



<u>Decision Ref:</u>	2019-0132
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process Application of interest rate Level of contact or communications re. Arrears Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint is in relation to the Complainants' Mortgage Accounts with the Provider, numbered ****7016, ****8288 & ****9833. The Complainants have raised several issues in relation to the Provider's offer of an Alternative Repayment Arrangement (ARA) for each of the accounts, in particular, the ARA offered to the Complainants in June 2015.

The details of the Complainants' Mortgage Accounts are as follows;

The Complainants' Variable Rate Home Loan Mortgage Account ****9833 was drawn down on 28th September 2001 in the amount of €88,881.67 at a variable rate of 5.89% for a term of 20 years. The rate of interest (at date of Provider's submission 3/09/2016) on the account was 4.50% (Variable).

The Complainants' Further Advance 1 Year Fixed Rate Mortgage Account ****7016 was drawn down on 3rd October 2002 in the amount of €33,000.00 at a Fixed Rate of 4.70% for a term of 19 years. On expiry of the 1 Year Fixed rate period, the Complainants opted to remain on a Fixed Rate for a further 4 years. On 9th May 2007, the Complainants opted to move to a Tracker Rate of 5.10% (ECB+I .35%). The rate of interest on the account (at date of Provider's submission 3/09/2016) was 1.35% (ECB+I .35%).

The Complainants' Further Advance 2 Year Fixed Rate Mortgage Account ***8288 was drawn down on 8th February 2007 in the amount of €40,000.00 at a Fixed Rate of 4.54% for a term of 27 years. On expiry of the 2 Year Fixed rate period, the account was placed on a Tracker Rate of 3.25% (ECB+2.25%). The rate of interest on the account (at date of Provider's submission 3/09/2016) was 2.25% (ECB+2.25%).

The 3 Mortgage Accounts outlined above are secured on the Complainants' principal primary residence and were therefore subject to the Mortgage Arrears Resolution Process (MARP) as outlined in the Central Bank's Code of Contact on Mortgage Arrears (CCMA) 2010 & 2013.

The complaint is that the Provider was not correctly engaging with the Complainants in relation to their arrears situation on their mortgages.

The Complainants' Case

The Complainants state that their complaint is in relation to the three mortgage accounts. The Complainants say that they applied to the Provider for a Term Extension on all three mortgages. The Complainants submit that they asked the Provider on different occasions to clarify:

- The length of the term extension on each mortgage.
- The interest rates that would apply to each mortgage until final payment date on all three mortgages.
- Clarification on Account ***8288 – whether it is a term extension or a term reduction (which they say they did not ask for).

Clarification was sought on the arrears on all three mortgages. The Complainants submit that the figures shown either without restructure agreement or with restructure agreement did not show any figure anywhere to include the arrears amount.

The Complainant states that the Provider talks about clearing arrears either before or after “assumes arrears are cleared in full immediately”. The Complainant states that therefore they are still left with arrears to pay. Which the Complainants say totally undermines the purpose of their request in the first place.

By way of a resolution the Complainants seek:

- Figures to show where arrears will be included, so that there will be no arrears at the end of the restructure.
- Interest rates to be shown clearly that will apply to each mortgage separately right through until the final payment is made on each one.
- The length of the term extension on each mortgage if there is going to be a “Term Reduction” Restructure applied to account number ***8288, which is a Tracker Mortgage Loan, and how does this comply or how will this comply with “Housing loans under Consumer Credit Act 1995” under “Tracker Mortgage Loans”.

- The Complainant states if more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different interest rate over the ECB Rate.

The Complainants also refer to letters containing misleading information from the Provider.

Letter dated 04 June 2015, Mortgage Account Number ***8288. Under **Mortgage Restructure** it refers to "Capitalisation with a Term Extension arrangement".

Letter dated 14th July 2015, Account 8288, this would be a term reduction.

The Complainants wonder which would apply if they had signed the restructure agreement.

As regards the same letter dated 04 June 2015, under **Mortgage Restructure**:

"This means that we will spread your arrears (including any interest owing) over the extended term of your loan".

The Complainants says that yet the letter states clearly that the Provider **assume** under notes 3 & 4 in the **Restructure Agreement: Moratorium Customer Copy** that arrears are cleared in full immediately. Note 3 and note 4 assume that arrears are cleared in full immediately following the period of the restructure agreement.

The Complainants consider that the information in this letter actually contradicts the Moratorium offer dated the same day, which the Provider expected them to sign and return .

The ,Complainants states that the same information applies to the other two accounts ****7016 and ***9833.

The Complainants state that they were then paying all three mortgages at the same agreed monthly repayments before they got into arrears, which was €928.35 repayments inclusive of all three mortgages per month.

The Complainants state that the Provider wanted €887.16 inclusive of all three mortgages per month for 6 months, and said that this amount would indicate to it the Complainant's ability to keep up repayments going forward and that then the Complainants would pay €946.82 per month following on thereafter. The Complainants submit that this certainly indicates how the *"cart is coming before the horse"*.

The Complainants state that they have been tireless trying to get simple information from this lender. The Complainants say that it has been made clear to the Provider several times over telephone communication exactly what is required, yet the Provider continues to try to give irrelevant information or contradictory information or information which the

/Cont'd...

Complainants have not asked for at all.

The Provider's Case

The Provider states that the Complainants' Mortgage Account ***9833 fell into arrears in April 2012 and the arrears balance (at date of Provider's submission 3/09/2016) was €19,398.04. The Provider says that the Complainants' Mortgage Account ****77016 first fell into arrears in May 2012 and the arrears balance (at date of Provider's submission 3/09/2016) was €5,562.97. The Provider submits that the Complainants' Mortgage Account ****8288 first fell into arrears in June 2012 and (at date of Provider's submission 3/09/2016) the arrears balance was €5,193.03.

The Provider states that it issued regular correspondence to the Complainants regarding the arrears on each account, in accordance with the CCMA 2010 and the CCMA 2013.

The Complainants completed a Standard Financial Statement (SFS) on 21st December 2012. The Complainants acknowledged that they had not been making any payments to the Mortgage Accounts for some time and requested an affordable ARA to be put in place going forward.

The Provider states that the Complainants SFS of 21st December 2012 and supporting documentation was passed to the Provider's Arrears Support Unit (ASU) for assessment. The Provider says that following a thorough assessment based on all information to hand, the Provider's ASU were of the opinion that there was insufficient affordability present to service repayments to the Mortgage Accounts under any of the ARAs offered by the Provider. In light of this, the ASU deemed that an Agreement to Sell Recommendation would be most suited to the Complainants' particular circumstances.

On 1st March 2013, the Provider issued an Agreement to Sell Recommendation to the Complainants. The Provider says that the Complainants did not sign the Agreement to Sell Acceptance Form and return same to the Provider therefore the Agreement to Sell could not be applied to the Complainants' Mortgage Accounts. The Provider submits that as no payments were being made to the accounts, and as no formal ARA was in place, the Complainants' Mortgage Accounts continued to accrue arrears and progress through the Provider's Collections process.

The Provider states that on 22nd August 2013, the Complainants completed a new SFS. The Complainants acknowledged that they had not been making any payments to the Mortgage Accounts however they did not wish to accept the Provider's offer of an Agreement to Sell Recommendation dated 1st March 2013. The Provider says that the Complainants did not request a specific ARA but advised the Provider that while their circumstances remained the same as their previous SFS, they were hopeful that the First Complainant would find employment in the future. The Provider states that the Complainants also advised the Provider that they intended to cease verifying their identification when receiving telephone calls from the Provider's Collections Department going forward.

/Cont'd...

The Provider's position is that following a thorough assessment of all information to hand, including the SFS and supporting documentation submitted by the Complainants on 22nd August 2013, the Provider's ASU deemed an Assisted Voluntary Sale (AVS) Agreement to be the most suitable on this occasion. The Provider says that as the Complainants' financial circumstances had not changed, the ASU were not in a position to offer any other ARA to the Complainants, as they did not show affordability.

The Provider states that it issued an AVS Agreement to the Complainants on 2nd September 2013. In addition, a Financial Advice Pack was issued to the Complainants on 23rd September 2013 at the Complainants' request.

On 3rd October 2013, the Provider received correspondence from the Complainants appealing the Provider's offer of an AVS Agreement.

The Provider submits that the Complainants appeal was passed to the Provider's Appeals Board for re-assessment. Based on all information to hand, the Provider's Appeals Board chose to uphold the ASU's decision to offer an AVS Agreement to the Complainants and declined the Complainants' appeal. The Provider confirmed this in writing to the Complainants on 11th November 2013.

The Provider states that the Complainants did not sign the AVS Agreement Acceptance Forms or return them to the Provider therefore the AVS Agreement could not be applied to the Complainants' Mortgage Accounts. As no formal ARA was in place, arrears continued to accrue on the Complainants' Mortgage Accounts.

The Provider says that on expiry of the Provider's offer of an AVS Agreement on 23rd January 2014, the Provider issued correspondence to the Complainants in accordance with Provision 47 of the CCMA 2013. This communication informed the Complainants that the protections of the MARP no longer applied and requested that the Complainants contact the Provider as soon as their circumstances changed.

It is the Provider's position that as no repayments were being made to the Complainants' Mortgage Accounts, the Provider continued to issue regular correspondence to the Complainants to keep them informed of the status of all 3 Mortgage Accounts.

The Provider submits that it also wrote to the Complainants on 26th February 2014 to request a new SFS with a view to arranging an ARA going forward, if appropriate. The Provider says it also continued to contact the Complainants by telephone in relation to their Mortgage Account arrears in accordance with CCMA 2013.

The Provider states that on 10th June 2014, the Complainants submitted a formal complaint to the Provider in relation to a telephone call received from the Provider's ASU. The Complainants were dissatisfied that the ASU agent relayed personal information pertaining to the Complainants' Mortgage Account arrears to an unauthorised third party. The Provider states that this matter was fully investigated and a Final Response Letter was issued on 7th July 2014. The Provider states that while the telephone number dialled on this occasion was the same number used on previous successful calls, the Provider can accept that the agent could have made more of an effort to establish the identity of the

Account Holder before proceeding. The Provider acknowledged that a shortcoming in service may have occurred on this occasion and has apologised.

The Provider states that it was noted that no payments were being made to the Complainants' Mortgage Account while the complaint was ongoing, therefore when issuing the Final Response Letter, the Provider requested that the Complainants complete a SFS at their earliest convenience. A further request for the SFS was issued on 29th July 2014.

On 11th August 2014, the Complainants completed a new SFS. The Complainants advised the Provider they would be in a position to make repayments of approximately €500 - €600 per month going forward and requested an ARA in line with this offer. The Provider says it was also noted at this stage that the First Complainant had been in employment since February 2014.

The Provider submits that following a thorough assessment of all information to hand, including the Complainants' SFS and supporting documentation, the Provider's ASU were of the opinion that a short term ARA was appropriate on this occasion as it would give the Complainants' income some time to regulate, with a view to applying a long term ARA in the future months. The Provider states that in light of this, the Provider issued a Moratorium Restructure Agreement on 26th August 2014 on all three Mortgage Accounts as follows:

Mortgage Account ***9833 — A Moratorium Restructure Agreement issued on 26th August 2014 for a period of 3 months, with restructured repayments set at €369.07 per month.

Mortgage Account ***7016 — A Moratorium Restructure Agreement issued on 26th August 2014 for period of 3 months, with restructured repayments set at €128.22 per month.

Mortgage Account ***8288 — A Moratorium Restructure Agreement issued on 26th August 2014 for a period of 3 months, with restructured repayments set at €237.60 per month.

The Provider states that the above ARAs would result in a combined repayment of €734.89 across the Complainants' 3 Mortgage Accounts, The Provider says it could evidence affordability for this amount from the documentation submitted in the Complainants' SFS of 11th August.

The Provider submits that as the Provider did not receive the Complainants' signed Moratorium Restructure Agreement Acceptance Forms, a reminder was issued in writing to the Complainants on 16th September 2014.

On 17th September 2014, the Provider received correspondence from the Complainants appealing the Provider's decision to offer a 3 month Moratorium restructure Agreement on all 3 Mortgage Accounts. The Complainants requested a Split Mortgage Restructure

/Cont'd...

Agreement as an alternative. The Provider says that on receipt of this, its Appeals Board re-assessed the Complainants case and following a thorough review of all information to hand, the Appeals Board chose to uphold the ASU's decision and declined the Complainants' appeal. The Provider states that the Appeals Board supported the ASU's opinion that a 3 month Moratorium Restructure Agreement, on all 3 Mortgage Accounts, was the most appropriate, affordable and sustainable ARA to suit the Complainants' particular circumstances. The Provider advised the Complainants of this in writing on 2nd October 2014.

On the 2nd October 2014, the Complainants' Solicitor, issued correspondence to the Provider advising that the Complainants had referred their previous complaint to their offices for action. The Complainants' Solicitor requested compensation for their clients. The Provider states however, that the Solicitor did not provide written authority from the Complainants to deal with matters of their Mortgage Accounts on their behalf. In light of this, the Provider reopened the complaint, but sought to deal with the Complainants directly.

On 10th October 2014, the Provider received the Complainants' signed Moratorium Restructure Agreement Acceptance Forms for Mortgage Accounts ***9833, ****7016 & ****8288 and these were applied to the Complainants' accounts accordingly.

The Provider states that it is noted that the Complainants successfully made restructured monthly repayments to all 3 Mortgage Accounts as per the respective 3 month Moratorium Restructure Agreement period.

The Provider issued a Final Response Letter to the Complainants regarding their complaint on 24th November 2014 apologising for the shortcoming in service in the Provider's telephone call to the Complainants, and a Gesture of Goodwill in the amount of €150.00 was offered. In its complaint response the Provider stated that this offer remains open.

On 5th December 2014, the Provider issued correspondence to the Complainants advising that the Moratorium Restructure Agreement in place on Mortgage Account ****9833 was due to expire on 31st December 2014. Similar correspondence was issued to the Complainants on 10th December 2014 advising that the Moratorium Restructure Agreement in place on Mortgage Account ****7016 would expire on 3rd January 2015. Furthermore, correspondence was issued on 15th December 2014 advising that the Moratorium Restructure Agreement in place on Mortgage Account ***8288 would expire on 8th January 2015.

On 7th January 2015, the Complainants' Solicitor provided his clients' written authority to the Provider to deal with matters relating to their Mortgage Accounts. As requested, copies of the Provider's previous correspondence to the Complainants regarding their complaint were issued to their Solicitor's office. Correspondence was also issued to the Complainants on 9th January 2015 confirming details of the current Mortgage Account repayments on all 3 Mortgage Accounts, at the Complainants' request.

/Cont'd...

On 22nd January 2015, the Provider received further correspondence from the Complainants' Solicitor advising that the Complainants were dissatisfied with the Provider's response to their complaint. The Provider responded to this correspondence on 29th January 2015, however this correspondence was issued to the Complainants directly in error. The Provider apologised for the inconvenience.

The Provider states that the Complainant's Solicitor continued to issue correspondence regarding the complaint dated 10th February 2015 and 13th March 2015. Further issues regarding continuing telephone calls from the Provider's Collections Department were also raised. On 15th April 2015, the Provider issued a Final Response Letter in relation to this complaint and it was noted in this correspondence that the Complainants would need to complete a SFS in order to be assessed for an ARA going forward.

It is the Provider's position that it continued to keep the Complainants up to date on the status of their Mortgage Account arrears while the complaint was ongoing. The Provider states that it is also noted that no formal ARA was put in place during this time as the Complainants had not submitted a SFS for assessment.

On 11th May 2015, the Complainants submitted a new SFS. The Complainants advised the Provider that the First Complainant was now in continuous employment and requested a Capitalisation Restructure Agreement & Term Extension on all 3 Mortgage Accounts. The Complainants advised that they could afford monthly repayments across all 3 Mortgage Accounts totalling €928.00 per month.

The Provider states that following a thorough assessment of all information to hand, including the SFS and supporting documentation submitted by the Complainants on 11th May 2015, the Provider's ASU deemed that a Capitalisation Restructure Agreement & Term Extension was an appropriate ARA for the Complainants' particular circumstances on this occasion.

The Provider submits that it was ASU intention was to offer the Complainants this ARA on a Pre-Trial basis for a period of 6 months across Mortgage Accounts ***9833, ***7016 & ***8288. The Provider's stated in its submission of 2nd September 2016, that should the Complainants successfully complete six consecutive restructured Mortgage Account repayments on all 3 Mortgage Accounts, the Provider would be in a position to offer a Capitalisation & Term Extension on the accounts on a long term basis.

The Provider says that it had confirmed this offer to the Complainants in writing on 4th June 2015 as follows;

Mortgage Account ***9833 — A Moratorium Restructure Agreement issued on 4th June 2015 with restructured repayments set at €480.46 for a period of 6 months. This ARA was issued on a 6 month Pre-Trial basis for a Capitalisation and Term Extension Restructure Agreement as per the Provider's correspondence of 4th June 2015.

/Cont'd...

Mortgage Account ***7016 — A Moratorium Restructure Agreement issued on 4th June 2015 with restructured repayments set at €134.97 for a period of 6 months. This ARA was issued on a 6 month Pre-Trial basis for a Capitalisation and Term Extension Restructure Agreement as per the Provider's correspondence of 4th June 2015.

Mortgage Account ***8288 — A Moratorium Restructure Agreement issued on 4th June 2015 with restructured repayments set at €271.73 for a period of 6 months. This ARA was issued on a 6 month Pre-Trial basis for a Capitalisation and Term Extension Restructure Agreement as per the Provider's correspondence of 4th June 2015.

The Provider states that the above ARAs would result in a combined repayment of €887.16 across the Complainants' 3 Mortgage Accounts. The Provider stated that it could evidence affordability for this amount from the documentation submitted in the Complainants' SFS of 11th May 2015. The Complainants were advised that the above offers would remain open for a period of 60 days.

On 17th June 2015, the Provider received correspondence from the Money Advice and Budgeting Service (MABS) requesting clarification of the Capitalisation and Term Extension Restructure Agreements issued to the Complainants on all 3 Mortgage Accounts. The Provider submits that following several failed attempts to contact MABS by telephone, the Provider's ASU spoke to the Complainants' appointed MABS agent on 25th June 2015 and explained the terms of the ARAs in detail.

The Provider's position is that as the Complainants did not sign and return the Moratorium Restructure Agreement (Pre-Trial for Capitalisation and Term Extension) Forms for their 3 Mortgage Accounts, the Provider issued reminder correspondence on 25th June 2015 and 6th July 2015. The Provider states that its ASU also contacted the Complainants by telephone regarding this matter and advised the Complainants of the consequences of failing to accept the Provider's offer of an ARA.

The Provider says it continued to receive correspondence from the Complainants querying the terms of the Capitalisation and Term Extension Restructure Agreements issued for Mortgage Account ****9833, ***7016 & ****8288. The Provider says it continued to provide clarification in writing on 14th July 2015, 7th August 2015 and 14th August 2015. The Provider states that its records also show that the Provider's ASU discussed this matter with the Complainants by telephone on several occasions.

On 20th October 2015, the Provider received a further complaint from the Complainants in relation to the terms of the ARAs offered on 4th June 2015 on all 3 Mortgage Accounts.

A Final Response Letter was issued by the Provider to the Complainants on 23rd October 2015.

The Provider submits that it is noted that as no formal ARA was in place since 31st December 2014 on Mortgage Account ****9833, 10th December 2014 on Mortgage Account ***7016 and 3rd January 2015 on Mortgage Account ***8288, arrears continued to accrue on all accounts in accordance with the terms and conditions of the accounts.

The Provider says it continued to keep the Complainants informed on the status of all 3 Mortgage Accounts in writing and by telephone on a regular basis, in accordance with CCMA 2013. The Provider says it is satisfied that it has made every effort to address the Complainants' queries regarding the Provider's Restructure Agreement offers of 4th June 2015, in a timely, courteous and professional manner. The Provider states that as evidenced from the call notes submitted in evidence, the correspondence submitted into evidence and the timeline of communications submitted into evidence, the Provider responded to the each of the Complainants' queries as they arose.

The Provider states that it is noted that the Complainants referred their complaint to the then Financial Services Ombudsman's Bureau on 1st December 2015.

The Provider's position is that on reviewing the Complainants file and based on all information to hand, the ASU arranged for the following to be issued to the Complainants on 21st March 2016; Mortgage Account ***9833 — Mortgage Restructure Offer — Trial Arrangement issued on 21st March 2016 with restructured repayments set for a period of 6 months. This ARA was offered on a 6 month Pre-Trial basis for a Capitalisation and Term Extension Restructure Agreement.

Mortgage Account ****7016 — Mortgage Restructure Offer — Trial Arrangement issued on 21st March 2016 with restructured repayments set at €123.34 for a period of 6 months. The Provider says that this ARA was offered on a 6 month Pre-Trial basis for a Capitalisation and Term Extension Restructure Agreement.

Mortgage Account ****8288 — Mortgage Restructure Offer — Trial Arrangement issued on 21st March 2016 with restructured repayments set at €263.70 for a period of 6 months. This ARA was offered on a 6 month Pre-Trial basis for a Capitalisation and Term Extension Restructure Agreement.

The Provider states that while the documentation issued to the Complainants on 21st March 2016 in relation to Mortgage Account ***8288, as referenced above, states the words 'Term Extension', that it was the Provider's intention to reduce the term to 59 months.

The Provider states that this would ensure that all 3 Mortgage Accounts would reach maturity at the Complainants' national retirement age. The Provider submits however, that on reviewing the Complainants' Mortgage Accounts ***8288 & ***7016, the Provider felt that it would not be appropriate to amend the term remaining on both accounts. In light of this, the Provider issued the following to the Complainants on 12th April 2016;

Mortgage Account ****48288 — Mortgage Restructure Offer — Trial Arrangement issued on 12th April 2016 with restructured repayments set at €201.11 for a period of 6 months. This ARA was offered on a 6 month Pre-Trial basis for a Capitalisation Restructure Agreement.

The Provider states that at 2nd September 2016, the Provider had not received the Complainants' signed Mortgage Restructure Offer — Trial Arrangement Acceptance Forms for Mortgage Accounts ****9833, ***7016 & ***8288, therefore the respective ARAs could not be applied to the Complainants Mortgage Accounts. The Provider says that as no formal ARA were in place, arrears continued to accrue on each Mortgage Account and the accounts progressed through the Provider's Collections process. The Provider states that it continues to issue regular correspondence to the Complainants advising of the status of their Mortgage Accounts, in accordance with CCMA 2013.

The Provider says it notes from the Complaint Form submitted by the Complainants that the Complainants would like the following issues clarified regarding the ARAs offered by the Provider on 4th June 2015;

1. The length of the term extension on each Mortgage Account.
2. The interest rate that will apply to each Mortgage Account until the Final Payment Date on all 3 Mortgage Accounts.
3. Has a term reduction or a term extension been applied to Mortgage Account ***8288
4. Clarification on the amount of arrears to pay on all 3 Mortgage Accounts as the Complainants do not feel this is clear from the restructure documents issued.

The Provider responded as follows;

1. Following the Complainants' request, the Provider provided this information in writing to the Complainants on 14th July 2015 and asserts that the information provided in same was accurate as at that date.

The Provider states that for clarity purposes, it wished to advise (advice as at 2nd September 2016) that should the Complainants sign and accept the Mortgage Restructure — Trial Arrangement Offers issued on Mortgage Accounts ***9833 & ***7016 on 21st March 2016, and ***8288 on 12th April 2016, the remaining terms would be amended as follows;

Mortgage Account ***9833 — a term extension of 91 months would be applied. At that time the account had 65 months remaining.

Mortgage Account ***7016 — a term extension of 91 months would be applied. At that time the account had 65 months remaining.

Mortgage Account ***8288 — the remaining term would not be amended and would remain at 214 months remaining.

2. On the second query the Provider states that its records show that the second named Complainant raised this query initially with the Provider's ASU on 21st July 2015. The Provider states that it confirmed to the Complainant that the interest rates of each

/Cont'd...

Mortgage Account would not be affected should the Complainants choose to accept an ARA. The Provider says it is also noted that the applicable interest rate for each Mortgage Account is clearly shown on the Provider's Moratorium Restructure Agreement issued to the Complainants on 4th June 2015.

The Provider submits that however, as Mortgage Account ***9833 has a variable rate, and Mortgage Accounts ***7016 & ***8288 have a tracker rate, it is not possible for the Provider to confirm the rate which will apply to the accounts until the Final Payment Dates as these rates are subject to change. All tracker mortgage rates are subject to change based on the fluctuations of the ECB rate. All variable mortgage rates are subject to change at the Provider's discretion.

The Provider refers to the Moratorium Restructure Agreement issued to the Complainants on 4th June 2016, under the heading 'Notes' which states;

"The payment amount noted is an approximation and may change to reflect rate changes"

As at 2nd September 2016 the Provider outlined the then current interest rates on the Complainants' Mortgage Accounts as follows;

Mortgage Account ***9833 — 4.50% (Variable Rate Home Loan)

Mortgage Account ***7016 - 1.35% (Tracker Rate ECB+I .35%) Mortgage Account

***8288 - 2.25% (Tracker Rate ECB+2.25%)

The Provider advised that all of the above rates were subject to change in accordance with the terms and conditions of the Mortgage Accounts.

3. On query 3 the Provider states that as outlined in response to point 1 above, this information was provided to the Complainants on 14th July 2015, following their request of 10th July 2015. The Provider says that the information provided to the Complainants was accurate at that time.

4. As of 2nd September 2016, the arrears balances on the Complainants' Mortgage Accounts are as follows; .

Mortgage Account ***9833 - €19,398.04 in arrears.

Mortgage Account ***7016 - €5,562.97 in arrears. Mortgage

Account ****8288 - €5,193.03 in arrears.

The Provider had advised then that should the Complainants sign and accept the Mortgage Restructure — Trial Arrangement Offers issued on Mortgage Accounts ****9833 & ***7016 on 21st March 2016, and ***8288 on 12th April 2016, the Complainants would have been placed on a trial period for 6 months. And should the Complainants have successfully made 6 consecutive restructured Mortgage Account repayments to all 3 Mortgage Accounts, as outlined in the documentation, the outstanding arrears on each account would have been capitalised and the arrears balances on each account would return to €0.00.

The Provider refers to the Complainants' comments regarding the Moratorium Restructure Agreement documentation issued by the Provider on 4th June 2015, in particular, the information provided under the heading 'Notes', which states;

"3. Without Restructure Agreement assumes arrears are cleared in full immediately. If they are not paid in full immediately the cost of credit will be higher than shown above".

4. With Restructure Agreement assumes any arrears are cleared in full immediately following the period of the restructure agreement. If the arrears are not paid in full immediately after this arrangement the cost of credit will be higher than shown above. "

The Provider asks that it be noted that this particular query was not raised by the Complainants in their previous complaints to the Provider, however it would like to clarify this matter now.

The Moratorium Restructure Agreements issued on 4th June 2015 for Mortgage Accounts ***9833, ***7016 & ***8288 were offered as a 6 month Pre-Trial for a Capitalisation and Term Extension Restructure Agreement and the Provider states that this was clearly outlined within the documentation.

The Provider says that as it cannot guarantee that a customer will successfully complete a Pre-Trial period, the Moratorium Restructure Agreement documentation is prepared with this in mind. Therefore, the information provided on the Moratorium Restructure documentation of 4th June 2016, including the 'Notes' section as referenced above, assume that the Moratorium Restructure Agreement is a standalone offer, and will not be succeeded automatically by any other restructure. The Provider states that the Capitalisation and Term Extension Restructure Agreement would not be formally offered to the Complainants until the Pre-Trial period is completed successfully.

The Provider refers to the Provider's Moratorium Restructure Agreement of 4th June 2015, under the heading 'Six Month Trial', which states;

"We will initially set up a 'Short Term Restructure Agreement' on your account for a trial period of six months. This is to ensure that you can make the new repayments, which will be set at the same level as the proposed monthly repayments for your Capitalisation with a Term Extension arrangement. Once you have successfully made six consecutive monthly repayments under the Short Term Restructure Agreement, we will offer you a Capitalisation with a Term Extension arrangement (as long as your circumstances haven't changed). Towards the end of the six months trial period, we will send you the 'Capitalisation and Term Extension Offer'.

If you do not make the six monthly repayments, we will not be in a position to offer you the Capitalisation and Term Extension arrangement.

In such circumstances you will remain liable for your full mortgage repayments, at your original terms. "

The Provider notes from the Complaint Form submitted by the Complainants on 1st December 2015, when asked "how do you want the Financial Service Provider to put thing right?", the Complainants requested the following;

1. Figures to show where arrears will be included, so that there will be no arrears at the end of the restructure.
2. Interest Rates to be shown clearly that will apply to each mortgage separately right through until the Final Payment is made on each one.
3. The length of the term extension on each mortgage.

The Provider responded as follows;

1. The Provider submits that as outlined above, this information cannot be confirmed by the Provider until the six month Pre-Trial period is successfully completed on all 3 Mortgage Accounts. Should the Complainants successfully make six consecutive restructured Mortgage Account repayments to all 3 Mortgage Accounts, the Provider will formally offer a Capitalisation and Term Extension Restructure Agreement on Mortgage Accounts ***9833 & ***7016, and a Capitalisation Restructure Agreement on Mortgage Account ***8288. Once the Complainants accept same, the Provider will capitalise the arrears on all 3 Mortgage Accounts resulting in an arrears balance of €0.00 on Mortgage Account ***9833, ***7016 & ***8288.

The Provider asks that it be noted that if the Provider were to include the arrears amount as part of the ARA (i.e. provide figures based on the arrears being capitalised prior to the Pre-Trial period taking place), this would result in a considerably higher proposed monthly restructured Mortgage Account repayment amount.

The Provider states that as of (2nd September 2016), the Provider had not received the Complainants' signed Mortgage Restructure Offer — Trial Arrangement Acceptance Forms for Mortgage Accounts ***9833, ***7016 & ***8288, therefore the respective ARAs could not be applied to the Complainants Mortgage Accounts. As no formal ARA was in place, arrears continued to accrue on each Mortgage Account and the accounts progressed through the Provider's Collections process.

2. The Provider states as outlined above, the Provider cannot provide confirmation of interest rates that may apply to the Complainants' Mortgage Accounts in the future. As discussed with the Complainants on several occasions the Complainants' Mortgage Account ***9833 has a variable rate which may be varied at the Provider's discretion. Also, the Complainants' Mortgage Accounts ***7016 & ***8288 are on a tracker rate, which may vary in line with the ECB rate.

3. The Provider says that this information was requested by the Complainants on 10th July 2015 and supplied in writing by the Provider on 14th July 2015.

The Provider acknowledges its shortcomings in service when dealing with this matter. The Provider has apologised for any confusion caused by its use of the phrase 'Term Extension' when referring to the restructure offered for Mortgage Account ***8288 on 4th June

/Cont'd...

2015. The Provider says that initially, it was the Provider's intention to amend the term on all 3 Mortgage Accounts so that they would each mature following a term of 156 months. However, following a further review, the Provider's ASU deemed that a term extension on Mortgage Accounts ***9833 & ***77016 would be appropriate, and to allow the term to remain unchanged on Mortgage Account ***8288.

The Provider says it also acknowledges that the Complainants' Solicitor provided written authority from the Complainants on 7th January 2015 to deal with their Mortgage Accounts on their behalf. Following receipt of this, the Provider issued a Final Response Letter to the Complainants directly on 29th January 2015 and has also apologised for this oversight. Furthermore, the Provider says it can accept that it may have been appropriate to accept the Complainants' Solicitor's correspondence without question, and would apologise for any inconvenience this may have caused.

The Provider states that it is also noted that the Complainants' correspondence of 18th August 2015 addressed to the Provider's Customer Relations Department, was not acknowledged as the person in question had since left the company.

The Complainants subsequently submitted further correspondence to the Provider on 13th October 2015 in relation to this matter and the Provider issued a Final Response to the issues raised on 23rd October 2015.

Having reviewed the Complainants' complaint in full, the Provider offered a revised Gesture of Goodwill in the amount of €750.00 to the Complainants at that time.

Additional submissions

There were a number of additional submissions from the parties – which were exchanged between the parties and concluded with the following submissions:

The Complainant's response of 23rd February 2017

"Let us point out that the shortcomings in service on this call have not been addressed.

- *The third party that answered [the Provider's representative's] call of 6th March 2015 was able to tell us of the nature of the call and could make reference to our accounts shortcomings.*
- *He told us that the lady seemed to assume that he was [the First Complainant] and he said that she just kept on talking about the account and he said that he couldn't get a chance to come in on the conversation to advise her that he actually was not [the First Complainant].*
- *He said that at no point what-so-ever did she ask any security question, nor indeed did she ask any question at all with any reference to either [the First or Second Complainant].*

/Cont'd...

- *He said that when he finally got a chance to speak, he then advised her that he was not [the First Complainant] and he said he asked her for a contact number that he could give to [the First Complainant] so that [the First Complainant] could then call [the Provider's representative] back himself when it would suit him.*

There appears to be no notation about any of this conversation recorded in the notes on the Bank's internal systems on the accruing, nor have [the Provider] made any reference to their shortcomings in service on this call.

We have asked the Bank's Data Access Department to provide us with a copy of the recording and they have advised us that under section 4(4) of the Data Protection Act, they could not disclose personal information relating to another person, namely the third party that answered the call from Ms M as he was not named on our accounts.

We then contacted Data Protection with reference to this and their advice on the matter is that the third party actually can make the request for the recording of the call with our permission. They also advised to enclose the appropriate fee of €6.35.

After giving permission to the third part/ to make a request for the recording, the third party then made the request and the following was the response from the Bank's Data Protection Department:

"Please note that under the Data Protection Act we can only provide copies of personal data relating to the requestor(s) and cannot disclose information relating to another person (section 4(4)). I have been unable to locate an account in your name with the details provided; therefore we are unable to provide a copy of the call requested in your letter, to you. Accordingly, I now return your postal order for €6.35".

"We now ask the Bank to clearly clarify exactly what information it is that they want the third party and ourselves to provide them with so as they then can release the recording of the telephone call made by Ms GM on the 6th of March 2015 at 16:32.

In response to [Provider's] remarks about abbreviations "SQA CMR" OR INDEED ANY OTHER ABBREVIATIONS, this is not acceptable and is extremely humiliating and insulting as these observaitons can and may refer to double meanings. This type of behaviour is extremely unprofessional.

This Bank needs to take ownership of their mistakes and make some shape at dealing with their shortcomings".

The Complainants' response of 2nd March 2017 to the Provider's letter of 20th February 2017 seeking a communication from the Complainants on the arrears.

The Complainant states: *"We will not be addressing arrears on the above mentioned accounts until the final decision of the Financial Services Ombudsman is reached".*

The Provider's response of 3rd March 2017

The Provider reiterates its apology for its oversight regarding the disputed telephone call and advised that the compensation of €150 remains open for acceptance.

The Provider advises that as the third party did not identify themselves in the call, it is unable to release the data.

The Provider states that it is satisfied that its use of abbreviations is appropriate for the purpose of time management and that such notes are for internal use only and are not displayed publicly.

The Complainants' response of 14 March 2017

The Complainants question the Provider refusal to release the telephone recording despite their consent and the consent of the third party.

As regards the €150 compensation, the Complainants state that this was for a separate breach where the Provider disclosed information without clearing security.

5 April 2017 – The Provider advised the Complainants of its intention to commence legal proceedings for repossession of the mortgaged property.

15 March 2017 – The Complainants advise the Provider that it would be dealing with addressing arrears following receipt of a Decision from the Ombudsman.

The Complainants' response of 20 April 2017

The Complainants question the Provider's refusal to release the telephone recording.

The Complainants state that they are not asking for the Ombudsman to adjudicate or even take into consideration, the content of this audio recording. The Complainants state they understand that the content of the audio recording is for the investigation of the Data Protection Commissioner and that it has nothing got to do with this Office's investigation. The Complainants state however, the point they are making is that the Provider is withholding this information and they rely on this vital information that the Provider is withholding. The Complainants say that they feel that they are entitled to this audio recording and feel that it is unjust and unreasonable of the Provider to continuously hold back on information that it holds regarding their accounts especially when this Office requested the Provider to provide such evidence.

The Complainant states that the Provider has now passed their mortgage files to its solicitors, to commence legal proceedings for repossession of the mortgaged property.

The Complainants submit that it has been nothing but false and misleading information from the Provider from the very start especially with the issue created with regard to Account Number ****8288 as to whether the Provider was offering a term extension or a term reduction and then the Provider never wanting to give the figures requested so the Complainants could have got on with the business of paying up the arrears.

The Complainants say that something they always told the Provider was that it could count on getting every cent owed once both of them were back working and got things sorted out.

It is the Complainants' position that the Provider stopped them from getting on with the business of repaying the arrears on all three accounts which they were willing to do and they could well afford to do. The Complainants say that the Provider did this by its unwillingness to provide them with the simple information asked of it for in the first place, that was to provide the Complainants with a set of figures that would show clearly where arrears would be included so that there would be no arrears at the end of restructure. THE Complainants state that they asked for figures and not for words like "CAPITALISATION"

The Complainants say that the only people that stopped them from signing up to an Alternative Repayment Arrangement (ARA) was the Provider itself. The Complainants state that this was because of the Provider's own unwillingness to co-operate with them, but instead the Provider chose to keep it going by providing nothing but false and misleading information and then it wanted to indicate that the Complainants were now outside the time limit of the Mortgage Arrears Resolution Process (MARP). The Complainants submit that the fact is that they could not have signed up to the Alternative Repayment Arrangement (ARA), because of the ongoing dispute between Provider and themselves about the term extension / reduction, interest rates and the figures to show monthly repayments and the complaint being in this Office.

The Complainants state that the Central Bank has regulation on mortgage arrears, and the Provider should not have allowed the Mortgage accounts to progress through the Banks normal collections procedure, while the Bank knew perfectly well itself that there was a dispute in process regarding Provider providing them with misleading information, so therefore they could not have signed up to an Alternative Repayment Arrangement (ARA). The Complainants say that the Provider already admitted this in previous correspondence, especially with regard to Account Number ***8288.

It is the Complainants' position that they can see quite dearly now that the Provider never had any intention of ever providing them with an Alternative Repayment Arrangement (ARA). The Complainants say that the Provider has now come to its final decision to commence legal proceedings for repossession of the property and turn out a young family who are in education on the side of the road.

The Complainants state that all the Provider has provided for them with is an attitude of outlining its power, with a customer offer of "Take it or else" approach. The Complainants say the Provider has failed to address its shortcomings and certainly have

/Cont'd...

failed to provide them with any type of a meaningful explanation as to why it will not co-operate with them as customers

On 27th June 2017 the Provider advised this office that the Legal Proceedings were on hold pending the outcome of the investigating adjudication of the complaint.

On 2nd August 2018 – the Provider advised the Complainant that it had transferred their loan to a named Designated Activity Company (the “Purchaser”). The Provider set out the legal basis for the transfer, as follows:

“The transfer and absolute assignment of your loan is permitted by law. The terms of your loan, including clause 1.15 of the General Mortgage Loan Approval Conditions provide that [the Provider]: “may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions”.

The Complaint for Adjudication

The complaint is that the Provider was not correctly engaging with the Complainants in relation to their arrears situation on their mortgages.

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 9th April 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.

/Cont’d...

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

Analysis

If a borrower is having difficulty paying a mortgage the lender may offer an *alternative repayment arrangement* (ARA) - often called a *mortgage restructure*. The arrangements available from the lender may be part of the **Mortgage Arrears Resolution Process (MARP)** or outside it.

Every customer's circumstances are different and the lender is obliged to look carefully at the borrower's personal circumstances before deciding what, if any, option to offer. Having assessed the borrower's financial situation, to consider if it is appropriate to offer an ARA. Where an ARA is to be offered the lender should choose an ARA that it considers appropriate and sustainable for the borrower's circumstances.

However, it is important that the Borrower also thinks carefully about the offer and whether it is sustainable in the long term from their point of view. If the Borrower accepts an ARA they will be signing a new mortgage contract and will be bound by its terms for the duration of the agreement.

Therefore, it is important for a Borrower to make sure that they fully understand the details of the offer.

This is the situation that has arisen here in this complaint, that is, that there was an arrears situation on a number of loans and the Provider was offering an alternative repayment arrangement.

The jurisdiction of this office must be borne in mind in complaints of this type. Where issues of sustainability / repayment capacity are in dispute, this office is only in a position to investigate a complaint as to whether the Provider, in handling the Complainants' arrears related issues, correctly adhered to any applicable obligations pursuant to the Central Bank's Consumer Protection Code (CPC), the Code of Conduct on Mortgage Arrears (CCMA), and any other regulatory or legislative provisions relevant to such issues.

This office will not interfere with the commercial discretion of a Provider unless the conduct complained of is unreasonable, unjust, or improperly discriminatory in its application to the Complainant, within the meaning of **Section 60(2)(c)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The Provider set out in its complaint response how it considered it has complied with the Consumer Protection Codes and the Codes of Conduct on Mortgage Arrears. The Complainants do not specifically argue that the Provider was not adhering to the relevant codes. I accept that the Provider has had due regard to the relevant provisions of the codes when assessing the Complainants' circumstances and when offering alternative loan repayment options.

/Cont'd...

The Moratorium Restructure Agreements issued to the Complainants by the Provider on 4th June 2015 for Mortgage Accounts ***9833, ***7016 & ***8288 were offered as a 6 month Pre-Trial for a Capitalisation and Term Extension Restructure Agreement.

The Moratorium Restructure Agreement states;

"We will initially set up a 'Short Term Restructure Agreement' on your account for a trial period of six months. This is to ensure that you can make the new repayments, which will be set at the same level as the proposed monthly repayments for your Capitalisation with a Term Extension arrangement. Once you have successfully made six consecutive monthly repayments under the Short Term Restructure Agreement, we will offer you a Capitalisation with a Term Extension arrangement (as long as your circumstances haven't changed). Towards the end of the six months trial period, we will send you the 'Capitalisation and Term Extension Offer'.

If you do not make the six monthly repayments, we will not be in a position to offer you the Capitalisation and Term Extension arrangement.

In such circumstances you will remain liable for your full mortgage repayments, at your original terms. "

On the Complaint Form submitted by the Complainants, they were asked "how do you want the Financial Service Provider to put things right?", the Complainants requested the following;

1. Figures to show where arrears will be included, so that there will be no arrears at the end of the restructure.
2. Interest Rates to be shown clearly that will apply to each mortgage separately right through until the Final Payment is made on each one.
3. The length of the term extension on each mortgage.

The Provider responded as follows;

In relation to item 1. The Provider stated that this information could not be confirmed by the Provider until the six month Pre-Trial period was successfully completed on all 3 Mortgage Accounts. The Provider advised that should the Complainants have successfully made six consecutive restructured Mortgage Account repayments to all 3 Mortgage Accounts, the Provider would have formally offered a Capitalisation and Term Extension Restructure Agreement on Mortgage Accounts ***9833 & ***7016, and a Capitalisation Restructure Agreement on Mortgage Account ***8288. The Provider submitted that had the Complainants accept these, the Provider would have capitalised the arrears on all 3 Mortgage Accounts resulting in an arrears balance of €0.00 on Mortgage Account ***9833, ***7016 & ***8288.

/Cont'd...

The Provider asked that it be noted that if the Provider were to have included the arrears amount as part of the ARA (i.e. provide figures based on the arrears being capitalised prior to the Pre-Trial period taking place), this would have resulted in a considerably higher proposed monthly restructured Mortgage Account repayment amount.

As no formal ARA was in place, arrears continued to accrue on each Mortgage Account and the Provider's position was that accounts would progress through the Provider's Collections process.

As regards Item 2, the Provider advised that it could not provide confirmation of interest rates that may apply to the Complainants' Mortgage Accounts in the future. The Provider submits that it had discussed with the Complainants on several occasions that the Complainants' Mortgage Account ***9833 has a variable rate which could be varied at the Provider's discretion. Also, the Complainants' Mortgage Accounts ***7016 & ***8288 were on a tracker rate, which could vary in line with the ECB rate.

As regards Item 3 "the length of term extension on each mortgage", the Provider says that this information was requested by the Complainants on 10th July 2015 and supplied in writing by the Provider on 14th July 2015.

In the Complainant's submission of 16/09/2016 in response to the above information from the Provider, the Complainants state that they had asked for the above information to be provided as they were looking to try and pay off the arrears on all three accounts.

The Complainants stated that from reading through the Provider's response they were aware that interest rates would fluctuate from time to time. The Complainants stated that they could accept, after great struggle from letters and telephone conversation, the Provider's information with regard to interest rates.

The Complainants submitted that they could also accept the information the Provider gave about the length of the term extensions set at 156 months, but referred to the huge amount of stress and anxiety this has caused them. The Complainants stated that the Provider did not give this information without them having to bring the whole matter to the Office of the Ombudsman. The Complainants say that to get the Provider to tell them whether it was a term extension or a term reduction it was going to apply to account number ***8288 was very difficult.

The Complainants stated that the Provider could not confirm figures to show where arrears would be included, so that there will be no arrears at the end of the restructure unless the Complainant's first made six successful consecutive restructured mortgage account repayments on all three mortgage accounts. The Complainants states that the Provider informed that it would then capitalise the arrears on all three mortgages resulting

in an arrears balance of €0.00 on mortgage Account numbers: ***7016, ***8288 & ***9833.

The Complainants questioned what the Provider means by the term capitalise, as they say that no one had explained this to them. The Complainants questioned - how this capitalisation would work. The Complainants question whether it is some sort of special formula the Provider works out to get a figure for repayments after the six month trial, or would it be that the Provider would quash the arrears after the six month trial. The Complainants state that they had no knowledge on this, and no one had ever explained what it meant by a Capitalisation.

The Complainants submitted that the Provider was aware they were paying €928 per month across all three accounts since February 2015, so they did not see why the Provider thought they would have had problem with a six month pre-trial period or indeed with making payments thereafter.

The Complainants questioned what the Provider meant where it stated:

"Please note that if the Provider were to include the arrears amount as part of the ARA (i.e. provide figures based on the arrears being capitalised prior to the Pre-Trial period taking place), this would result in a considerably higher proposed monthly restructured Mortgage Account repayment amount".

The Complainant states that someone from the Provider needed to clarify what exactly this was about and needed to put this in writing.

From the above it can be seen that for the most part the complaint issues were resolved by the Provider explaining matters to the Complainants, but I consider had the parties been able to communicate in a better manner earlier, these confusions could have been avoided.

The outstanding aspects of the complaint related to (i) the necessity for the trial period arrangement at all (ii) the Complainants requirement for greater detail of that arrangement before signing up to it (iii) the Complainants request for outstanding proofs on telephone calls and (iv) the Provider's actions in commencing proceedings for repossession (later put on hold) and in later transferring the mortgage loans to another entity.

While I accept that the Provider correctly endeavoured to put in place an arrangement that would deal with the arrears situation that arose, there were failings on its part which caused the Complainants to lose trust in the Provider in how it was putting forward that arrangement. In regard to the matters that caused the break down in trust the following is noted:

- In a 2014 telephone call received from the Provider's ASU, the ASU agent relayed personal information pertaining to the Complainants' Mortgage Account arrears to an unauthorised third party – the person who answered the telephone was not one

/Cont'd...

of the borrowers. The Provider states that while the telephone number dialled on this occasion was the same number used on previous successful calls, the Provider can accept that the agent could have made more of an effort to establish the identity of the Account Holder before proceeding. The Provider acknowledged that a shortcoming in service may have occurred on this occasion and apologised for same. A gesture of Goodwill in the amount of €150.00 was offered by the Provider.

The Provider did not release the recording, as it says the third party did not identify themselves in the call.

- On 22nd January 2015, the Provider received correspondence from the Complainants' Solicitor in relation to their complaint. The Provider responded to this on 29th January 2015, however this correspondence was issued to the Complainants directly in error. The Provider apologised for the inconvenience.
- The Provider states that it can accept that the Complainants may have been confused with correspondence that was issued on 4th June 2015 on all 3 Mortgage Accounts to offer a Capitalisation and Term Extension Restructure Agreement. However, it was the Provider's intention to reduce the term of Mortgage Account ***8288 to 156 months remaining. The Provider states that this was to ensure that all 3 Mortgage Accounts would reach maturity at the same time, corresponding also with the Complainants' national retirement age.

The Provider acknowledges its shortcomings in service when dealing with this matter. The Provider apologised for any confusion caused by its use of the phrase 'Term Extension' when referring to the restructure offered for Mortgage Account ***8288. The Provider says that initially, it was the Provider's intention to amend the term on all 3 Mortgage Accounts so that they would each mature following a term of 156 months. However, following a further review, the Provider's ASU deemed that a term extension on Mortgage Accounts ***9833 & ***7016 would be appropriate, and to allow the term to remain unchanged on Mortgage Account ***8288.

- The Provider has acknowledged that the Complainants' Solicitor provided written authority from the Complainants on 7th January 2015 to deal with their Mortgage Accounts on their behalf. Following receipt of this, the Provider issued a Final Response Letter to the Complainants directly on 29th January 2015 and it says it apologised for this oversight. Furthermore, the Provider says it can accept that it may have been appropriate to accept the Complainants' Solicitor's correspondence without question, and apologised for any inconvenience this may have caused.
- The Provider accepts that the Complainants' correspondence of 18th August 2015 addressed to the Provider's Customer Relations Department, was not acknowledged as the person in question had since left the company.

The Complainants subsequently submitted further correspondence to the Provider on 13th October 2015 in relation to this matter and the Provider issued a Final Response to the issues raised on 23rd October 2015.

Having reviewed the Complainants' complaint, the Provider offered a revised Gesture of Goodwill in the amount of €750.00 to the Complainants. As regards the Complainants wish to not discuss matters over the telephone, as an alternative, the Provider offered to arrange for the Complainants to meet with a Mortgage Advisor at a branch of the Complainants' choosing.

Given that the Complainants were in arrears on their mortgage loan account and that they did not agree to the alternative repayment arrangement offered by the Provider, I accept that the Provider had the right to take action pursuant to Provision 47 of the Code of Conduct on Mortgage Arrears 2013. Provision 47 states that:

*“If a **borrower** is not willing to enter into an alternative repayment arrangement offered by the lender, the lender must inform the **borrower** on paper or another **durable medium** of the following:*

(d)) that legal proceedings may commence ..”

I accept that the Provider acted within its rights when transferring the loans to another entity.

It is noted that the broader data protection issues have been referred to the Data Protection Commissioner.

The Complainants responsibilities as regards the payment of the loans and in engaging with the Provider always remained despite any breakdown in trust with the Provider and I accept that greater effort could have been made on their part to come to an agreement with the Provider.

I conclude that this was a situation where there was a requirement for greater and better communication between the parties, and on the substantive issue of the alternative repayment arrangement it is my Legally Binding Decision that this aspect of the complaint is not upheld.

As regards the customer and communication service issues, I consider that the appropriate remedy here is that the Provider pay a more meaningful compensatory payment to the Complainants for its identified failings. Therefore, it is my Legally Binding Decision that the complaint is partially upheld and I direct the compensatory payment of €1,500 (one thousand and five hundred euro). This compensatory payment is instead of the compensatory payments offered by the Provider.

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 to make a compensatory payment to the Complainants in the sum of €1,500, to an account of the Complainants choosing, within a period of 35 days of the nomination of account details by the Complainants to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

3rd May 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.