



<u>Decision Ref:</u>	2018-0018
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Commercial Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - buy-to-let Delayed or inadequate communication
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns the re-structure of a mortgage the Complainant holds with the Provider.

The Complainant's Case

The Complainant purchased an apartment for the sum of €230,000.00 in 2005 with the aid of an interest only loan from the Provider. The property was to be let for 10 years with a developer paying the rent for the duration of the agreement. On the expiration of the 10 year period the plan was that the developer was to buy the property back pursuant to an Option Agreement for the original purchase price, thereby enabling the Complainant to repay the principal. The Complainant states that the developer has gone into liquidation and the guarantor has left the country.

The Complainant states that in 2015 he entered into detailed negotiations with the Provider as to how to deal with the debt. He states that the Provider requested that he put his proposals in writing and the Provider telephoned him to confirm that "option 3" had been accepted. The Complainant states that the Provider's acceptance of Option 3 "put the matter on a contractual footing". He states that he gathered funds for the lump sum and set up a standing order for €1,600 per month. The Complainant states that he did not receive the Provider's written proposal until the 24 February 2016 by which time he had paid the lump sum, 2 monthly payments as well as the further sum of €464.77 in respect of interest on the original loan. An exchange of correspondence took place and on the 15 March

2016 the Complainant received a letter from the Provider informing him that he was required to repay the full amount of the mortgage loan.

The Complainant states that a legally binding contract was created in December 2015 and the Provider has *“shown a complete disregard for the fundamental principles of contract law”*. The Complainant states that the Provider has *“unilaterally pushed out the term of the loan. I did not sign the letter of offer as it failed to reflect what was agreed”*. He states that his *“overall objective was to be debt free by my 80th birthday in 2021. I do not believe this is an unreasonable expectation”*. He states that *“the net effect of the proposal which was accepted provide (after payment of the lump sum of €115,000) for total payments of €105,600 over 5.5 years to 30 June 2021. The document of the 17 February is seeking repayments of €135,720 over 6 years”*.

The complaint is that the Provider wrongfully reneged on agreement made with the Complainant. The Complainant is looking for the Provider to issue a letter confirming *“a lump sum payment of €115,000 (already made) with an additional 66 payments of €1,600 per month to conclude on 30 June 2021 – which I will be happy to sign so that this harassment might stop”*.

The Provider’s Case

The Provider states that the Complainant purchased the property *“on the basis that a substantial capital allowance attached, which you were able to offset against other rental income... the developer included a buy back clause which could be exercised ten years after the property was bought. Hence the original loan term of ten years. The developer’s inability to facilitate a buy back left you in the position whereby you have a property and outstanding mortgage which has now matured”*.

The Provider states that the Complainant *“made a significant capital reduction to the loan over a number of payments in late 2015 and a very realistic proposal to deal with the remainder of the debt”*.

The Provider states that its Network Manager made *“representations and recommendations to the Bank’s Arrears Support unit (ASU) ... (the Manager) is not the decision maker as the decision process resides within the Bank’s ASU”*. It states that it *“is at a loss as to how the Complainant formed the opinion that the Network Area Manager ... was empowered to approve an arrangement which was not within her discretion”*. The Provider states that the Complainant’s proposal was assessed by its ASU unit and on the 17 February 2016 a second amending loan offer issued which reflected the Area Manager’s submission and the Complainant’s subsequent capital reduction. It states that it must convey its decisions in writing to the customer and that *“this constitutes the Bank’s formal offer which must be accepted by the customer to formalise matters... in effect this is a revised loan agreement”*. It states that that its offer differs slightly from what the Complainant felt was agreed *“is due to the fact that the amending loan offer letter must comply with regulatory requirements as to exact loan terms and specify precise repayments. In this instance there is nothing to prevent you from making repayments at €1600.00 per month as opposed to the €1575 .00 per month detailed in the letter”*

/Cont’d...

The Provider acknowledges that between 24 November 2015 and the 30 December 2015 *“17 pieces of correspondence issued to you. Most were triggered by the capital reductions made on different dates as detailed in our letter of 20th January 2016”*. It submits that at the request of the Complainant it refunded *“two interest only instalments total €929.54 (€464.77 X2)”*. It submits that the *“interest only payments which were called for in accordance with the terms and conditions attached to your original offer letter. As the loan matured on 30th March 2016 no further payments will be requested under the direct debit mandate”*.

The Provider states that a revised contract with the Complainant will not come into force until such time as the Complainant accepts its offer of the 17 February 2016. It states that as the Complainant has not completed the Mortgage Form of Authorisation application to extend the term of the loan to a new majority date, that mortgage arrears arose on the account on the 30 December 2015. It submits that the Complainant’s proposal requires it *“to accept an agreement which would not discharge the full outstanding loan and has the potential to cause the Bank to crystallise a loss”*. The Provider states that there is no evidence *“of an agreement with the Bank to accept .. last 6 months of the term defrayed”*.

Decision

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

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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

A Preliminary Decision was issued to the parties on 20th February 2018, 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.

A Submission dated 26th February 2018 from the Complainant, was received by the Financial Services and Pensions Ombudsman after the issue of a Preliminary Decision to the parties. This submission was exchanged with the Provider and an opportunity was made

/Cont’d...

available for any additional observations arising from the said additional submission. I have considered the contents of the Complainant's additional submission for the purpose of setting out the final determination of this office below.

The issue for investigation and adjudication is whether the Provider correctly and reasonably dealt with the Complainant with regard to his borrowings.

- The Complainant's loan offer issued on the **17 October 2005** as follows:-

PART 1 ...

1. Amount of Credit Advanced	€230,000
2. Period of Agreement	10 Years
3. Number of Repayment Instalments	4. Amount of each instalment...
120 Fixed at 4.490%	€857.38 ...
.	
...	

PART 2...

11. Type of Loan	Interest Only
12. Interest Rate:	4.490% Fixed
13. Property to be mortgaged...	
14. Purchase Price (or value) of Property:	€258,000
...	

PART 4 – The Special Conditions

11. Special Conditions ...

(a) The following special conditions apply to the Loan:

*(vi) Repayments of the Loan shall be comprised of interest and any other amounts payable... **At the end of the term ...the Borrower shall discharge the outstanding principal balance, interest and all other monies payable in connection with the Loan.** The Lender may at its absolute discretion convert the Loan to an annuity or repayment loan whereupon the Borrower shall be obliged to make such revised repayments instalments comprising both of principal and interest and any other monies payable ...*

Part 5 The General Conditions

4. Repayment

(a)Unless otherwise stated herein the repayment of the Loan shall be by monthly instalments in arrears ... For an annuity or other repayment loan, repayments shall be comprised of principal and interest and any other amounts payable ...

(The Provider) may at its absolute discretion and with the consent of the Borrower vary any payment of principal, interest or any other amount payable in respect of the Loan...".

[my emphasis]

- The Complainant signed the letter of offer, indicating his agreement to same, on the **24 October 2005** as follows:-

/Cont'd...

"I confirm that I have read and fully understand..... the terms and conditions contained in this Offer Letter and I confirm that I accept the Offer Letter on such terms and conditions..."

- The Complainant had a number of discussion with the Provider in September and October 2015 regarding the loan. On the **8 October 2015** the Provider's records include the following " ...They enquired in a roundabout way re write off **and I stated that (the Provider) will not write off any portion of debt** they also enquired re a interest free portion and I stated (the Provider) is a business they also enquired re a reduction in interest rate I advised that they can put any of the above in their proposals ... which must be accompanied with a competed SFS... I again advised that the full amount of the loan was due in December and that proposals are required...". [my emphasis]

- On the **9 November 2015** the Provider wrote to the Complainant informing him that his "current rate will expire on 8/12/2015" and offering him a "BTL ...of 4.800%". The letter asked the Complainant to reply by the 8 December 2015.

- On the **17 November 2015** the Complainant emailed the Provider stating "all my plans have been based on lodging half the capital against the liability by 31/12/2015. In fact the first of several weekly tranches of €12,000 will be lodged to the Mortgage a/c on Monday next 23rd... letter gives a deadline of 8 December next for submission of same. This has thrown my advance planning upside down as notice periods are involved..".

- On the **19 November 2015** the Provider emailed the Complainant as follows:

"I got the copy of that letter this morning thank you.

The reason for the letter is that for the last 10 years your mortgage has been on a fixed rate which is due to expire on the 8 December next. It will automatically be on the variable rate after that date.... The maturity date of the mortgage is still the 31/12/2015".

- On the same date the **19 November 2015** the Provider wrote to the Complainant stating that "the variable rate will be the one mentioned on the letter (4.8%) until you put your proposal to (the Provider)(which I presume will include you looking for a favourable rate) ...".

- On the **24 November 2015** the Provider wrote to the Complainant as follows:-

"With reference to your recent request I confirm that the amendments to the above account have been processed and the revised detailsbelow.

...

Interest Rate: 4.490%

...

Fixed Rate Maturity Date 8/12/2015..."

- On the **25 November 2015** the Complainant wrote to the Provider as follows:-

/Cont'd...

“... I have new **proposals** which I will present as a series of options **for consideration**:

- 1) Pay €115,000 (which is the ultimate that we can come up), sell the property for the best possible price and I hand over the proceeds in full and final settlement.
 - 2) Pay €70,000 (my available resources) and €950 per month over 14 years.
 - 3) **Pay €115,000 and €1,600 per month over 6 years. Even though it is to the ultimate limit of my capacity this option is my preferred option as I do not wish to be burdened by debt beyond my 80th birthday. As an incentive to secure my commitment to this major burden, I do not think it would be unreasonable to be able to expect the Bank to defray the final six months of the term...**
 - 4) In line with the Special Conditions convert the entire sum into a repayment mortgage and this could comfortably be done over a 25 year period at €750 per month...
 - 5) Hand over the keys in January and let (the Provider) chase to his grave, a pensioner who has both engaged with the Bank and presented a range of workable options.
- If you would like to go through **these options** with us personally, we would be pleased to do so. Indeed, **we are receptive to any proposal from you that maybe attractive to us.**
- [my emphasis]

- The Provider’s records for the **1 December 2015** include the following:-

“... The decision is to offer the borrower a 72 month term extension. **This will mean a revised expiry date of 30/12/2021.** The term extension is conditional on a capital reduction that totals A105k. This recognises the A10k lodgement made on 30/11/15 since the SFS completion dated 25/11/15. Please advise the borrower that the repayment figure quoted on the MFA will be the correct figure before the A105 capital reduction takes place. The repayment figure post-capital reduction is c. A1611pm. Note that the repayments at c. A1611pm will be on a capital and interest basis...”.[my emphasis]

- On the **1 December 2015** the Provider wrote to the Complainant as follows:-

“With reference to your recent request, I confirm that the amendments to the above account have been processed and the revised details relating to your account are outlined below.

Mortgage Product Type:	10 Year Fixed RIL
Mortgage Type:	Endowment
Interest Rate	4.490%
Repayment Frequency:	Monthly
Maturity Date	30/12/2015
...	
Mortgage Repayment	€760.90
Fixed Rate Maturity Date	8/12/2015 ...”.

- A similar letter to the Provider’s letter of the **1 December 2015** was sent to the Complainant on the 2 December 2015 except that the “mortgage repayment” is described as €753.53

- On the **3 December 2015** the Provider and the Complainant spoke on the telephone. The Complainant states that the Provider informed him during this call that Option 3 of his

/Cont’d...

proposal of the 17 December had been accepted. The Complainant has requested a copy of the recording of this telephone conversation. The Provider states, however, that it does not record calls at its branches and the call was not recorded. It states the call was documented in its records as follows:-

*“Spoke to (the Complainant) on mobile **Advised (the Complainant) t/e 72 mts with capital reduction of A115k and new repays of approx A1600 pm on interest rate of 5.65%. ... (the Complainant) happy I advised that MFA may not have correct details when issue but once all cap repaid can get MFA reissued with correct amounts... (the Complainant) will attempt higher cap red ...Advised new repay will start once MFA signed & returned...”**. [my emphasis]*

- On the **7 December 2015** the Complainant emailed the Provider as follows:-

*“Thank you for your call last week ... **Given the Bank’s positive reaction to Option 3 in my letter as outlined, I will despite the challenge it represents, do my utmost to achieve the clearance of my liability.... My plan was to have the initial sum in place by this Friday 11th December and that will happen with a lodgement of €6,000 on that date.... The second part of the plan was to have the balance of €45,000 lodged by Friday... the final sum will not be in place until the period immediately after 24th December ...I am presuming ... that the first monthly payment under the new arrangement will be from the beginning of February. You might please indicate that I am correct in this regard...”**. [my emphasis]*

- On the **7 December 2015** the Provider replied as follows:-

*“... Firstly the letter is a generic letter which issues when a lump sum is received into a mortgage account – there is no change to your mortgage **but sometimes if lump sums are made it can make a difference to the repayment on the mortgage. Once the full €115000 is lodged I will get the documents issued to you with the new repayment on them** – unfortunately until the funds are received the balance will still be as is. It would be **my hope to have the documents out to you and returned in time for the February payment going forward** but we will keep in contact until it is sorted out for you...”*. [my emphasis]

- On the **7 December 2015** the Provider sent a similar letter to its letter of the 1 December 2015 to the Complainant except that the mortgage repayments is described as €679.38.

- On the **8 December 2015** the Provider wrote to the Complainant to inform him that his interest rate “*is now 4.80%*”.

- On the **8 December 2015** the Provider sent a similar letter to its letter of the 1 December 2015 to the Complainant except that the mortgage repayments is described as €630.53 and the interest rate of 4.800% is described as a “*BTL: Roll to VARIABLE*”.

- On the **9 December 2015**, the **14 December 2015** and the **17 December 2015** the Provider sent similar letters to its letter of the 8 December 2015 to the Complainant except

that the mortgage repayments are described as €646.56, €623.06 and €2,594.00 respectively.

- On the **17 December 2015** the Provider wrote to the Complainant as follows:-

"We have carefully assessed your mortgage loan to see if there is an alternative repayment arrangement to suit your individual circumstances.

Offer of an Alternative Repayment Arrangement

We have determined that the most appropriate alternative repayment arrangement option for you in your current circumstances is to allow you to extend the period of your mortgage loan by 72 months.

This extends the maturity date to 19/12/2021 and at the current rate of interest we estimate your new repayment amount to be €2,594.00 each month. This estimate is based on the amount you owe us on the mortgage loan and the rate of interest that applies today... will commence from 30/12/2015.

... When deciding whether to take up this offer, please consider what the alternative repayment arrangement will mean for your individual circumstances...

If you wish to take up this offer we require you to .. sign and return the enclosed Form...".
[my emphasis]

- On the **18 December 2015** the Provider wrote to the Complainant stating that *"the amount of your revised repayment is €543.69 falling due on 18/12/2015"*.

- On the **18 December 2015**, the **21 December 2015** and the **30 December 2015** the Provider sent similar letters to its letter of the 8 December 2015 with the mortgage repayments described as €543.69, €504.05 and €464.77 respectively. I note that the maturity date is still described as the 30 December 2015.

- On the **31 December 2015** the Provider wrote to the Complainant stating that *"the most recent mortgage repayment due was not paid in full by the due date. If you ... are in the process of making an arrangement with us... please ignore this letter..."*. The letter stated that the 1 payment had been missed and that the sum of €623.06 was due.

- On the **4 January 2016** the Complainant emailed the Provider as follows:-

"... I took your advice to ignore and file away the avalanche of documents spat out by the computer following each lodgements to the account. What I did was to ensure that I had funds in the account to pay the last amount notified (€543.60)... Woe is me! It appears that the computer is apparently programmed to deduct the largest amount and €2594 was deducted from the account – placing it in overdraft ...

Could I ask you please do the following for me:

- 1) *Confirm that the o/s balance now shows at €115,000*
- 2) *Set up a repayment DD as agreed for €1600 per month ...*
- 3) *To make sure that the debit for €2594 is cancelled...*
- 4) *The interest rate was varied from 4.49 to 4.80% from 8/12/2015.... You might please credit the account with an adjustment to 4.49% up to 31/12/2015*

/Cont'd...

5) €115,000 divided by €1,600 is 72 months – 6 years applying the incentive for option 3 of a 6 months rebate the final payment would be on 30/6/2021... the account shows that I have now delivered on Part 1 of my commitment. [my emphasis]

- On the **8 January 2016** the Complainant emailed the Provider noting that “the payment of €623.06 has now been honoured and the balance is now at €115,000 ... **You had told me that a letter would issue** to me once I had that balance in place. **I am expecting that letter to incorporate my proposals in Option 3 which you too indicated that you favoured**”. [my emphasis]

- On the **15 January 2016** the Complainant emailed the Provider stating “I don’t know **if the Mortgage Form of Authorisation is to issue from you ... but .. it has not arrived here yet**”. [my emphasis]

- On the **18 January 2016** the Provider emailed the Complainant as follows:-

“... It now transpires that when the calculation was done on the 2nd of December last that the balance used was €204159 less €105000 would leave a balance of €99,158 at 5.65%... Taking the balance of today’s date of €115,000 for the next 72 months... at a rate of 4.8% gives repayments of €1885.00 ... If the documents issue now they will have a repayment of €1885 on them per month which is the capital and interest repayment to 29/12/2021. **The repayment at €100k at 4.8% with a maturity date of 29/12/2021 is €1639.85**”.

[my emphasis]

- On the **19 of January 2016** the Complainant wrote to the Provider as follows:-

“I refer you to my letter of 25th November 2015 setting out several viable options to deal with monies outstanding on the ... property. The calculations were clearly set out in my correspondence and you were at all times aware that the relevant figure was €230,000. You telephoned me in early December to confirm that the Bank were accepting option 3 – namely that I would discharge a lump sum of €115,000 upfront and commence payments of €1600 per month from 31st January 2016 with the Bank defraying the final 6 months payment as a gesture of goodwill.

I made an offer which you accepted and I have discharged the consideration of €115,000 in compliance with the terms of our agreement... A binding agreement is in place...”.

- On the **20 January 2016** the Provider wrote to the Complainant as follows:

“... in response to your letter received in our offices on 20 January.... We conducted an assessment of your Standard Financial Statement (SFS) and proposal dated 25 November 2015 requesting a further period of interest only repayments. You agreed to lodge an amount of €115,000 to the mortgage account however payments received since 25 November 2015 total €98,000.... Once the shortfall of €17,000 has been lodged to the account it will then be reviewed so that a new Mortgage Form of Authorisation (MFA) can be issued detailing the new monthly repayment. As the account is now past the maturity date of 30/12/2015 ... you remain liable for the full outstanding balance currently €115,000 ...”.

/Cont’d...

- The Complainant responded on the **28 January 2016** stating that the Provider was:

“incorrect in both your calculations and in terms of what was agreed with your representative. Nowhere... did I request a further period of interest only repayments. I presented five options none of which related to interest only. My discussions... examined various options one of which was to reduce the original loan of €230,000 to €115,000... Addressed in option 3 ... this is the proposal which was accepted by you. My January statement reflects that I have reduced the loan by €115,000 ... I have already put arrangements in place for the agreed figure of €1600 to be available to you on 31 January and each subsequent month... ”.

- The Provider’s records for the **5 February 2016** include the following:

“... Funds available to service debt confirmed at last assessment E2,221.03. However it is noted the borrowers own expenses were considerable higher. Mr has also made a large capital reduction of E115k from ... own funds over the last 6 months. A term extension to 31/05/2023 will reduce repayments to E1,575.59 per month and is affordable Also in line with his request. Noted borrower has requested a write off of the last 6 months repayments however this is not within (the Provider) policy...”.

- On the **10 February 2016** the Complainant emailed the Provider stating that:

“I did request a response to my letter of 28th January ‘by return’. I note that on 1/2/2016 €464.77 was deducted from the account. I have not authorised any deductions and am gravely annoyed...”.

- On the **17 February 2016** the Provider wrote to the Complainant offering him an alternative repayment arrangement to commence on the 29 February 2016 as follows:-

*“...the current maturity date of the Loan is extended by 89 months (the Term Extension) to the New Maturity Date of 31/05/2023 ...
.... The Lender estimates the new repayment amount will be €1575.00 each month...commence on the 29/2/2016...”.*

- On the **2 March 2016** the Provider wrote to the Complainant informing him that:

“under the terms of your mortgage account you were required to repay the full amount of the mortgage loan on the maturity date shown above. We will shortly be writing to you regarding what you are required to do next...”.

- On the **3 March 2016** the Complainant wrote to the Provider as follows:-

“ I refer to your letter of the 17th February Which purports to suggest a further alternative repayment arrangement.

/Cont’d...

Your representative and I, after much discussion and written proposals... agreed on an alternative arrangement in early December. I immediately proceeded to put arrangements in place to comply with the terms of that agreement ... I have no difficulty in signing an agreement which correctly reflects the arrangement put in place in December...".

- On the **3 March 2016** the Complainant wrote to the Provider informing him that

"under the terms of your mortgage account you were required to repay the full amount of the mortgage loan on the maturity date..."

- On the **24 March 2016** the Provider wrote to the Complainant as follows:-

"...As you are aware (Provider's staff member) role is that of a network manager. She liaises with customers ... makes representations and recommendations to the Bank's Arrears Support Unit ... she is not the decision maker... forwarded your proposal to the Bank's ASU ... and on 17 February 2016 a second amending loan offer issued which reflected her submission and your subsequent capital reduction ...".

I note that the Complainant states that his "Option 3" proposal whereby the last six months of his mortgage term would be "defrayed" was in recognition of his efforts "to maintain the huge repayments". He states that "repayments of €1600 per month are no trifle for a pensioner". The Provider, however, states that its records indicate "that the Complainant was advised clearly that the Bank would not write off any portion of the debt at the meeting on the 9 October 2015 and consistently since then". It states that "mortgage ... write off/debt forgiveness is not a resolution policy employed by" the Provider.

The Complainant submits that the Provider's memo of the telephone conversation of the 3 December 2017 "falls far short of a transcript". He states that while he was "pleased and relieved that the Bank had delivered on their assurance that a lump sum payment would generate a substantial reduction in interest, by indicating their acceptance of Option 3... To suggest therefore that I would have been happy with an interest rate of 5.65% when my previous rate was 4.49% is nothing short of preposterous". He states that his reiteration of the Option 3 agreement is further borne out in his emails which followed that conversation.

I accept that there is no regulatory requirement for the Provider to record telephone conversations with customers. It is, however, unfortunate that the conversation on the 3 December 2015 was not recorded as the Complainant has a different understanding to the Provider of the conversation in question. The call was summarised by the Provider in its contemporaneous records and I note that the record states that the Complainant was advised that the term extension was 72 months. While the Provider's letter of the 17 December 2015 referred to a maturity date of the 19 December 2021, I accept that the Complainant was informed that the Provider's correspondence may not contain the correct information until the capital repayment had been made and that the formal documents would issue after he had made the capital repayments. It is unclear why the formal documentation could not issue before this. I note that the correct formal documentation did not issue from the Provider until the 17 February 2016. It is very disappointing that a letter setting out the full details of the Provider's decision to offer a loan extension was not

/Cont'd...

sent to the Complainant shortly after it had made its decision on the 1 December 2015. I also note that the Complainant was sent numerous letters from the Provider during this time. While he was informed that this would be the case due to the lump sum lodgements he was making, this must have caused confusion; it is also very disappointing that most of this correspondence was automated and did not refer to the Complainant's proposals or the Provider's decision. The evidence also suggests that the role of the Provider's Network Manager was not explained to the Complainant until the 24 March 2015; this is unsatisfactory. I note the Provider comments that it *"is at a loss as to how the Complainant formed the opinion that the Network Area Manager was empowered to approve an arrangement which was not within her discretion"*. In my view the Complainant could not have been expected to know the level of discretion that any representative of the Provider had unless he was clearly informed of such by the Provider. I have been provided with no evidence that this happened prior to the Provider's letter of 24 March 2016. Accordingly I accept that there were serious shortcomings in the Provider's conduct and these aspects of the complaint are upheld.

In any event, whatever the content of the telephone call on the 3 December 2015, I am of the view that the Complainant understood that any re-structure of his loan agreement had to be set out and agreed by both parties in writing. This is clear from the Provider's email on the 7 December 2015 which made clear that written documentation still had to issue prior to the loan re-structure being formalised as well as the Complainant's email of the 8 January 2016 which showed that he was expecting formal correspondence from the Provider.

In the Complainant's submission dated 26th February 2018 it stated that:

"We are not sure of what your decision is in relation to the monthly repayments of €1,600, which [the Complainant] has continued to make since this process started. Can you confirm, to put the matter beyond doubt and in view of the confusion created by the bank, that 72 payments of €1,600 will fully discharge his liability to the bank? In view of the breakdown of trust, there is no point in him trying to negotiate further with the bank, nor is he able. In any event, he has nothing left to negotiate with, having given them his life savings in the form of the lump sum, which was done on the basis of them agreeing to the above repayments".

On balance, I am of the view that while the Complainant set out his *"proposals"* to the Provider on the 25 November 2015 that the Provider did not accept these proposals in writing and instead wrote to him with its own proposals on the 17 February 2016.

I appreciate that the Complainant is a pensioner and understandably would like the loan to be paid off prior to his 80th birthday. There is no regulatory requirement, however, for financial institutions to agree to a particular demand from a borrower regarding changes to the agreed contractual repayment arrangement on a loan. I also note that this mortgage is secured on an investment property, which is not the Complainant's primary residence, which is elsewhere. Accordingly, I accept that the protections of the Code of Conduct of Mortgage Arrears do not apply in this instance. While I am of the view that the Provider

/Cont'd...

should do its utmost to agree a solution in the interests of both parties, it is important for the Complainant to be aware that he has a contractual obligation to repay the monies borrowed to the Provider in the way which was set out to him in October 2005; this was agreed when he entered into the mortgage agreement by signing his acceptance of the letter of loan offer which specified those terms. I am of the view that the Provider has a commercial discretion in determining the outcome of any application from an account holder to amend the mortgage agreement. Accordingly, I accept that the Provider is entitled to refuse the Complainant's request to defray the final six months of the mortgage term and this aspect of the complaint is not upheld. Likewise, the term and level of payments to discharge an outstanding debt, is a matter for the Provider to accept and is not something that this office can interfere with. Therefore, I cannot compel the Provider to accept the Complainant's suggested 72 payments of €1,600 as fully discharging his liability.

Having considered the matter completely, however, I take the view that that there were serious shortcomings in the conduct of the Provider. Accordingly, in order to do justice between the parties to this complaint my Legally Binding Decision is to partially uphold the complaint and to direct the Provider to make a compensatory payment to the Complainant in the sum of €4,000.00.

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)(g)**.
- Pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider pay the Complainant €4,000 (four thousand euro) to an account of his choosing within 35 days of Provider receiving the account details from the Complainant.
- Pursuant to **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I 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**, where the amount is not paid by the Provider from the expiry of the 35 days set out above.
- Pursuant to **Section 60(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Respondent Provider is now required, not later than 14 days after the expiry of the 35 days set out above to notify this office in writing of the action taken or proposed to be taken in consequence of the said direction/s outlined above.

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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS
OMBUDSMAN**

22nd March 2018

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) in accordance with the Data Protection Acts 1988 and 2003.