



<b><u>Decision Ref:</u></b>	2022-0203
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Arrears handling (non- Mortgage Arrears Resolution Process ) Dissatisfaction with customer service Incorrect information sent to credit reference agency Classification of borrower as non-cooperating Maladministration regarding voluntary sale
<b><u>Outcome:</u></b>	Partially upheld

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint relates to customer service issues, processing delays and general maladministration relating to a mortgage account. The mortgage account holders are a mother, her brother and her son. The first Complainant is the son, and the second Complainant is his uncle. Pursuant to a power of attorney the first Complainant is the appointed attorney for his mother, the third Complainant.

#### **The Complainants' Case**

The first Complainant states that the property associated with the mortgage was his mother's home and that his mother suffers from a degenerative disease and is now living in full time residential care. The first Complainant states that in **2010** he, as well as his uncle, the second Complainant, *"were put under pressure to put our names down on a very large mortgage"* with the Provider.

The first Complainant states that from **2010**, his mother's condition deteriorated to such an extent that *"she could no longer handle her affairs"* and he, as her sole caregiver and only financial support, made the interest only repayments on the mortgage over a 7-year period until **2017**.

The first Complainant states that his mother's condition deteriorated to such an extent that she was placed into full-time residential care in **2017** and it was at this point that the decision was taken to sell the property, as a means of settling the mortgage balance. The Complainants state that:

*“from this point onwards the dealing with [the Provider] and their representatives became nothing short of a nightmare and put me under a great deal of anxiety and stress whilst trying to cope with my mother's decline, which I expressed to them on multiple communications”*

The first Complainant states that attempts were made to sell the house, however, it soon became apparent that a sale was not possible, because he and his uncle learned for the first time that there were additional *“judgment mortgages attached to the house”* stemming from his mother's previous *“financial difficulties”*.

The Complainants state that in light of this new information and the realisation that they could not afford to maintain the mortgage repayments indefinitely, it became clear that their only option was to surrender the property back to the Provider. The Complainants however state that any attempts to surrender the property have been undermined by the numerous ongoing issues that they have had with the Provider.

When making the complaint, the Complainants stated that *“for the past three years they [the Provider] used every delay tactic in the book”*. The Complainants state that the Provider would not return any phone calls and it also lost forms which the Complainants completed, and these then required re-submission. The Complainants also state that on one occasion, the Provider determined that the signatures on a particular set of forms did not match the signatures held on their records and this resulted in the Complainants having to attend a local branch to re-submit their signatures, before the paperwork could be processed. The Complainants state that it also took the Provider a period of months to add their solicitors as an authorised third party, to act on their behalf and they submit that *“even he was ignored on numerous occasions”*. Furthermore, the Complainants state that the Provider delayed in responding to the Complainants' request to appoint a receiver.

The Complainants state that during this time, the Provider would typically take months to respond to any queries that they raised whilst, during the same period, would issue correspondence to them stating that the Complainants were deemed as non-cooperative. The Complainants state that upon receipt of any such letters, they would contact the Provider to advise that they had been attempting to resolve the issues at hand, adding that it was the Provider which was *“ignoring”* them.

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The Complainants state that the Provider recorded them as non-cooperative on two separate occasions, however, this were subsequently overturned following intervention by the Complainants' solicitor. The Complainants state that the Provider acknowledged fault and offered **€250.00** compensation, which the Complainants did not accept.

The Complainants state that in "*mid 2019*", the Provider issued a memorandum of surrender which was completed and returned in **August 2019**. The Complainants state that within this form, the first Complainant selected the option that he would remain in possession of the property until such time as an agent was appointed. The Complainants state that this request was ignored and the Provider "*returned the memorandum to us on the 27th September to advise due to the fact [the first Complainant] was still living in the property*" and therefore would not accept the memorandum that had been submitted and the Provider also requested that the first name Complainant vacate the property. The first Complainant states that he returned the updated memorandum in **November 2019**, once he had arranged alternative living arrangements.

The Complainants state that despite the Provider receiving the re-submitted memorandum in **November 2019**, it confirmed delays in processing, citing COVID-19 as a cause. The Complainants query how this could have been a factor when it was clear that COVID-19 and any subsequent restrictions were not present in Ireland until **March 2020**. The Complainants state that they escalated a complaint and requested a call back from the Provider's complaints department, but again this callback was never received.

The Complainants state that rather than call back to discuss the complaint, as had been requested, the Provider instead issued a Final Response Letter dated **17 June 2020**. The Complainants assert that they requested the call back from the Provider's complaints department so as to ensure the various elements of their complaint were noted, however, no one called back to discuss the complaint, and it became apparent there were elements of their complaint that the Provider failed to address in the Final Response Letter.

The Complainants submit that the Provider accepted it had failed to issue an acknowledgment letter regarding the complaint and states that this "*demonstrates mistakes and poor service that we have received from them, for years now*".

The Complainants assert that if they had been sent the acknowledgement letter in a timely manner, this would have meant that they could have contacted the Provider to discuss the logged complaint. The first Complainant submits that the Provider also failed to update his correspondence address, despite numerous requests and any correspondence sent to him was being posted to an address he no longer had access to.

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The Complainants state that the Provider referred *“to our credit rating being severely effected due to the arrears”* on the account. The Complainants submit that their solicitor advised them that they should cease making payments on the mortgage, on the basis that the Provider was not engaging with them and that stopping the payments would *“get them to notice us and help us”*. The Complainants therefore contend that the Provider is partly responsible for the arrears that have arisen on the account, as it did not meaningfully engage with them. The Complainants contend that if the Provider *“treated us fairly from day one in trying to resolve this issue the arrears would not be anywhere near where they are and we would not be in this situation”*. The Complainants state that as a result of the Provider’s lack of engagement *“we’re pretty much blacklisted for the next seven years”*.

The Complainants say that the Provider mentioned in its Final Response Letter that it has been in touch with their solicitor as the approved third party and therefore the Complainants should liaise through their solicitor. The Complainants state, however, that the Provider issued *“very little communication”* to their solicitor. The Complainants contend that even if the Provider is obliged to discuss matters with their solicitor, it should still issue a callback to acknowledge the request, as a general courtesy.

The Complainants made further submissions by way of letter dated **11 May 2021**. The Complainants re-iterated that during the pandemic they had not been offered any assistance with regards to mortgage payments/arrears. The Complainants also stated that the property has been on the market since **February 2021**. The Complainants stated that the majority of communications/call backs by the Provider only occurred after being prompted on multiple occasions, by the first Complainant.

The Complainants submitted a detailed timeline of the developments between **August 2017** and **March 2018** in respect of the communication between the Complainants and the Provider as it pertains to the appointment of the third-party authority. The Complainants submit that this timeline shows the *“breakdown in communication between the departments”* within the Provider.

The Complainants state that *“during this urgent time”* the first Complainant was asked to verify his signature twice and *“despite many phone calls and emails stressing the urgency it was almost 2 months”* after the first Complainant’s second verification request, that the Provider contacted the other Complainant to then say his signature didn’t match. The Complainants state that signature verification *“only became an issue when we needed help desperately”*. The Complainants also *“find it not acceptable that if an agent is out of the office or performing other duties, no one else would deal with the matter until they return”*. The Complainants state that their case was *“not treated as unique and was not considered on its own merits. It was not handled sympathetically or positively by the lender”*.

The Complainants state that the *“only significant engagement to deal with the arrears was bombarding us with automated letters. When speaking to the multiple agents...of the back of these letters the assistance I received...was to be told to ignore these letters”*. The Complainants state that when asked to seek clarity on what was happening and what the Complainants needed to do, they were told *“on almost every occasion”* that they would be called back, and this did not happen on a large number of occasions.

In respect of the appointment of the receiver, the Complainants state that *“there is very little communication from [the Provider] from the date the third-party authority was added to our file”*. The Complainants state it would take the Provider *“long periods of time to come back to his correspondence and the situation would need to be explained again and again”* despite the fact that the third-party authority was proposing *“a suggested solution to a major problem”*.

The Complainants in their response on **11 May 2021**, stated that having looked through records, they could not locate the details of the documents that were lost, and therefore that this element can be removed from the complaint.

The Complainants submit that the Provider has provided inaccurate information with regard to some of the allegedly missed mortgage repayments *“which were in fact paid”*. The Complainants state that the first two payments missed from **2017** were due to delays with the standard financial statement, and that the Complainants were advised that the payments would be backdated. The Complainants acknowledge that they cancelled their direct debit but state that this was *“out of frustration”* and a feeling that *“it was the only way to get [the Provider] to notice us and engage with us”*.

The Complainants note that the property was surrendered to the Provider officially in **November 2019**, yet the Provider continued to try to process mortgage repayments thereafter and the Complainants state that they are *“confused as to why we would be expected to continue to pay mortgage payments on a property that is now in their possession”*.

In its **11 May 2021** submissions, the Complainants *“highly disagree that [the Provider] has been in ‘significant engagement in relation to dealing with the arrears and assisting the customer where possible’”*. The Complainants also confirmed that it was never communicated to the first Complainant that in order to change the main correspondence address *“all 3 parties would need to verify”*.

The Complainants made further submissions on **26 May 2021** stating that the Provider is *“still not willing to take any responsibility for how badly they have handled our case and us as individuals in this situation”*. The Complainants rejected the settlement offer of **€2,000**.

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The Complainants made further submissions on **17 June 2021** stating that they are thankful that the Provider has *“increased the offer”* and has *“acknowledged some of the unsatisfactory service issues in dealing”* with the Complainants, however, they did not feel the offer was satisfactory seeing the account was now in debt of **€187,313.22** and the Complainants’ credit ratings have been severely affected as a result. The Complainants also attached a letter from the Provider dated **15 September 2020** which admitted a failure to send the required regulatory correspondence to the Complainants as a result of *“an operational error”*. The Complainants state that they were not *“treated fairly and efficiently by [the Provider] during a very difficult time”* and they are *“just looking for fairness and for something to be done regarding the arrears and [their] credit rating”*. The Complainants rejected the settlement offer of **€5,000**.

The Complainants want the Provider to acknowledge *“the very unfair treatment”* and *“take the property, clear the arrears and amend our credit rating”*.

### **The Provider’s Case**

The Provider issued two final response letters dated **6 March 2020** and **17 June 2020**. The Provider states that it received a letter from the Complainants dated **8 January 2020** wherein it was noted that the Complainants had received correspondence from the Provider that stated their solicitor was not an authorized third party to act on behalf of the Complainants. The letter issued to the Complainants also stated that legal action was soon to be taken against the Complainants as they were deemed as not co-operating.

The Provider issued an apology in its Final Response Letter dated **6 March 2020** stating that the Complainants *“should never have received the letter dated 29th December 2019”* on the basis that the *“key hand back”* and *“memorandum of surrender”* documents were received by the Provider but were not *“acted upon”*.

The Provider states that the Complainants had previously attempted to sell the property however the sale could not proceed because of judgments on the mortgage and therefore any failure to sell the property was not as a result of the Provider rejecting the Complainants’ proposal to appoint a receiver.

The Provider states it did not repossess the property and rather acted on the information contained within the memorandum of surrender submitted by the authorised third party. The Provider states that in doing so it secured the property.

The Provider states that it initially received a memorandum of surrender from the Complainants' solicitor on **28 August 2019**. The Provider states that this was followed by a request from the Complainants' solicitor on **12 September 2019** enquiring as to whether the first Complainant could reside in the property for a period of three months. The Provider states that this suggestion is outside of the normal process and that it indicated to the Complainants' solicitor on **27 September 2019** that it could not take an occupied property into its possession. The Provider states that it asked the Complainants' solicitor to re-submit the memorandum of surrender once the property had been vacated.

The Provider states that it contacted the Complainants' solicitor on **2 October 2019** to state that a hand-over date could be agreed for 3-4 months' time and that this could be diarised if required. The Provider states that an updated memorandum of surrender and the keys to the property were then received from the Complainants' solicitor on **21 November 2019**. The Provider states that the deeds of the property were still with the Complainants' solicitor as he had requested them on accountable trust receipt previously, when he had tried to sell the property, during which issues in relation to title were discovered (judgment mortgages and issues with building regulations). The Provider stated that the deeds of the property were not recovered until **November 2019**.

In response to the Complainants' contention that the Provider delayed in the sale of the property, the Provider submits that it is not possible to *"automatically put the property up for sale as soon as it is surrendered as there are background processes that need to be completed prior to going to market"* (e.g. must ensure property is vacated, instruct on the property report, complete a checklist before sending the details to the property management company). The Provider notes that the Christmas break occurred shortly after the surrender of the property and then the country *"went into total lockdown in **March 2020**"* which influenced matters. The Provider notes that there were a series of calls from the first Complainant seeking updates during this time, wishing to speak to somebody in either the legal department or recoveries and that *"this is not a practice that the Bank engages in, and perhaps this could have been explained more clearly to the customer"*. The Provider made further submissions to this Office on **26 April 2021** wherein it stated that the property had been approved to be marketed in **December 2020** but that COVID had prevented the Provider from placing the property on the open market and it was hoped that when lockdown was lifted in **April 2021**, this could happen.

The Provider states that the Complainants' credit rating will continue to be affected due to the amount of arrears on the mortgage account which as of **26 April 2021** was **€187,313.22**. The Provider asserts that there has been *"significant engagement in relation to dealing with the arrears and assisting the customer wherever possible"*.

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The Provider stated that the Complainants' Irish Credit Bureau records will reflect the previous seven years of their mortgage history and the Central Credit Register records will mirror this. The Provider stated that it was required to issue a report to the Irish Credit Bureau, and this must reflect the transactions that have occurred on the account. The Provider submits that it cannot speculate on how any other financial provider may interpret the Irish Credit Bureau data thereafter.

In terms of call-backs requested by the Complainants, the Provider set out a timeline detailing all of the calls that the Complainants made to the Provider between **2017** and **2020**. The Provider acknowledged that there *"are some where there were delays in calling the customer back"* and apologised and accepted that *"there were some service failings"*.

The Provider states that on **30 August 2017**, the Complainants' solicitor contacted it to say that it had been appointed as the third-party authority for the Complainants. The Provider states that it contacted the Complainants on **7 September 2017** seeking customer verification of this. The Provider states that the Complainants' solicitor then called the Provider on **11 September 2017** and was informed that the Complainants' account could not be discussed with him until the third party authority was in place. The Provider states that on **3 October 2017** the first Complainant was told that the letter of authority would have to be authorised by all parties to the account and at the moment it was just the first Complainant who had signed it.

The Provider states that it called the first Complainant twice on **18 October 2017** to follow up on the authority issue, but he did not answer. The Provider states that on **13 November 2017**, the first Complainant sent a new letter of authority, and this was received by the Provider on **17 November 2017**. The Provider states that it told the Complainants on **7 December 2017** that the signatures on the letter of authority needed to be verified. The Provider states that the first Complainant sought an update on **13 December 2017** and the Provider attempted to call him back on **15 December 2017**.

The Provider states that the first Complainant sought an update on **2 January 2018** and **4 January 2018** and was called back but there was no update to provide. The Provider states that it emailed the first Complainant on **23 January 2018** to inform him that his uncle's signature needed to be verified and his uncle was advised to visit a branch with ID to have his signature witnessed.

The Complainants' solicitor was ultimately added as a third-party authority on **8 March 2018** and the Complainants were sent an email confirming this on **13 March 2018**. The Provider notes that the Complainants' solicitor contacted the Provider on **1 August 2018** notifying it that the solicitor would be trading under a new practice and the Provider informed the Complainants' solicitor that a new letter of authority would be needed.

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The Provider does not agree that there were undue delays when approving the Complainants' Solicitor as the third party authority. The Provider states that

*"in order to progress a TPA there need (sic) to be a process in place to ensure that all customers are treated fairly and responsibly...there was a waiting time for all parties to complete the letter of authority and a gap while waiting to verify signatures...its is imperative that [the Provider] has all the information, and correct information, before it can apply a TPA to an account"*

The Provider also states that it is open to it to

*"request signature verification to protect customers and the [Provider] itself" and that "this in order to ensure that the person on file is the correct person and that there is no disadvantage to any customer or possibility of any potential fraud on any account"*

In respect of the complaint concerning delay in responding to the Complainants' proposal to appoint a receiver, the Provider submits that on **15 November 2017**, the Provider was in contact with the proposed third-party authority who informed the Provider that there were three judgment mortgages on the Complainants' property and suggested that the Provider appoint a receiver to the property. As there was no letter of authority for this individual, the Provider could not discuss the Complainants' account with him. On **13 March 2018**, following approval of the third-party authority, the Provider spoke with this third party authority who again confirmed that there were three judgment mortgages on the property and that there had been some work done to the property that was against building regulations. The third-party authority again suggested that a receiver be appointed to the property. The Provider notes that the title deeds of the property were with the third-party authority and this led to delays because he wanted the Provider to confirm that it could sell the property and potentially remit the balance of funds to the clients, without the need for settlement of the judgments against the property. The Provider states that it consistently told the third-party authority that this was not something that it could agree to.

The Provider stated in its submissions dated **26 April 2021**, that it did not believe that it lost any documents. The Provider asserted that on the occasions when documents had to be re-submitted, this was as a result of insufficient information in the original submission or in circumstances where originals of documents were needed (i.e. the requested letters of authority).

[The contention that the Provider lost documents, has been withdrawn by the Complainants].

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The Provider states that is *“satisfied that it adequately attempted to resolve the complaint”* raised by the Complainants and *“has engaged with the Complainants and the third party authority throughout this process”*. The Provider states that *“it has been accepted that there were some service failures in returning calls and the letter of **December 2019**, however this was overturned on appeal”*. The Provider states that the Complainants’ complaints:

*“were thoroughly investigated, and this was set out in the Final Resolution Letters of **6 March 2020** and **17 June 2020**, where a number of issues were raised and replied to. In relation to issues that the customers had with the non-compliance element in **December 2020**, this was dealt with by way of an appeal which was upheld in favour of the Complainants.”*

The Provider states that it received a request on **16 July 2020** to amend the first Complainant’s address and it was noted that in order to change the main correspondence address, all three parties would need to verify the request. The Provider states that on **17 July 2020**, the first Complainant’s address was amended.

In its letter dated **26 April 2021**, the Provider offered **€2,000** in recognition of the service issues in the matter and in proposed settlement of this matter.

The Provider delivered further submissions to this Office on **24 May 2021**. The Provider re-iterated that it *“has an obligation to ensure that the parties are who they say they are, and sometimes this may necessitate identification verifications”*. It also points to the fact that even before the third-party authority being appointed, there were some courtesy calls with him. The Provider notes that when its timeline stated, *“direct debit rejected”*, this was merely noting that the direct debit had been rejected and it accepts that there would have been occasions where manual payments were being made. It also notes that direct debit payments were stopped at one point on the advice of the third-party authority. The Provider again accepts that *“there were several times that call backs were offered and either were not followed up with or were late, and for this the Bank can only apologise”*. The Provider re-iterated its offer of **€2,000** in these submissions.

The Provider made further submissions by way of letter dated **9 June 2021** stating that it *“would again like to note that the [Provider] has accepted that there were lapses in service which was clearly unsatisfactory for all sides. I refer specifically to the delays/failures in call backs, and the non-co-operating letter sent after the property was surrendered”*.

The Provider increased its settlement offer to **€5,000** in light of the foregoing.

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### The Complaint for Adjudication

The complaint is one of maladministration, insofar as the Complainants contend that the Provider:

- failed to adequately administer the processing of the property surrender and sale;
- failed to properly consider the appointment of a receiver to the property;
- took too long to authorise the Third Party; and
- provided poor customer service

all of which contributed to and prolonged the adverse effects on the Complainants' credit rating.

### 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.

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

By way of background, I note that the property which is central to this complaint was the first Complainant's mother's home and that from **2010** the first Complainant's mother's health deteriorated to such an extent that "*she could no longer handle her affairs*" and he made the interest only repayments on the mortgage over a 7-year period until **2017**. When his mother's health deteriorated to such an extent that she was placed into full-time residential care in **2017**, the first Complainant along with his uncle, the second Complainant, made a decision to sell the property as a means of settling the mortgage balance.

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I note that it is accepted by all parties that this sale was not possible due a number of judgment mortgages registered on the property. I note that the Complainants then made the decision to surrender the property to the Provider, and issues arising from this, prompted the Complainants to make this complaint.

In respect of the complaint that the Provider failed to adequately administer the processing of the surrender, apart from the customer service issues dealt with below, in my opinion there is no evidence of the Provider failing to adequately administer the surrender of the property. I note that the Provider initially received a memorandum of surrender from the Complainants' solicitor on **28 August 2019**, shortly followed by a request from the Complainants' solicitor on **12 September 2019** enquiring as to whether the first named Complainant could reside in the property for a period of three months. This suggestion was promptly rejected by the Provider on **27 September 2019** on the basis that it would not accept a surrender of the property when the property was occupied. This was a decision within the commercial discretion of the Provider and indeed is understandable, in my opinion. The actual hand-over of the property to the Provider was then delayed for a number of months due, amongst other things, to the need for an updated memorandum of surrender, the keys to the property and title deeds to be supplied. I accept however, that the Provider delayed somewhat in the sale of the property, and in this regard although I note the background processes as outlined by the Provider which need to be adhered to, before a property is placed for sale, this does not adequately explain the absence of progress from November 2019 to March 2020, when there were severe disruptions caused by the COVID-19 pandemic, which then gave rise to further delay.

In respect of the complaint made by the Complainants that the Provider failed to properly consider or delayed in considering the appointment of a receiver, I note that the delay in considering this was due to a lack of proper letters of authority in place for the third-party authority. I note that the Provider consistently told the third-party authority that the appointment of a receiver was not something that it could agree to and in any event, I note that this was at all times a commercial decision to be made by the Provider, which it was under no obligation to agree to.

Regarding the complaint that the Provider took too long to authorise the third party, I note that the timelines submitted by both parties largely correspond with one another. In essence, this aspect of the Complainants' complaint boils down to the implication by the Complainants that the request for signature verification was inappropriate and was in fact a delaying tactic. It is unclear why the Provider would want to delay the authorisation of a third party nor what benefit it would obtain from doing so. In any event, I accept that the Provider is entitled to request signature verification in order to prevent fraud and to protect both itself and its customers' mortgage information.

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Therefore, in my opinion, the decision made by the Provider to request signature verification was not an unreasonable one, but the timelines submitted by the parties are indicative of a less than timely progress being achieved.

In respect of the customer service issues put forward by the Complainants, I note that the Provider accepts that there were several call backs which were offered and not followed up on/were late and it has accepted that the letter dated **29 December 2019** deeming the Complainants to be non-cooperating, should never have been sent.

I further note that the recordings of the telephone calls submitted to this Office, demonstrate the distress the first Complainant felt at being “*bombarded*” with arrears letters at a time when he was doing his best to co-operate with the Provider, and he explained to the Provider that he cancelled his direct debit payments on the advice of his solicitor. It should be noted however, that the cancellation of the direct debit was the cause of the communications being issued by the Provider, as it was obliged to notify the Complainants of the non-payment of the monies due, in accordance with its regulatory obligations. The Provider had no option in that regard, and the Complainants should not have been surprised by the correspondence they received, when they elected to cease payment, thereby contributing further to the arrears problem.

In my opinion, the Provider’s failures to return calls constituted poor customer service and was a breach of provision 2.1 of the Consumer Protection Code 2012 (as amended) which states that a Provider must act “*honestly, fairly and professionally in the best interests of its customers and the integrity of the market*”. By failing to call back the Complainants, by issuing the **29 December 2019** letter and by sending pro-forma letters with no recognition of the steps being taken by the Complainants to address the arrears, the Provider was not acting fairly or in the best interests of the Complainants and in my opinion, this constituted conduct which was unreasonable and unjust within the meaning of **Section 60(2)(b)** of the ***Financial Services and Pensions Ombudsman act 2017***.

I am conscious that when the Provider sent its Formal Response to the investigation of this Office, it acknowledged its wrongdoings to a significant degree. I am not satisfied however, that the compensation offered at that time of €2,000 was adequate for the issues raised by this complaint.

Whilst I am conscious that since that time a more reasonable compensatory offer has been made by the Provider, I do not accept that this was made in a timely fashion and in those circumstances, for the reasons outlined above, I consider it appropriate to partially uphold this complaint and it is my intention to direct the Provider to make a compensatory payment to the Complainants in the sum of **€5,000**, in order to conclude.

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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 **€5,000** (five thousand 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)

20 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.

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**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.

