



<u>Decision Ref:</u>	2019-0078
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants entered into two mortgage agreements with the Bank, in respect of their private dwelling house, in 2009. In 2013 the Complainants entered into an Alternative Repayment Arrangement with the Bank in respect of each mortgage agreement. The Complainants submit that they were within the Mortgage Arrears Resolution Process and that Alternative Repayment Arrangements were in place during the period **01 July 2013 to 30 September 2014**, inclusive.

The Complainants' complaint is that the Bank has failed to acknowledge that the forbearance was for the continuous period outlined above, and that, as a result, it has incorrectly calculated the arrears on the mortgage accounts in respect of this period.

The Complainants' Case

The Complainants submit that during 2013 they were experiencing difficulties in meeting their mortgage repayments on the two mortgage loans which they held with the Bank and that in **July 2013** they entered into a forbearance agreement with the Bank. The Complainants submit that the Bank agreed to place them on a reduced monthly payment schedule, whereby they paid a total of €2,000.00 per month (€1,000 in respect of each mortgage).

The First Complainant submits that he asked the Bank at the outset if they could remain on this arrangement for at least a 12 month period, as it seemed to him to be highly unlikely that he would be in a position to normalise his income situation within a lesser period of time. The First Complainant submits that the Bank refused this request and insisted that the Complainants complete a "*reporting procedure*" to it, on a 3 monthly basis.

The First Complainant submits that he expressed "*major reservations*" about this "*cycle*" to the Bank but that he nonetheless complied with "*any and all*" requests from the Bank, including making full declarations as to the Complainants' financial position every 3 months, meeting with MABS, providing the Bank with any and all information they required, and any other "*issues*" that it came up with.

The First Complainant submits that the Bank continued to agree to extensions of the forbearance period each time the Complainants made an application until they received a letter from the Bank, dated **15th October 2014**, in which the Bank stated that the forbearance period had ended.

The Complainants submit that the deadlines which were set for receipt of documentation by the Bank were never achievable, in reality. They submit that the processes were entirely out of their control and depended on such things as when the Bank's credit committee next sat, how long it took the outsourced third party entity to send forms to the Bank, how long it took the Bank to reply by post, etc.

The Complainants submit that they were in distress at that time, that they did everything that was possible to genuinely deal with the situation, and that the Bank did not put forward a solution that was fit for purpose.

The Complainants submit that they are neither querying the monies owed to the Bank nor are they querying the end of the forbearance period with the Bank. The Complainants' complain however, that the Bank has calculated the amount of arrears based on whether or not all the Complainants' documentation was in place on a specific date (the quarter end), which, the First Complainant submits, is totally unfair as, as per his "*continuous warning*" on this matter.

The Provider's Case

The Bank notes that the Complainants' complaint is in relation to the arrears outstanding on the above accounts and the period of forbearance which applied to the Complainants' mortgages.

The Bank submits that although it was the Complainants' belief that arrears had accrued because of administrative delays which had occurred while they were applying for ARAs the Bank disputes that this is the case.

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The Bank submits that the Complainants' mortgage accounts entered into arrears in **May 2013** and that the Complainants subsequently wrote to the Bank on **20 June 2013**, requesting the Bank to move their monthly repayments to interest only repayments for a period of 6 months.

The Bank submits that a Standard Financial Statement (SFS), a signed Consent form and the Complainants' bank statements were furnished by the Complainants with this request. The Bank submits that on **05 July 2013** it offered the Complainants an Alternative Repayment Arrangement (ARA) in the form of reduced repayments of **€1,000** on each loan account for the period **July, August and September 2013**.

The Bank submits that the Complainants submitted an appeal of this decision, on **19 July 2013**.

The Bank submits that the appeal was considered by the Bank's Appeals Board, which wrote to the Complainants on **19 August 2013**, declining the appeal. The Bank submits that this is in keeping with the timeline for such matters, per the Code of Conduct on Mortgage Arrears. The Bank submits that the decision to decline the appeal was made by the Appeals Board as it concluded that the level of mortgage forbearance provided to the Complainants was appropriate at that time.

The Bank submits that it wrote to the Complainants on **31 August 2013** to confirm that the ARA which was in place would expire the following month. The Bank submits that the ARA expired in **September 2013** and that the Complainants' repayments reverted to the full contractual monthly instalments in **October 2013**.

The Bank submits that the Complainants applied for a further ARA by letter dated **31 December 2013**. The Bank says that it assessed the request and wrote to the Complainants on **22 January 2014**, to offer reduced repayments of €1,000 on each account between **January and March 2014**, inclusive. The Bank submits that it subsequently wrote to the Complainants on **14 February 2014**, to confirm that the ARA would expire the following month. The Bank submits that this ARA expired and the Complainants repayments reverted to the full contractual monthly instalments in **April 2014**.

The Bank submits that the Complainants applied for a further ARA by letter dated **11 March 2014**. The Bank says that it wrote to the Complainants on **19 March 2014** to request 3 months' bank statements, to support their request. The Bank submits that the Complainants' bank statements were received by it on **26 March 2014** and that, upon receipt of these, the Bank completed a full assessment of the Complainants' request. Upon review, the Bank says that it determined that further information was required by it, in order to make a decision and that the Bank wrote to the Complainants on **01 April 2014** in this regard.

The Bank submits that upon receipt of all requested documentation, on **23 April 2014**, the Bank completed its assessment and wrote to the Complainants on **08 May 2014** to offer an ARA, in the form of reduced repayments of €1,000 on each account between **May and August 2014**, inclusive.

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The Bank notes that in the Complainants' letter to the Bank, dated **22 April 2014**, the Complainants expressed dissatisfaction that the Bank had requested additional information in order to assess an ARA, as the Complainants felt this caused an excessive delay.

The Bank submits that it investigated the complaint and issued a response letter to the Complainants on **06 May 2014**. The Bank submits that the complaint was not upheld as it determined that the provider to which it outsourced administrative matters, was justified in requesting the additional information from the Complainants, following a review of the bank statements which it had received from them, on **26 March 2014**.

The Bank submits that, on **17 July 2014**, it wrote to the Complainants to confirm that the ARA which was in place would expire the following month. It says that on **14 August 2014** it received the Complainants' letter, dated **12 August 2014**, in which the Complainants requested a further ARA, in the form of interest only repayments, for a period of 6 months effective from **01 September 2014**.

The Bank submits that the Complainants provided a signed consent form, a SFS and three months bank statements in support of this request. The Bank says that it assessed this information and wrote to the Complainants on **18 August 2014** to request income verification, which, it submits, was received on **29 August 2014**.

The Bank submits that upon review of the information received on **29 August 2014**, it wrote to the Complainants, on **04 September 2014**, requesting 3 months bank statements as the internet print offs which had been provided by the Complainants were not sufficient. It also sought formal confirmation that the Complainants had restructured all short term debts and formal confirmation that the Complainants had attended MABS.

The Bank submits that it received bank statements on **15 September 2014**, along with a letter from the Complainants, confirming that they had met with MABS on **20 February 2014** and confirming that they had not completed a restructure of their credit card debt at that time.

The Bank submits that, upon receipt of this information, it completed a full assessment of the Complainants' case and says that, based on the information provided, submits that it was not prepared to offer a further ARA on the mortgages due to the fact that the Complainants were prioritising short term debt over the mortgage repayments.

The Bank submits that it issued a letter confirming its position to the Complainants on **15 October 2014**. The Bank submits that the Complainants contacted it, on **22 October 2014**, in response to its letter of **15 October 2014**. It says that during this call, the Complainants expressed dissatisfaction about the arrears outstanding on the mortgages at that time. The Bank submits that it was the Complainants' belief that arrears had accrued because of administrative delays which had occurred while they were applying for ARAs and that they felt that the Bank had not treated them fairly but it denies that this was the case.

The Bank submits that it completed a full review of the ARAs offered to the Complainants since **July 2013** and that it issued a final response letter to the Complainants on **18**

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November 2014. The Bank submits that the complaint was not upheld as the Bank could not find any evidence to support the Complainants' claims that the ARA requests were not assessed in a timely manner or that the Complainants were treated unfairly.

The Bank submits that the Complainants' mortgages were transferred to a different Provider, in **February 2015**, and that therefore the Bank is not in a position to confirm the current status of the Complainants' mortgage accounts.

The Complaint for Adjudication

The Complainants' complaint is that the Bank has failed to recognise that they were within the Mortgage Arrears Resolution Process, and on a continuous period of forbearance from **01 July 2013 to 30 September 2014**, inclusive and that any breaks in this arrangement were due to administrative delays on the part of the Bank/third party provider to which it had outsourced its loan servicing facilities.

The Complainants' complaint it that the Bank has failed to acknowledge that it had calculated the arrears incorrectly, in not recognising that the forbearance was for the continuous period, referred to above.

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 06 March 2019 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.

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

The Complainants contend that they had entered a period of forbearance which lasted for one year but that the Bank insisted that they complete a “*reporting procedure*” to it, on a 3 monthly basis. The Bank has denied that this is the case or that it operates any such “*reporting procedure*”.

In the course of examining this complaint I have had regard to all of the documentation furnished, including the Mortgage Loan Agreements entered into between the Complainants and the Bank, the communications between the parties and the Alternative Repayment Arrangements which were entered into between the Complainants and the Bank, during the period 2013/2014.

Mortgage Loan Agreements

There are two mortgage loan agreements in place in respect of the Complainants’ property and each Letter Offer of Mortgage Loan is dated **06 March 2009**. The first Letter of Offer relates to Loan Account ending -805 and states:

Important Information as at 06 March, 2009

<i>Amount of Credit Advanced</i>	<i>€249,550.00</i>
<i>Period of Agreement</i>	<i>19 years</i>
<i>Number of Repayment Instalments</i>	<i>228</i>
<i>Instalment Amount</i>	<i>€1,583.96</i>

This was accepted and signed by the Complainants on 11th March 2009.

The second Letter of Offer, dated 06 March 2009 relates to Loan Account ending -903. It states as follows:

Important Information as at 06 March, 2009

<i>Amount of Credit Advanced</i>	<i>€360,450.00</i>
<i>Period of Agreement</i>	<i>19 years</i>
<i>Number of Repayment Instalments</i>	<i>228</i>
<i>Instalment Amount</i>	<i>€2,287.87</i>

This Letter of Offer was also accepted and signed by the Complainants, on 11 March 2009.

Alternative Repayment Arrangements

The Provider has furnished a copy of a booklet entitled “*A helpful guide to our Mortgage Arrears Resolution Process*” which it says was provided to the Complainants together with the Bank’s letter dated **15th July 2013**.

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I note, under the heading “*reaching a resolution*”, the following information:

“Alternative repayment arrangements are available, however, these vary from case to case and are subject to an assessment of your individual circumstances where applicable or appropriate such as:

- *Affordability*
- *Arrears on account*
- *Previous alternative repayment arrangements*
- *Maintenance of previous alternative arrangements*
- *Ongoing sustainability of any alternative repayment arrangements offered by us*

We will decide which alternative repayment arrangement we believe is best suited to your individual circumstances, having assessed all of the information provided.

We may decide that it is not possible to reach a resolution. If this happens we will write to you with the reasons for our decision.

If an alternative repayment arrangement is agreed, it is important that you keep to the terms of the arrangement. If there is a change in your circumstances that may affect the arrangement, you should contact [the Customer Support and Administration Services Company]

I note that from the Complainants’ point of view, *“the intention from the outset was to have a forbearance period running for a period of one year as I [the First Complainant] had originally requested.”* The Complainants’ submit however that *“[the Bank] insisted that their system was such that we would have to resubmit updated information every 3 months or so that they could monitor the position going forward in order to run their approval continuously over that time frame.”*

The Complainants’ have submitted that, *“we stated from the very outset...that this was unworkable/impractical. In fact it was obvious from very early on that the short time frame imposed meant that this system was not fit for purpose.”*

The ARA Arrangements and Sequence of Correspondence

On **14 June 2013**, the Complainants each received two letters from the third party provider, acting on behalf of the Bank, whom I propose to refer to as *“the loan servicing company”* for the purpose of this Decision.

One of the letters in question related to account ending **-805** and it advised that as the Complainants had missed a payment, the account had entered into arrears in the amount of **€1,466.18**.

The other letter related to account ending **-903** and advised that as a payment had been missed, the account was in arrears in the amount of **€2,118.46**.

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On that same date, the First Complainant rang the loan servicing company and asked to discuss the possibility of entering into a period of interest only repayments.

The Complainants' position is that this marked the beginning of a one year period of forbearance, and of their making reduced monthly repayments.

The Banks' position is that at the initial application stage, the Complainants were made fully aware that the Bank could not guarantee approval of any request which it received in this regard and that it was the Complainants' responsibility to maintain their normal contractual repayments during the application process.

The Bank has submitted that when the First Complainant spoke with the loan servicing company by telephone, on **14 June 2013**, the Complainants were advised that they would be sent out a Standard Financial Statement (SFS) and a Consent Form and that they should return these, together with three months most recent bank statements.

On **26 June 2013** the First Complainant rang the loan servicing company and advised that he had submitted the paperwork, as he had been asked, and that he was seeking confirmation that the accounts had been moved to the requested arrangement. I note from listening to the audio recording that the Agent advised that the paperwork had been sent to the Bank on the previous day and that it would probably take 4 to 6 weeks "to get an answer on that".

The Bank provided its response to the Complainants' request by letters dated **05 July 2013**, in respect of mortgage accounts -805 and -903. These letters are identical in their content. I consider that it may be useful to set these out in full, as follows:

"We refer to your recent request to [the Bank] for an alternative repayment arrangement in respect of your mortgage account.

In line with the Central Bank of Ireland's Code of Conduct on Mortgage Arrears, the Bank has explored a number of alternative repayment arrangements as part of its full financial review.

Following this review, the Bank is pleased to inform you that the option of reducing your current monthly repayment instalment for a specified period of 3 months has been granted subject to the terms set out in this letter. [my emphasis]

This means that you will now pay the New Monthly Repayment (which is less than the monthly repayments agreed in your original mortgage) for a period of 3 months. Although this will result in lower monthly repayments during the specified period, less capital is being repaid and the remaining balance on your loan will not reduce to the same extent as was originally agreed.

The alternative repayment arrangement will result in you paying additional interest on your Mortgage Account over the term of the loan. This is because the balance on your Mortgage Account will be paid more slowly than agreed in your original mortgage. Any

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interest amounts that fall due and are not paid during the specified period will also be added to the balance on your Mortgage Account.

Any existing arrears on your Mortgage Account will remain outstanding and will be subject to interest unless you make additional repayments.

Please Note;

- ***Based on the information provided by you, given the level of short term debt, the Bank is only prepared to offer an initial 3 month alternative payment arrangement, to allow you time to restructure all the short term debt as detailed.***

- ***During the period of this agreed alternative payment arrangement on your mortgage account, the following loans must be restructured:***

- ***Credit card debt totalling €13,400 costing €600 per month to service.***

Any further requests for an alternative repayment arrangement will require formal confirmation that these loans have been restructured.

- ***Any further request for an alternative repayment arrangement will require you to provide***

- ***a fully completed certified statement of affairs from your Accountant***

- ***We note that you have requested an interest only alternative repayment arrangement on your Mortgage Account, the Bank is prepared to grant you a fixed reduced payment arrangement as this option is deemed more appropriate to your circumstances based on the financial information provided by you. By applying a fixed reduced repayment amount over the period of the agreed alternative repayment arrangement, this will ensure that any future interest rate increases will not affect the fixed repayment amount agreed. [underlining added]***

- ***It is recommended that you obtain independent legal and/or financial advice and/or contact your local Money Advice Budgeting Service office or an appropriate alternative guidance on debt prioritisation and budgeting advice.***

- ***Any future requests for an alternative repayment arrangement will require a proposed plan /strategy to clear the arrears in full on your mortgage account(s) and/or to reinstate your full Contractual Monthly Instalments.***

Your original loan terms have been varied as follows:

1. *The repayments due on your Monthly Account have been adjusted so that you will repay the Reduced Monthly Repayment for a period of 3 months from 01/07/2013 to 30/09/2013 inclusive (the "New Repayment Period"), provided you are otherwise meeting the conditions of your loan terms and your mortgage with us.*

2. *At the expiry of the New Repayment Period or such other period as the Bank may agree the repayments on the Mortgage Account will revert to the method as set out in your original mortgage and offer letter. This will be calculated and adjusted to ensure that the balance outstanding on the Mortgage Account (being capital and interest) will be repaid over the remaining term of the mortgage or upon redemption if earlier (and as a result your monthly repayments will increase.) Please note that interest will continue to accrue on any outstanding arrears during the New Repayment Period.*

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[my emphasis]

Following receipt of this letter, the First Complainant had a telephone discussion with the loan servicing company, on **15 July 2013**. I note from having listened to the audio recording of this conversation that he confirmed that he had received the above letter in question but stated that he wasn't happy as he had requested an alternative arrangement for a period of 6 months but that the Bank had come back and said 3 months. The Complainant raised the issue that this was a very short period of time and that he wouldn't have requested 6 months if he had wanted 3 months and said that he knew that he needed 6 months, in the circumstances. The telephone agent advised the Complainant that he could reapply after the 3 month period or he could appeal the decision, which would take 40 days.

I note that the Agent, at this time, further advised that if the Complainants wished to reapply for an ARA, that they should submit the application in advance of the end of that 3 month period of forbearance, in order to have it "*sorted*" by the time the October payment was due.

On **18 July 2013** the First Complainant spoke again with the loan servicing company and advised that he was unhappy as he had received a letter from the Bank stating that there were arrears on the accounts. He said that he had come to the loan servicing company at the beginning of June and had explained that he wanted something put in place by the end of June. He said he thought that whatever decision was made by the Bank, would be applied retrospectively. (I would note however, having listened to the recording in this regard, that the Complainant was not in fact so advised.)

The First Complainant expressed his disappointment to the loan servicing company, that although his request had been for interest only payments, on both accounts, for a period of six months, the Bank had granted reduced payments of €1,000 in respect of each mortgage account, which was more money than interest only repayments, and was only for a period of three months.

During this call, the First Complainant explained to the loan servicing company that the whole purpose behind his seeking a hiatus had been to avoid the stress of going into arrears and that he had sought a period which would allow the Complainants to get their financial affairs in order.

On the issue of appealing the Bank's decision, he noted that as this could take 40 days, there would be no point in doing so within the three month period. He explained to the telephone agent that, to his mind it was a straightforward business request and that he didn't feel that the Bank going back to anyone, with a three month arrangement was in any way useful.

The First Complainant, during this telephone conversation, also queried why, if he had paid the interest only amount in June, he had received arrears letters from the Bank. The Agent explained that he was not on a reduced payment arrangement for June but was on it for **July, August and September** and that if he paid the €1,000 due on each account during this period, the arrears would not increase.

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The Agent explained that the arrears would only increase if he did not re-apply for an ARA and, come October, there was no reduced repayment arrangement in place but he continued to pay €1,000, instead of the "normal monthly repayment". The Agent advised the First Complainant that if he needed a further arrangement for reduced payments in October, that he should reapply in September, *"just so you have it in place."*

The Complainants proceeded to submit an appeal on **19 July 2013** in relation to the ARA which had been offered by the Bank, on **05 July 2013**.

The appeal was considered by the Bank's Appeals Board which wrote to the Complainants on **19 August 2013** declining the appeal. The letter stated that the decision to decline the appeal was because the Appeals Board concluded that the level of mortgage forbearance provided to the Complainants at that time was appropriate.

The Bank wrote to the Complainants on **31 August 2013** to confirm that the ARA in place was due to expire the following month.

The ARA expired in **September 2013** and the Complainants' repayments reverted to the full contractual monthly instalments in **October 2013**.

On **18 October 2013** the Complainant spoke with the loan servicing company and was advised that they would be billed for the full amount of mortgage repayments that month, as *"there is no arrangement"*. The Complainant advised the Agent that, *"here's the thing, I asked for 6 and they came back and said no, only 3. Obviously that is not what I asked for. Where are we in relation to this?"* The Agent asked whether the Complainant had appealed it, and he advised that he had not. The Complainant advised that he had said at the outset that he wanted 6 months, but that the Bank *"came back and said we'll give you three"*. The Complainant asked whether arrears were going to accrue and the Agent confirmed that this was the case, as there was no arrangement in place.

The Agent advised that if the Complainant wanted to make a request for a further Alternative Repayment Arrangement, that he would have to resubmit documentation in this regard. The First Complainant advised that he was not going to do that as he had provided everything necessary in the first instance and that *"there was no rationale to what they [the Bank] did."* The Agent responded by advising *"Apart from the fact that it is up to them. It is at the discretion of [the Bank]"*. The Complainant said that the Bank had granted a period of three months without any rationale and that his situation hadn't changed so submitting new information wouldn't influence any decision.

I note that the Complainant expressed his frustration at the fact that his initial request was very clear and very plain and that nothing had changed and that putting together documentation for the Bank to *"mull over"* wouldn't change his original request. The telephone agent advised the First Complainant that the Bank wouldn't entertain a verbal request and that in order to prevent arrears from increasing in November, the Complainants would need to complete the documentation required by the Bank if he needed further assistance. The Complainant asked the Agent to send out the relevant forms, which he advised that he would do.

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By telephone call dated **02 November 2013** the First Complainant advised that he had still not received the forms and was advised by the Agent he was speaking with, that he would re-issue the documentation.

By telephone call dated **12 November 2013** the First Complainant advised that he had still not received the forms and was advised by the Agent he was speaking with, that he would re-issue the documentation. This is a disappointing lapse in service on the part of the Loan Servicing Company.

By telephone call dated **20 December 2013**, the Complainant confirmed to the loan servicing company that he had received the documents but hadn't had a chance to send them back. He explained to the Agent that he had sent in documentation 5-6 months previously and that nothing had changed.

The Complainants resubmitted the required documentation, by couriering same to the Loan Servicing Company on **31 December 2013**. In this letter of 31 December 2013, the First Complainant stated that, *"A long term arrangement is required in order to bring some element of stability to this situation. I am requesting that you split the existing mortgage with 60% remaining on an annuity repayment basis as originally scheduled and the remaining 40% frozen for a period of 3 years. I believe that I will be in a position to address the frozen element within that time frame."* He enclosed a completed "MARP pack", including a signed consent form, and bank statements for the period since June 2013.

The loan servicing company received the application on **02 January 2014**. The Company requested further information in relation to the Complainants' application, on **14 Jan 2014**.

The Bank subsequently wrote to the Complainants on **22 January 2014** to offer reduced repayments of €1,000, on each mortgage account, *"for a specified period of 3 months"*, between **January and March 2014** inclusive. The letter stated:

Your original loan terms have been varied as follows;

1. *The repayments due on your Mortgage Account will be adjusted so that you will repay the Reduced Monthly Repayment for a period of 3 months from 01/02/2014 to 30/04/2014 inclusive (the "New Repayment Period"), provided you are otherwise meeting the conditions of your loan terms and your mortgage with us.*
2. *At the expiry of the New Repayment Period or such other period as the Bank may agree the repayments on the Mortgage Account will revert to the method as set out in your original mortgage and offer letter. This will be calculated and adjusted to ensure that the balance outstanding on the Mortgage Account (being capital and interest) will be repaid over the remaining term of the mortgage or upon redemption if earlier (and as a result your monthly repayments will increase.) Please note that interest will continue to accrue on any outstanding arrears during the New Repayment Period.*

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The Bank wrote to the Complainants on **14 February 2014** to confirm that the ARA would expire the following month.

By telephone call dated **27 February 2014**, the Complainant advised the loan servicing company that he had received a letter from the Bank dated **22 January 2014** granting a reduced payment ARA, but that he believed he had been sent out the wrong letter because it made reference to a Credit Union that he was not familiar with and it further stated the new ARA period was for 3 months, from the **01 February 2014 to 30 April 2014**.

Indeed, having examined same, the second page of the letter in question does appear to contain information that does not relate to the Complainants or their loans and appears to have been issued in error to the Complainants. This is a further very disappointing error on the part of the Bank which could potentially have caused great misunderstanding as to the terms of the ARA which had been granted, had it not been for the First Complainant querying it with the loan servicing company.

The Agent with whom the Complainant spoke advised him that the information in the letter conflicted with what he could see on "*the system*", namely that the ARA period was from **01 January to 31 March**. The Complainant was advised that if he wanted to reapply for a further ARA he would have to send in new supporting documents and another SFS.

On 11 March 2014, the Complainant informed the loan servicing company by telephone that he was couriering over the application for the new restructure together with cheques for the February repayments.

The loan servicing wrote to the Complainants on **19 March 2014** requesting copy bank statements. By telephone call dated **21 March 2014**, the Complainant advised that he had submitted a "*restructure pack*" and the Agent confirmed that it had been received on **18 March 2014** but queried whether the First Complainant had submitted bank statements. The Complainant said that he had submitted statements 3 months previously and that he couldn't understand why it made any difference. The Agent explained that it was Bank policy and that the maximum period of time that the Bank were prepared to offer for reduced payment arrangements, at that time was 3-6 months.

By letter dated **22 March 2014** the Complainants wrote to the loan servicing company, enclosing bank statements for the previous 3 months.

There is a letter dated **01 April 2014**, which issued from the loan servicing company to the Complainants advising that the information which the Complainants had submitted to the Bank remained incomplete. It advised that in order for the Bank to process their request, certain information was required by the Bank within 10 business days.

By telephone call on the **17 April 2014** the First Complainant spoke with an Agent of the Loan Servicing Company; he confirmed that he had applied for a further period of forbearance with the Bank but that it was looking for more information. The Agent advised him that the Bank would be billing for the full amount in April and that if the Complainant had an arrangement in place until the end of March then matters would accordingly revert

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to full payments for April, if no arrangement was in place. The Complainant explained that it was difficult with 3 month rolling arrangements. The Agent advised that the “*rationale*” is that forbearance is only supposed to be a short-term measure.

There is a letter from the First Complainant to the loan servicing company dated **22 April 2014** which notes that the Complainants did not receive its letter of **01 April 2014** within the **10 business days** indicated but in fact only received them the week previously.

The further information which had been requested was supplied by the Complainants on **23 April 2014**. By telephone call of **03 May 2014** the Loan Servicing Company confirmed that it had received documentation from the Complainants, on **30 April 2014**.

The Bank has submitted that on receipt of this documentation it completed its assessment, and wrote to the Complainants on **08 May 2014**, to offer an ARA in the form of reduced payments of €1000 on each account, “*for a specified period of 4 months*”, between **May and August 2014**, inclusive.

The terms of the ARA were set out by the Bank, as follows:

- *During the period of this agreed alternative payment arrangement on your mortgage account, the following loans must be restructured:*
 1. *Credit Cards x 2*
 2. *Undisclosed loan €306pm*

Any further requests for an alternative repayment arrangement will require formal confirmation that these loans have been restructured.
- *While the Bank has agreed this period of alternative arrangement, the Bank may not be prepared to offer further forbearance on your mortgage account for the purpose of prioritising personal debt over your mortgage account.*
- *Any further request for an alternative repayment arrangement will require you to provide:*
 - *3 months up to date bank statements for all accounts held by both borrowers including accounts ending 7870 and 2508. These refer to transactions made to [the Second Complainant's] bank account.*
- *The Bank recommends that you review your current monthly expenditure with a view to reducing same.*

The letter goes on to state:

Your original loan terms have been varied as follows:

1. *The repayments due on your mortgage account will be adjusted so that you will repay the Reduced Monthly Repayment for a period of 4 months from 01/05/2014 to 31/08/2014 inclusive (the “New Repayment Period”) provided you are otherwise meeting the conditions of your loan terms and your mortgage with us.*

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By telephone call of **27 May 2014**, between the First Complainant and the loan servicing company, the company advised that the restructure in question was for the period **May to August**. The Agent advised that when it ended in August it would come up for review and if the Complainant felt that he would not be in a position to pay the full amount in **September**, that he should call the Loan Servicing Company after he had made the July payment and that it would get the necessary documentation out to him so that he was “good to go”.

In August a further application from the Complainants was received by the Bank in this regard however it was deemed incomplete and a request was made for further information.

By telephone call of **04 September 2014** between the First Complainant and the loan servicing company, the First Complainant was told that the Bank would be billing for the full amount in September and that this would have an effect on the arrears, which would increase. The Complainant submitted to the Agent that the 3 month applications were part of a continuous process and, accordingly, that there shouldn't be any arrears since he applied for forbearance. The Agent advised the Complainant that “*what we classify as arrears is any amount over the agreed amount.*”

The Complainants furnished the bank statements requested by Loan Servicing Company letter by cover of letter dated **11 September 2014**. The letter indicated “*I have not yet completed my restructuring of my credit card debt (entirely my fault in not seeing this fully through). However, I undertake to have this formally completed by the end of October and will send you on formal confirmation of this then.*” The letter also confirmed the Complainant's attendance at MABS on 20 February 2014.

The loan servicing company received the letter on **15 September 2014**. A Decision on the matter was sent by the Bank to the Complainants on **15 October 2014**, declining to grant a further ARA.

Arrears

The Complainants' complaint is that the arrears which accrued on their mortgage loan accounts during the period, were incorrectly calculated and that they were in fact on a period of continuous forbearance with the Bank from July 2013, onwards. However, having examined all of the relevant documentation and having listened to the audio recordings furnished, it is clear that the Bank granted three separate periods of forbearance and that arrears accrued in the intervening months, when there was no such agreement in place.

From the evidence made available to me, I am satisfied that there was an ARA in the form of reduced payments, on each mortgage account, of €1,000 per month for the following periods:

- July to September 2013
- January to March 2014
- May to August 2014

The Bank says that despite its ARA decision letters, dated 22 January 2014 and 08 May 2014, reminding the Complainants that they had to restructure their short-term debt and review

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their day-to-day expenditure, the Complainants did not adhere to this when they submitted an ARA application in August/September 2014 and that it was therefore not in a position to offer a further ARA period on the Complainants' mortgage accounts.

Having had detailed regard to all of the evidence before me, I am satisfied that the Complainants' complaint that the Bank failed to recognise that they were on a period of continuous forbearance for a period of one year and that arrears which arose during this time were therefore erroneously calculated/recorded by the Bank, is not substantiated by the evidence. In these circumstances I do not find any grounds upon which the complaint that the Complainants were within a period of continuous forbearance during the period 01 July 2013 to 30 September 2014, can be upheld.

I am mindful of the fact that the decision as to whether or not to grant an alternative repayment arrangement and the terms that are applied to same, are matters which fall within the commercial discretion of a Bank. The details of any re-negotiation of the commercial terms of a mortgage loan, is a matter between the Bank and the customer and this Office will not interfere unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant. Whilst I accept that the Bank's decision to grant ARAs for a duration of three months, three months and four months, respectively, required the Complainants to submit a fresh application and supporting documentation each time, and would have been time consuming and stressful for the Complainants, I also accept the Bank's position, as set out during a conversation between the loan servicing company and the First Complainant, on **21 March 2014**, that it was Bank policy to grant reduced payment arrangements to customers, for a maximum period of 3-6 months, at that time.

I note however that there were instances where the service provided to the Complainants by the Bank and/or its outsourced loan servicing company, fell below the standards of service which could reasonably be expected, including the loan servicing company's delay in issuing correspondence to the Complainants in **October 2013** when it said it would. I also consider that the letter from the Bank to the Complainants, dated **22 January 2014**, which, on its second page, referred to a Credit Union which the Complainants had no dealings with and which incorrectly stated that the ARA period which had been granted was for the period 01 February 2014 to 30 April 2014, when in fact it had been granted for the period 01 January 2014 to 31 March 2014, constituted a significant error by the Bank.

Whilst the matter was subsequently clarified with the Complainants, it fell well below the standard of service expected. It further appears that there was a delay in the loan servicing company issuing correspondence to the Complainants, dated **01 April 2014**.

In consideration of the foregoing, I therefore consider it appropriate to partially uphold the Complainants' complaint.

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) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider make a compensatory payment to the Complainants in the sum of €1,000.00 to an account of the Complainant's 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
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

29 March 2019

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.