also effectively confirming that it will continue to punish me for the results of its own error.*"

Because the wider customer connection issue, does not form part of this complaint investigation, it is unclear why the Provider having recognised its error, did not remove the account from the Specialist Department, once the arrears situation had been rectified.

The Provider maintains that a performing account with no arrears, can be subject to a periodic review whereby the Provider requests very specific personal and financial documentation. Such information will of course be required if an accountholder is seeking to engage with a Provider, to reach an agreement regarding an Alternative Repayment Arrangement or some variation of the mortgage terms. Where an accountholder is however, meeting the contractual repayments falling due, and otherwise in compliance with the terms and conditions of the borrowing, I would consider it very unusual for a financial service provider to seek source of income details such as P60 income, Directors' Remuneration, Social Welfare details, pension entitlements or additional information concerning an accountholder's tax affairs. Insofar as the wider customer connection issue arising in this matter, does not however form part of this complaint, I do not consider it necessary or appropriate to comment any further.

The First Complainant made a number of complaints to the Provider including formal complaints and she contends that the Provider failed to address or to adequately address elements of the complaint. On **7 February 2020**, the First Complainant submits that she made a telephone call to the Provider and asked that her complaint be dealt with independently from the Specialist Department.

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On **18 February 2020** this complaint was made by email on **19 February 2020** with a further request for *“an independent adjudicator within the bank”*.

The Provider responded by saying:

*“(a) A new complaint has now been registered on your behalf
(b) As your accounts are domiciled within [Provider Specialist Department], I can confirm [Provider Specialist Department Centralised Complainants] are dealing with this complaint
(c) We are not in a position to defer the annual review of your facilities or timeline for same.”*

The First Complainant submits as follows:

“When a customer requests an independent review of an earlier complaint, it is not acceptable that the review would be conducted by the very same person who managed the original complaint.”

The Provider refers to its **Final Response Letter** of **25 June 2020** which notes that the complaint was being handled by a centralised complaints department which is *“an independent unit set up to investigate expressions of dissatisfaction from our customers and to identify themes and systemic issues which need to be addressed to improve our overall customer service”* and highlights that the complaint was *“independently investigated”* and was dealt with in an *“open and transparent manner.”*

The Provider submits that although the **Final Response Letters** were signed by the same Complaint Manager, an independent Complaint handler was assigned to investigate the matter following the First Complainant’s complaint in **February 2020**. On **12 June 2020**, the Provider wrote to the First Complainant and confirmed that *“the investigation is now complete and is currently being independently reviewed by management.”* In my opinion, it would have been more objectively fair, if the Provider had sought to address the complaint independently of the Specialist Department, as per the First Complainant’s request in **February 2020**, which was not an unreasonable request, in my opinion.

The Provider submits that it aims to resolve all customer complaints within 40 business days but that in this case the Provider *“required more than 40 business days to satisfactorily investigate the complaint and issue its FRL.”* The Provider asserts that it *“respectfully does not agree”* that its complaints handling procedure is grossly unfair to customers. The First Complainant submits as follows:

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“it is unreasonable that it took [Provider] seven months to respond to my original complaint, ultimately confirming in November 2019 the information that I had advised to them in April 2019.”

I note the period taken to address the First Complainant’s complaint and in particular the period taken in issuing a **Final Response Letter**, but I take the view that the history of these issues, which stemmed from the events of 2014, were somewhat complicated and will have required significant untangling.

In relation to the Complainants’ credit rating, the Provider confirms that the Complainants’ ICB rating for account ending 101 *“indicated that there are no arrears showing on this account.”* The Provider also submits that:

“according to its records the Complainants’ CCR record reflected arrears outstanding on the accounts as follows:

*Account *****101: This account reported in arrears from August 2017 to April 2018 and then from November 2018 to March 2019. There are currently no arrears reporting with the credit reference agencies.”*

I accept that this is an accurate depiction of the arrears reported to the Central Credit Register (“**CCR**”) though in my opinion, this situation is likely to have been mitigated if the Provider had acted swiftly in November 2014 to explain its requirements to the First Complainant in order to implement the change of address on a joint account. Whilst it is more than a little disappointing that the Complainant did not receive the usual arrears notifications when a payment was missed, which seems likely to have triggered action on her part, I accept that details of missed direct debits will have been available to her from her personal account and certain details from the Statement of Mortgage Account should also perhaps have raised a question in her mind, though I accept that this information did not in any way replace the regulatory notifications which she ought to have been receiving if the address on the joint mortgage account had been changed in 2014.

The result of these issues has given rise to entries on the Central Credit Register which will remain in place for a period of 5 years from those entries, thereby impacting on the Complainants’ credit worthiness, although there is every reason to believe that action would have been taken at the time when these arrears arose, had the Complainants been made aware of the situation. I am also conscious that three years and more of that period, has now elapsed.

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In all of those circumstances, I take the view that it is appropriate to uphold the complaint made against the Provider regarding these issues and the Provider's failure to supply information requested for account ending 203.

I note that the Provider initially paid a goodwill gesture of **€500.00** (five hundred euro) which was dismissed by the First Complainant as "*utterly inadequate.*"

The Provider subsequently offered **€13,750.00** (thirteen thousand, seven hundred and fifty euro) "*in recognition of the failing identified and acknowledged by the [Provider].*"

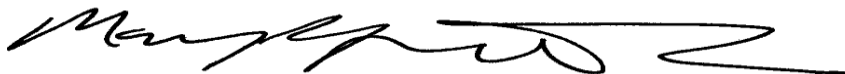
In my opinion, there were a number of opportunities where, having acknowledged its own error, the Provider could have employed effective and speedy customer service to reduce the impact on the Complainants but unfortunately such an approach was not pursued. In all of the circumstances, I take the view that the Provider's conduct in its dealing with the Complainants was unjust and unreasonable, within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Having considered these matters at length, I take the view that the Provider's offer of €13,750 falls short of the appropriate compensation required to redress these issues for the Complainants. Accordingly, I direct the Provider to make a compensatory payment to the Complainants, as directed below.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is 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 **€17,500** (seventeen thousand five hundred Euros) 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)

7 June 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—

(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.