



<b><u>Decision Ref:</u></b>	2018-0026
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Variable Mortgage
<b><u>Conduct(s) complained of:</u></b>	Arrears handling - Mortgage Arrears Resolution Process Level of contact or communications re. Arrears Maladministration
<b><u>Outcome:</u></b>	Substantially upheld

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

#### **Background**

The complaint concerns a mortgage the Complainant holds with the Provider.

#### **The Complainant's Case**

The Complainant submits that the Provider has failed to comply with the 2013 Code of Conduct on Mortgage Arrears ("CCMA"). She also states that the Provider failed to comply with the Mortgage Form of Authorisation Agreements ("MFA") signed in November 2012 and May 2014. The Complainant also states that the Provider failed to conduct the required reviews prior to the expiration of the Alternative Repayment Arrangement ("ARA") in October 2013 and February 2016.

The complaint is that the Provider wrongfully managed the Complainant's application for forbearance on her mortgage account. The Complainant is looking for a long term sustainable solution to her mortgage payments.

#### **The Provider's Case**

The Provider has apologised for its delay in responding to the Complainant's complaint of the 8 December 2015. It states that the delay was due to an unintentional delay in correspondence being forwarded from the branch to the Arrears Support Unit ("ASU").

The Provider states that in the absence of an ARA the Complainant is required to maintain the payments in accordance with the letter of loan offer. It states that if there is no formal arrangement in place to alter the payment being billed then arrears will accrue on the account. In relation to the phone calls the Complainant received *“requesting additional payments were made as a result of outstanding arrears on your account”*, the Provider states that it is required to issue regulatory correspondence and that its level of contact and attempted contact has not been excessive. The Provider also states that it did contact the Complainant prior to expiry of facilities as required under the CCMA.

The Provider acknowledges the Complainant’s ongoing repayments of €1500 per month and states that it is *“in the Bank’s interest to ... agree a long term sustainable solution which will provide certainty as to the long term discharge of your loan”*.

### **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 26 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.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

### **Terms and Conditions**

- The Complainant’s original loan offer issued on the 21 May 2008 as follows:-

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PART 1 ...

- |                                    |                                 |
|------------------------------------|---------------------------------|
| 1. Amount of Credit Advanced       | €328,000                        |
| 2. Period of Agreement             | 18 Years                        |
| 3. Number of Repayment Instalments | 4. Amount of each instalment... |
| 12 Fixed at ...                    | €1,428.77 ...                   |
| 24 Variable at ...                 |                                 |
| 180 Variable at ...                |                                 |

...

PART 2...

- |  |                |
|--|----------------|
| 11. Type of Loan                           | Interest Combo |
| 12. Interest Rate:                         | 5.250% Fixed   |
| 13. Property to be mortgaged...            |                |
| 14. Purchase Price (or value) of Property: | €388,000       |

...

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 Society 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 her agreement to same, on the 29 May 2008 as follows:-

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

**Sequence of Events**

- In 2011 the Complainant applied to the Provider for forbearance and on the 14 October 2011 the Complainant signed the Provider's Mortgage Form of Authorisation (MFA) agreeing to a reduced repayment of €1000.00 per month for a period of 12 months.
- On the 11 April 2012 the Provider wrote to the Complainant as follows:-  
*"... we are now writing to establish if there has been any change in your circumstance since the arrangement was put in place... If there has been a change in your financial circumstance please complete the attached Standard Financial Statement ...".*
- The Complainant replied on the 15 June 2012 stating that *"there has been no significant change in my circumstances...".*

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- On the 22 August 2012 the Provider wrote to the Complainant to inform her that the *“interest only combo period of your mortgage is due to expire on 21/10/2012. From that date repayments will consist of principal and interest...”*.
- I have been furnished with an undated copy of an SFS (Standard Financial Statement) that the Complainant appears to have completed around this period giving details of her financial situation.
- On the 22 October 2012 the Provider informed the Complainant that her mortgage had *“now been switched to a Repayment Mortgage”*.
- On the 1 November 2012 the Provider wrote to the Complainant offering an ARA and enclosing an MFA. The Complainant signed the MFA on the 8 November 2012 indicating her acceptance.
- On the 7 November 2012 the Provider wrote to the Complainant to inform her that the mortgage had fallen into arrears on the 31 October 2012.
- On the 16 November 2012 the Provider wrote to the Complainant informing her of her new repayment amount.
- Letters regarding the arrears on the account were sent on the 3 December 2012 and the 5 December 2012.
- On the 4 January 2013 the Provider sent details of an ARA to the Complainant. The Complainant signed the attached MFA on the 27 February 2013 indicating her agreement to same.
- On the 20 June 2013 the Provider wrote to the Complainant as follows:-  
*“Under the Code of Conduct on Mortgage Arrears we are reviewing the arrangement in place on your mortgage...writing to establish if there has been any change in your circumstances since the arrangement was put in place or since your last review...  
**If there has been a change in your financial circumstances please complete the attached financial assessment form.** We will also require the following supporting documentation...  
The financial assessment form is an important document ... we will use this information in our assessment of your case. You may benefit from a meeting with one of our branch staff... we can arrange that a branch advisor will contact you to arrange this meeting...”*  
(my emphasis)

On the same date, the 20 June 2013, the Provider’s records state:-

*“Outgoing call... Home No Answer”*.

- On the 17 July 2013 the Provider wrote stating that the *“interest only Combo period of your mortgage is due to expire on 15/10/2013”*.

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- On the 22 July 2013 the Complainant replied to the Provider's letter of the 20 June requesting account statements and stating as follows:-  
*"... there has been no change in my financial circumstances since I completed the last Standard Financial Statement in 2012. However my circumstances are due to change next year as I am due to Retire and my income will be significantly reduced..."*.
- On the 10 September 2013 the Provider's records state:-  
*"OBC to mobile, powered off"*.
- On the 27 September 2013 the Complainant wrote to the Provider stating that she had not received a response to her letter in July.
- On the 1 October 2013 the Provider's records state:-  
*"Outgoing Call....discussed CCMA, MARP. Borr concerned regarding no ack of docs sent to asu in July..."*.
- On the 15 October 2013 the Provider wrote informing the Complainant that her mortgage had now switched to a repayment mortgage and stating that if she had any queries she should contact her branch.
- On the 29 October 2013 the Complainant wrote to the Provider as follows:  
*"I am disappointed at ... failure to respond to written correspondence.... The letter from you date 15 October 2013 makes no reference to this letter... **I contacted your office to arrange an appointment and was told that I would be contacted with an appointment but have received no response to date.... Failing to engage with me in relation to my mortgage difficulties. As my circumstances have changed since 2012 I am unable to meet the requested monthly payments and intend to continue to pay €1700 which was the mortgage payment amount agreed in 2012. ..I do not authorise... to transfer any more than €1700 from my current account to the above mortgage account...**"*. (my emphasis)
- The Provider's records for the 5 November 2013 include the following entry:-  
*"... ltr to cust to apologise as she should have been advised to complete a new SFS & supporting docs... Advise as the ac would bill for full c & I repays e2228.33 **we have put a hold on dd** & she will need to make alternative arrangements to pay e1700 as outlined in her ltr..."*. (my emphasis)
- On the 5 November 2013 the Provider wrote to the Complainant as follows:-  
*".... Please accept our apologies as you should have been advised to submit a new Standard Financial Statement and supporting documentation as this is a requirement for any further forbearance requests. We have arranged for a Network Account Manager to contact you ..."*

*As the account would bill for full capital and interest repayments of €2228.33 **we have put a hold on your direct debit**. Therefore you will need to make an alternative arrangement to credit the account with €1700 as outlined in your letter...". (my emphasis)*

- On the 5 December 2013 the Provider also wrote to the Complainant stating that it had *"been unsuccessful in contacting you by telephone to discuss the arrears on your mortgage loans... Please contact our Arrears Support Unit..."*.
- On the 13 December 2013 the Complainant completed a SFS.
- A letter regarding arrears on the account was sent to the Complainant on the 9 December 2013 and 2 January 2014.
- On the 20 January 2014 the Provider wrote to the Complainant offering her an ARA with a reduced instalment period of 6 months with monthly repayments in the sum of €1,689.23 to be *"backdated to start from 31/10/2013 for a period of 6 months"*. An *"Application to Pay Reduced Payment"* was attached to the letter which included the *"Special Condition"* that *"Prior to the facility being put in place customers are to provide first legal charge over the ... site at..."*.
- On the 2 February 2014 the Complainant wrote to the Provider as follows:-  
*"Thank you for your letter of the 20/1/2014. I will continue to pay €1700 per month which is the maximum amount I can pay based on my current income. I would like to request that my new agreement follow the last agreement and run from October 2013 for 12 months.*

*I wrote to (the Provider) in October 2013 outlining ... failure to engage with me .... **In November 2013 (the Provider) transferred €2238.33 from my account...** without authorisation with the result that I was forced to borrow money for day to day expenses.... I am now shocked and appalled to discover that in the Mortgage Form of Authorisation Application to Pay Reduced Payment you have sought to gain advantage by inserting without prior discussion and as a footnote... **"Prior to the facility being put in place customers are to provide first legal charge over the unencumbered site at ...."**. This condition was not discussed with me nor is it mentioned in your covering letter.... not an acceptable condition and I wish to Appeal this Offer". (my emphasis)*

- On the 10 February 2014 the Provider wrote stating *"you have advised us that you do not wish to take up this offer or you have not signed and returned the documentation we sent you to put the ARA into effect... We take this as meaning that you are not willing to enter the ARA. You have the right to appeal the decision..."*.
- On the same date the 10 February 2014 the Provider also wrote to the Complainant acknowledging receipt of her recent letter and confirming her appeal would be considered by its Appeals Board.
- On the 28 February 2014 a letter from the Provider regarding arrears and pointing out *"the serious consequences for you including legal proceedings"* was sent to the Complainant.

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- On the 14 March 2014 the Provider wrote to the Complainant as follows:-

*"Our Mortgage Appeals Board has completed its consideration... the Board has decided to offer you an alternative repayment arrangement in the sum of €1700 per month for a period of 12 months.... The details of this alternative repayment arrangement will be sent to you in a separate letter and form...It is also the Board's strong view that your home loan repayments must be prioritised and noting that you hold an unencumbered site ..... it may be in your best interest to consider disposal of assets to support our mortgage and reduce your indebtedness..."*

- On the 2 April 2014 the Provider wrote to the Complainant as follows:-

*"... As of the date of this letter your mortgage remains in arrears as set out above ...If you have not yet been in touch with our Arrears Support unit... it is important that you make contact on...The number of missed mortgage repayments remains at a serious level. It is vital you co-operate with us in addressing your mortgage arrears. If you choose not to co-operate with us in addressing your arrears we will classify you as not co-operating under the code of Conduct on Mortgage Arrears... serious consequences for you..."*

- On the 12 May 2014 the Complainant wrote to the Provider as follows:-

*"... I have received a threatening electronically signed letter from you dated 28/2/2014 .... I received an unsigned letter from the Chairperson Mortgage Appeals Board dated 14/3/2014 ... This was two months ago and I still have not received the expected documents.... I received another threatening letter with your electronic signature dated 2/4/2014 ...uncoordinated responses confirm my belief... that ... failing to engage properly with me about my mortgage difficulties...I would be grateful if you could arrange for me to receive the Agreement I was expected to sign following the Appeals Board findings. The last Mortgage Form of Authorisation Agreement I signed expired on 31 October 2013"*

- The Provider sent an undated letter to the Complainant, received on the 26 May 2014, as follows:-

*"... We have requested that the Mortgage Form of Authorisation be reissued to you and **back dated to cover the March and April repayments** and apologise for any inconvenience caused...". (my emphasis)*

- On the 19 May 2014 the Provider sent the MFA to the Complainant who signed it on the 28 May 2014 and returned it to the Provider as follows:-

*"... I wrote... outlining (the Provider's) failure to respond to my correspondence....On 1<sup>st</sup> November 2013 (the Provider) withdrew funds without authorization from my current account with the result that I was left with insufficient funds for living expenses and was forced to borrow money from friends to tide me over..."*

- On the 10 June 2014 the Provider wrote stating that "we have received your signed ...MFA and confirm that this has been backdated to the 31 March 2014 for 12 months until 28 February 2015.

*With regards to November 2013 repayment your account reverted to full capital and interest repayments of €2228.33. A direct debit was in place at this time and your account was debited the full amount. As per our letter dated 6 November 2013 (sic) we advised that the direct debit would be cancelled however you would need to make alternative manual payments to the account. As there was no formal arrangement in place at this time, the account continued to bill for full capital and interest therefore arrears continue to accrue...".*

- On the 1 July 2014 and 29 September 2014 the Provider wrote to the Complainant informing her of the arrears on the account.
- On 15 October 2014 a letter issued from the Provider stating that *"your existing arrangement had expired and ... you were expected to meet the full capital & repayments due... on 11 November... requesting you to contact us..."*.
- On the 20 October 2014 the Provider wrote to the Complainant noting that *"following your appeal heard 11 March 2014 it was approved that a forbearance of 12 months alternative repayment arrangement of €1,700 per month was the most suitable solution and your request to backdate the current forbearance arrangement to that of the expiry date of your previous forbearance was declined"*.
- On the 3 November 2014 the Provider wrote to the Complainant as follows:-  
*"... your letter dated 20 October 2014. This letter includes the first acknowledgement I have received .... that a conscious decision was made not to backdate the forbearance arrangement to the expiry date of the previous agreement as had occurred in the past... is there any .. process to Appeal this decision"*.
- On the same date the 3 November 2014 the Provider wrote to the Complainant stating *"Your current repayments on this mortgage loan are €1700.00. **These repayments are due to end on 3/03/2015** after which the repayments will be the full principal and interest amount due under the mortgage loan...**If you foresee any difficulties in making your mortgage repayments please contact your branch...**"*. (my emphasis)
- On the 30 December 2014 a letter regarding the arrears on the account was sent to the Complainant.
- The Provider's records on the 31 December 2014 state as follows:-  
*"Outgoing Call – unsolicited... Home left message to call"*.
- On the 13 January 2015 the Provider's records state:  
*"Outgoing Call – unsolicited ... Home Left Message to Call"*.
- On the 30 January 2015 the Provider's records state:  
*"Outgoing Call – unsolicited ... Home Left Message to Call"*.

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- On the 11 February 2015 the Provider's records stated:  
*"Outgoing Call ... Mobile no answer... unable to leave a message..."*.
- On the 18 February 2015 the Provider's records state  
*"Note sent asking for contact re imminent rollover of RR on account on 3/3..."*.
- On the 25 February 2015 the Complainant wrote to the Provider as follows:-  
*" ... This week I received a "with compliments" slip asking me to contact the Arrears Support Unit by telephone... undated and unsigned... most unprofessional... My circumstances have not changed significantly since I completed my last Standard Financial statement and therefore I will not be in a position to pay full capital and interest payments from March 2015. I confirm that I will not discuss my mortgage on the telephone with an unnamed official. **I would like to receive written details of the process required to set up a new arrangement based on my income**". [my emphasis]*

The "with compliments slip" in question stated *"please contact Arrears Support Unit at... Regarding upcoming returns to full capital and interest repayments and expiry of current arrangement"*.

- On the 3 March 2015 the Provider wrote as follows:-  
*"... we can confirm that your account has now been switched to a Repayment Mortgage..."*.
- On the same date, the 3 March 2015, the Provider wrote to the Complainant dealing with various issues raised by the Complainant. It also states that it *"noted your comments in relation to receiving the Compliments Slip. This was issued by our Network Account Manager.... Had tried to contact you by telephone but failed and was anxious to talk to you ... In order to engage and hopefully come to a further viable alternative repayment arrangement I would ask you to make contact with our Customer Relationship Unit..... **I understand that you do not wish to talk to an unnamed official but this is the way forward here.** The unit will arrange an appointment to complete the Standard Financial Statement over the phone and will send you a copy of this completed form. Alternatively they will send you a Standard Financial Statement for completion by you and return to us for assessment..."*. [my emphasis]
- On the 18 March 2015 the Complainant wrote to the Provider as follows:-  
*"I wrote... on 25 February 2015 confirming that my circumstances have not changed significantly since I completed my last Standard Financial Statement and therefore I will not be in a position to pay full capital and interest payments... requested written details of the process for settling up a new arrangement with the Arrears Support Unit and to date (the Provider) has not complied with my request...None of the letters have provided details of the current... process to deal with the fact that I will not be in a position to make full mortgage repayments from 31 March 2015.... Failed to respond and took full repayment of €2228.33 from my bank account on 31 October 2013... On the 13 January 2014 I met with .... The ... Branch to discuss my mortgage difficulties and he noted that all communication ... would be in writing. (the Provider) failed to engage with me from July 2013 to January 2014 and the*

*new arrangement was not backdated to the expiry date of the previous arrangement. This resulted in the current outstanding arrears... the current offer ... expires in March 2015 and to date (the Provider) failed to provide me with details of the current process for managing my inability to make full mortgage repayments from March 2015...I have suspended the mortgage direct debit from my... account. I have set up a standing order for €1500 per month...". [my emphasis]*

- The Provider sent letters on the 30 March, 1 April and 9 April 2015 to the Complainant regarding missed payments and arrears on the account.
- On the 24 April 2015 the Provider sent a letter to the Complainant enclosing an SFS and a guide to its completion and asking her to complete and return the SFS as it would be used "in our assessment of your mortgage loan".
- On the 27 April 2015 the Provider wrote to the Complainant as follows:-

*"... the Bank is obliged to engage with customers who are unable to meet their full mortgage repayments. We are unable to implement reduced repayments on foot of a written request...The Bank provides a comprehensive support service ... including local network managers and a contact centre ... can arrange an appointment to meet with a Network Account manager ... or take calls at alternative times suited to the customer's requirements... I have arranged for a Standard Financial Statement .... sent to you...in the event that a term of reduced repayments ends, the account will revert to full contractual repayments.... We note that you have amended your repayment to €1500.00 per month. This will further increase your arrears..."*

- Further letters regarding the arrears on the account were sent to the Complainant on 1 and 7 May 2015.
- On the 7 May 2015 the Provider wrote to the Complainant as follows;-

*"... We have recently sought to obtain information from you that would enable us to complete an assessment of your current financial circumstances... So far you have not provided the necessary information. If you do not complete either of the actions below within 25 business days of the date of this letter we will classify you as "not co-operating ...".*

- The Complainant completed the SFS on the 11 May 2015. She returned the SFS with a letter which included the comment that the Provider had taken "€2200.04 on 8/5/2015 after being notified that I had suspended my direct debit and set up a monthly standing order for €1500.00 which was paid on 30/4/2015. I have now cancelled my direct debit...  
**... available to meet the Local advisor by appointment on a Monday morning or all day Friday**". [my emphasis]
- On the 15 May 2015 the Provider sent a "copy of SFS & MARP booklet enclosed" to the Complainant. Attached was a compliments slip with the name and telephone number of a member of the Provider's staff.

- On the 7 July 2015 the Provider wrote to the Complainant offering her an ARA from the 30 June 2015 in the sum of €1700 a month for 6 months.
- On the 5 August 2015 the Complainant responded stating that the *“Alternative Repayment Arrangement is not acceptable to me....I wrote to you on 25 February 2015 and stated that ... I will not be in a position to apply full capital and interest payments from March 2015... I will not discuss my mortgage loan on the telephone with an unnamed official.... Sent an SFA form with a letter dated 27 April 2015 which was over 2 months after I wrote to you... The last ... expired at the end of March 2015. The arrears ... have arisen as a direct result ... failure to respond appropriately to my pre-arrears notifications...”*.
- The Provider acknowledged her Appeal on the 10<sup>th</sup> August 2015.
- On the 14 August 2015 the Provider wrote to the Complainant as follows:-

*“We refer to our recent letter at which we offered you an Alternative Repayment Arrangement .... We have applied the ... MARP to date. As you are not willing to enter the ARA we offered you your mortgage loan is now being dealt with outside of MARP and the protections of the MARP no longer apply... we can commence legal proceedings for possession three months from the date of this letter or eight months from the date the arrears arose...”*.
- On the 7 September 2015 the Provider wrote to the Complainant regarding her Appeal stating:-

*“... concluded that the alternative repayment arrangement as offered by the ASU was fair and reasonable .... Noting that the ASU offered reduced repayments of €1700.00 per month for a period of 6 months which was approved to allow you to show capacity for a long term option of a possible split mortgage option with repayment of circa €1700 per month for the remainder of the term of the mortgage.. the split mortgage option... will not be formally offered to you until ... you evidence your repayment capacity at the required level of circa €1700 per month for a period of 6 months immediately preceding the approval of the split mortgage option... subject to a pre-condition that you provide a first legal charge over the lands at ...To accept this alternative repayment arrangement please sign and return the form to us...”*.
- On the 26 October 2015 the Complainant wrote to the Provider confirming that she was *“unable to sign the Alternative Repayment Proposal”*.
- On the 9 November 2015 the Provider wrote to the Complainant as follows:-

*“We previously told you that your mortgage is no longer covered under ... MARP. We offered you a “out of MARP” alternative repayment arrangement... you have not returned the signed ARA form...”*.

- On the 11 November 2015 the Provider wrote to the Complainant stating that *“in circumstances whereby an offer ... is not accepted or is declined ... liable to lose the protections of MARP...”*.
- On the 8 December 2015 the Complainant raised a number of issues with the Provider and notified it of her intention to take her complaint to this office.
- On the 4 January 2016 the Provider wrote to the Complainant informing her that *“please contact us immediately or you will leave us with no option but to place your mortgage loan account(s) in the hands of our solicitors to initiate possession proceedings...”*.
- On the 18 January 2016 the Provider wrote as follows:-

*“...we have made every reasonable effort to agree an alternative arrangement with you ... We now call on you to pay us everything you owe under these mortgage loan account(s) within 10 business days...”*.

- The Provider replied to the Complainant’s letter of the 8 December 2015 on the 29 March 2016.
- A complaint was logged with this office on the 19 April 2016.
- On the 15 August 2016 solicitors acting on behalf of the Provider wrote to the Complainant referring to the possible commencement of legal proceedings.

It is important for the Complainant to be aware that she has a contractual obligation to repay the monies borrowed to the Provider; this was agreed when she originally entered into the mortgage agreement with the Provider. While the Provider is obliged to comply with the Code of Conduct on Mortgage Arrears and have *“a flexible approach in the handling of these cases”* and to assist *“the borrower as far as possible in his/her particular circumstances”*. There is no regulatory requirement for financial institutions to agree to a particular demand from a borrower regarding changes to agreed mortgage repayments. The Provider has a commercial discretion in determining the outcome of any application to amend the mortgage agreement. While I appreciate that the Complainant is in financial difficulties, the Provider is not required to agree to her request for a specific monthly repayment amount such as €1,500.00 or €1,000.00 a month or to remove a pre-condition of an ARA. While the Complainant is certainly making efforts to repay and co-operate with the Provider and undoubtedly she has serious financial worries, this does not take away from her contractual obligation to repay her mortgage in full and in the terms originally agreed.

I note that the Complainant states that the Provider’s MFA committed it to reviewing the arrangements in place at least 30 days before they expired in October 2013 and February 2015. Section 43 of the Central Bank’s Code of Conduct on Mortgage Arrears (2013) (*“the Code”*), which came into effect on the 1 July 2013, includes the requirement that:

*“A lender must review an alternative repayment arrangement at intervals that are appropriate to the type and duration of the arrangement, including at least 30 calendar days in advance of an alternative repayment arrangement coming to an end. As part of the review, the lender must check with the borrower whether there has been any change in his/her circumstances in the period since the alternative repayment arrangement was put in place, or since the last review was conducted. Where there has been a change in that borrower’s circumstances, the lender must request an updated standard financial statement from the borrower and must consider the appropriateness of that arrangement for the borrower.*

The earlier 2011 Code does not contain this requirement. The MFA that issued in November 2012 expired on the 15 October 2013. While this MFA did not state that the Provider would review the arrangement 30 days in advance of its expiration, I note that the requirements of the 2013 Code, detailed above, came into effect 3 months prior to the MFA’s expiration in October 2013. I note that in June 2013 the Provider asked the Complainant to complete an SFS if there had been *“any change in your circumstances”*. In November 2013 the Provider admitted that it should have advised her that it was necessary to submit a new Standard Financial Statement if further forbearance was required. The Complainant’s mortgage switched to a full repayment mortgage in October 2013 and the account went into arrears. A month later the Complainant completed a SFS and on the 20 January the Provider offered the Complainant a further forbearance agreement which she appealed as it was unacceptable to her. The Provider wrote to the Complainant on the 14 March 2014 offering a further ARA but it was not until the 19 May 2014, after prompting from the Complainant, that the Provider sent her the MFA to sign in order to put the ARA in place. It also failed to offer her an appointment as requested by her in October 2013. While the Provider did backdate the forbearance arrangement to take effect from the 31 March 2014, I am of the view that much of the delay prior to this was caused by the lack of clarity in the Provider’s correspondence of the 20 June 2013 as well as its failure to furnish the Complainant with the MFA following its letter of the 14 March 2014. Accordingly this aspect of the complaint is upheld.

The MFA that issued from the Provider on the 19 May 2014 states that the Provider will review the arrangement *“at least 30 days before the alternative repayment arrangement expires”*. The Provider records, detailed above, show that it made a number of unsuccessful attempts to contact the Complainant by telephone prior to the expiry of the MFA and also wrote to her to inform her on the 3 November 2014 that arrangement was due to expire and asked her to contact it if she anticipated any difficulties in making full repayments on expiry. While the Complainant would have preferred written contact only from the Provider, I accept that it was not unreasonable for it to contact her by telephone. I am of the view that the Provider made reasonable attempts to contact the Complainant to discuss the forbearance arrangement that was due to expire in February 2015 and to obtain details of her financial situation as required under the Code. Accordingly this aspect of the complaint is not upheld.

I am of the view, however, that it was quite unprofessional for the Provider to send an unsigned and undated compliments slip to the Complainant in February 2015 and it is very disappointing that it informed her in its letter of the 3 March 2015 that it expected her to

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speak to an “unnamed official”. It is also very disappointing that she requested written details of the forbearance process on the 25 February 2015 and the Provider did not send her the SFS and Guide for a further 2 months. Furthermore it failed to provide her with an appointment as requested by letter of the 11 May 2015. Accordingly, these aspects of the complaint are upheld.

The Complainant submits that the Provider breached Section 51 of the CCMA when she appealed its decision to offer her an ARA of the 20 January 2014. Section 51 of the Code includes procedures for the handling of Appeals. I have reviewed the documentation furnished and as detailed above, I accept that the Provider clearly delayed in sending out the revised documentation that was required and accordingly did not comply with Section 51(f) of the CCMA. Accordingly this aspect of the complaint is upheld.

The Complainant has suggested the Provider breached Section 61 of the Code which states that “A lender must be able to demonstrate to the Central Bank of Ireland that it is in compliance with the requirements of this Code”. This provision is applicable to the Central Bank of Ireland only and any issues regarding same should be raised with it.

The Complainant submits that the Provider contacted her excessively in breach of Section 22 of the Code. While it is unfortunate that on a number of occasions the Provider sent “automated” letters to the Complainant which were not tailored to her particular circumstances and did not respond to her most recent correspondence, I accept that the Provider has a regulatory requirement to keep the Complainant informed of the level of debt and arrears on her account and I have not been provided with compelling evidence that it wrote or telephoned her excessively. I also accept that the Provider’s correspondence regarding the possibility of legal proceedings complied with the Code. The Complainant has suggested the Provider breached Section 28 of the Code. This section of the Code includes the actions the Provider must take prior to classifying a borrower as “not co-operating”. While the Provider suggested it was considering classifying the Complainant as non-co-operating. I note that it did not proceed to classify the Complainant as “a non-co-operating borrower”.

The Complainant has also alleged that the Provider failed to comply with Section 40 of the Code which states that “A lender must document its considerations of each option examined under Provision 39”. I have reviewed the internal documentation the Provider has furnished to this office and I am satisfied that it documented its examination of the possible options for forbearance suggested under the Code and that it assessed the Complainant’s circumstances prior to informing the Complainant of its decision.

The Complainant contends that the Provider “raided” her current account following the end of the forbearance agreements. I accept that in the absence of an ARA the Provider is entitled to administer the loan in line with the original loan agreement and I accept this applied in May 2015. I note, however, that on the 29 October 2013 the Complainant instructed it not to transfer any more than €1,700.00 to her mortgage account and the Provider agreed to this on the 5 November 2013. On the 31 October 2013, however, a repayment of €2,228.33 was made to the Complainant’s mortgage account in breach of her instructions and the Provider’s agreement to cancel the payment. While it may be the case

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that 2 days' notice was not sufficient to cancel the direct debit instruction, I am of the view that the Provider ought to have explained this to the Complainant in its letter of the 5 November 2013.

I also accept that the Provider delayed in responding to the Complainant's letter of the 8 December 2015, as I note that it did not reply until the 29 March 2016. I also accept that it would have been good practice to have highlighted in its cover letter to the Complainant that a special condition applied to its ARA of the 20 January 2014.

The Complainant submits that the Provider breached Clause 38 of the 2013 Code as it failed to put a temporary ARA in place. I note that Clause 38 states that a lender "*may agree ... to put a temporary ... arrangement in place*". I am of the view that such an arrangement is at the discretion of the Provider; there is no regulatory requirement for it to put such an agreement in place.

It is clear that the Complainant was in financial difficulties and endeavouring to reach a solution with the Provider. This was a difficult time for her and it is clear that the shortcomings of the Provider added to her distress. For the reasons outlined above I am satisfied that there were serious failures in aspects of the Provider's conduct and accordingly the complaint in this matter is substantially upheld. I would, however, urge the parties to engage with a view to achieving agreement on a mutually satisfactory repayment arrangement.

It is my Legally Binding Decision that this complaint is substantially upheld, for the reasons set out above.

In these circumstances, I direct that the Provider pay a compensatory sum to the Complainant of €2,000.00, to an account of the Complainant's choosing. I also direct that the Provider remove any arrears which arose on the account between (1) the expiry of the ARA in October 2013 and the commencement of the new ARA in March 2014 and (2) March 2015 and July 2015 inclusive. I also direct the Provider to amend the Complainant's profile during these periods with the appropriate Credit Referencing Agency to reflect this arrears adjustment.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4)(a) and (d)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider (i) review, rectify, mitigate or change the conduct complained of in relation to its management of the Complainant's application for forbearance on her mortgage loan account (as set out above) within 35 days of the date of this decision, and (ii) pay an amount of compensation (as set out above) to the Complainant for any loss, expense or

inconvenience sustained by the Complainant as a result of the conduct complained of, within 35 days of the date of this decision.

- 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 within 35 days of the date of this decision.
- 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 period specified above for the implementation of the directions pursuant to Section 60(4)(a)&(d), to notify this office in writing of the action taken or proposed to be taken in consequence of the said directions 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**

23 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.