



<u>Decision Ref:</u>	2019-0144
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Fixed Rate
<u>Conduct(s) complained of:</u>	Failure to process instructions
<u>Outcome:</u>	Partially upheld

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

Background

The Complainants entered into housing loans with the Provider drawn down in 2009 and 2010 respectively, for the purchase of their family home. Following their marital breakdown, the Complainants submitted a Mortgage Modification Request (“MMR”) in **late June/early July 2016** to the Provider, seeking to transfer the title deeds and mortgage into the sole name of the First Named Complainant. The MMR was refused by the Provider on the basis of lack of repayment capacity.

Subsequently, the First Named Complainant, on foot of advice from the Provider’s branch’s mortgage advisor, took over all financial responsibilities relating to the secured property the subject of the mortgages, for a period of 6 months to demonstrate repayment capacity and the Complainants submitted an updated MMR in **August 2017**. This request was again refused by the Provider on the basis of lack of the repayment capacity of the First Named Complainant.

The Complainants are dissatisfied with the Provider’s decision to reject the Complainants’ two applications for an MMR, in 2016 and 2017. Furthermore, the Complainants are dissatisfied with the Provider’s overall handling of the MMR requests and with the level of customer service displayed by the Provider in relation to the MMR requests.

The Complainants' Case

The Complainants' account of events is as follows:

The First Named Complainant states that in **late June/early July 2016**, following the breakdown of her marriage to the Second Named Complainant, she arranged to meet with a mortgage adviser in the Provider's local branch to discuss transferring the mortgage into her sole name. At this meeting, the First Named Complainant states that she was furnished with an MMR form. She states that she duly completed this and submitted it to the Provider attaching relevant documentation to support her request, and it was signed by both Complainants. The Provider's mortgage adviser advised that the MMR would be evaluated in its head office and not in the local branch, and as a result they were advised the application could take up to six weeks to obtain a decision.

On **4 August 2016**, the First Named Complainant sent an email to the branch mortgage adviser enquiring as to whether any communication had been received from head office in relation to the MMR. The Complainants did not receive a response.

In **late August 2016**, the First Named Complainant continued to contact the mortgage adviser by telephone, who ultimately informed her that she had received notification from head office that the MMR had been declined but had not received a written document in respect of the decision. The First Named Complainant states that the mortgage adviser told her that the response from head office was generic and that no specific reason was given for declining the MMR, other than stating that repayment capacity was not evident. The First Named Complainant states that she did not receive a written response from the Provider to confirm this.

Before **December 2016**, the First Named Complainant spoke to the mortgage adviser again in relation to transferring the joint mortgage into her sole name. After this discussion, from **January 2017**, the First Named Complainant altered the relevant account details so that the mortgage and other household related expenses became the sole responsibility of the First Named Complainant., on foot of advice from the mortgage adviser, in order to demonstrate repayment capacity. The mortgage adviser proposed that after six months, the First Named Complainant could submit a second MMR and would then be in a position to demonstrate that she was capable of meeting the financial commitment on her own.

In **late July 2017**, the First Named Complainant arranged to meet the mortgage adviser in relation to submitting a second MMR. The mortgage adviser suggested that the First Named Complainant attach P60s, evidence of savings and six months of bank statements. On **3 August 2017**, the First Named Complainant completed the MMR form, which she had co-signed by the Second named Complainant, attached the relevant documentation and returned them to the mortgage adviser. The First Named Complainant states that she was advised by the mortgage adviser if she did not hear anything from the mortgage adviser by **25 August 2017** that she should give her a call.

On **25 August 2017**, the First Named Complainant telephoned the mortgage adviser as she had not received any correspondence in relation to the MMR. The First Named Complainant

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was unable to reach the mortgage adviser. On the same day the First Named Complainant sent an email to the mortgage adviser to follow up on the MMR application.

On **29 August 2017**, the First Named Complainant received an email from the mortgage adviser who informed her that she had been out of the office for three weeks due to unforeseen personal circumstances, that she would contact the review team in head office and revert back. The First Named Complainant states that she received a telephone call from the mortgage adviser on **30 August 2017** informing her that the mortgage adviser had been in touch with head office but needed a few more days to follow up and that she would be in contact in the coming days.

On **6 September 2017**, the First Named Complainant had not heard anything from the mortgage adviser and took the decision to formally complain to the Provider about the matter. The First Named Complainant posted a letter of complaint to the Provider's customer services offices.

On **7 September 2017**, the mortgage adviser telephoned the First Named Complainant to inform her that the second MMR had been refused. The First Named Complainant was told that her mortgage repayments represented 60% of her income and that she would only be allowed €285,000 as a mortgage. The First Named Complainant requested that the reasons for refusing the MMR be put in writing. The First Named Complainant states that she was told that she would receive a letter. The First Named Complainant states that she informed the mortgage adviser that she had posted a letter of complaint to the Provider's customer services office in relation to the MMR.

The First Named Complainant received a letter on **20 September 2017** from the Provider dated **8 September 2017** refusing her MMR request. This letter did not set out the reason why the MMR had been declined.

The First Named Complainant, having received no response to her letter of complaint dated 6 September 2017, sent an email on **20 September 2017** to the Provider's contact address on its website. The First Named Complainant states that she asked for the email to be forwarded to the Provider's complaints department.

The First Named Complainant states that on **25 September 2017**, she received an email from the Provider suggesting that she contact the Provider's customer service team in relation to her complaint.

On **29 September 2017**, the First Named Complainant telephoned the Provider's complaints department and spoke to a member of its team. The First Named Complainant states that she explained that she had written a letter of complaint on 6 September 2017, and that she had not received a satisfactory response. The member of the complaints department checked the complaint and confirmed that the complaint had been received and allocated to a team member for investigation. The First Named Complainant states that she told the member of the complaints department that she was not happy with the manner in which the complaint was handled and requested that the complaint be dealt with properly. The

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First Named Complainant states that she was told that a member of the complaints department would be in contact with her in the coming days.

On **2 October 2017**, the First Named Complainant received a telephone call from the mortgage adviser who she had been dealing with in the Provider's local branch. The mortgage adviser was enquiring about the complaint made by the First Named Complainant. The First Named Complainant states that she told the mortgage adviser that the content of her letter of complaint had not been answered and that she would like to receive the reasons for refusal of the MMR, in writing.

On **5 October 2017**, the First Named Complainant received a Final Response letter from the Provider. The Provider states as follows:

"... has also confirmed it would be willing to review an application again after a two year period when the balance of the mortgage accounts would have reduced. Alternatively, if the combined mortgage accounts could be reduced in capital to an amount of €285,000 they would be willing to review this application again.

I am happy to confirm that I am upholding your complaint with regard to the lack of information and clarity you have received regarding the applications. I sincerely apologise for this fall down in our service. I am sorry that I could not resolve all the elements of your complaint to your full satisfaction. However, I trust my letter helps to clarify matters for you"

The Complainants are seeking for the Provider to grant the MMR so that the First Named Complainant takes over the responsibility for the mortgage on the marital home. If the MMR is granted, the First Named Complainant would like to be paid compensation in relation to the mortgage protection policy which she has been paying based on the lives of two people as opposed to just her own. The First Named Complainant would also like the overpayment of the mortgage protection policy since August 2016, plus the accruing interest on it, to be repaid to her, as this is when the Complainants believe the MMR should have been granted.

The Provider's Case

The Provider states that it met with the Complainants on **27 June 2016** to discuss transferring the mortgage loan account into the sole name of the First Named Complainant.

The Provider states that the MMR was received on **29 June 2016**. The assessment of the MMR was carried out by the Provider's credit department on **14 July 2016**. The Provider states that it assessed the First Named Complainant's application and gave the First Named Complainant's request due consideration before it was reviewed by a Senior Manager. The Provider states that the MMR was declined.

The Provider states that the reason the MMR was declined was;

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“that the level of the mortgage was outside the Provider’s income criteria; and affordability for the overall level of the proposed borrowings in the First Named Complainant’s name was outside our lending criteria”

The Provider states that it wrote to the First Named Complainant on **18 July 2016** (a copy of a letter dated 19 July 2016 has been furnished to this office by the Provider) advising her of its decision. The Provider states that it:

“properly and fully considered the First Named Complainant’s proposal and submissions, the contents of her MMR and supporting documentation and engaged fully with the First Named Complainant”

The Provider states that it is not obliged to accept the First Named Complainant’s request to remove the co-borrower from the mortgage loan account. It states that the acceptance of any proposal is at the commercial discretion of the Provider and decisions are made based on certain criteria.

The Provider states that its records indicate that the mortgage adviser contacted its Credit Department on **12 August 2016** seeking reasons for the decline of the First Named Complainant’s request.

On **15 August 2016**, the Provider states that its Credit Department advised the mortgage adviser that:

“repayment capacity was not evident based on our lending criteria to take over the mortgage in her own right and indicated that a lower level of borrowings in the region of €260,000 to €260,000 (sic) could be supported if she had the capacity to reduce the mortgage to this level. Alternatively, [the Provider] could review again with a suitable replacement borrower”

The Provider states that the reasons the MMR was declined were explained to the First Named Complainant.

The Provider states that on **4 August 2017**, it met with the First Named Complainant to discuss the re-submission of her MMR application. The First Named Complainant submitted the MMR dated **3 August 2017**.

The Provider states that:

“due to unforeseen personal circumstances, the mortgage advisor was unexpectedly out of the office immediately following her meeting with the First Named Complainant on 4 August 2017. As a result, she did not return to work for almost three weeks. Immediately upon her return, the MMR was submitted to the Provider’s Credit Department for assessment on 23 August 2017. The mortgage advisor asked for the application to be expedited”

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The Provider states that the assessment of the MMR dated **3 August 2017** was undertaken by a Senior Manager in the Provider's Credit Department on **31 August 2017**. The Provider confirms that the First Named Complainant's application was declined.

The Provider states that the reason the re-submitted application was declined:

“was that the affordability for the overall level of proposed borrowers was outside the Provider's lending criteria”

The Provider states that it spoke with the First Named Complainant on **7 September 2017** to convey the Provider's decision. The Provider states that on the telephone call of 7 September 2017 the First Named Complainant did not allow the mortgage advisor to convey the reason for the MMR being declined and asked for the decline letter to be issued and the Provider states that it wrote to the First Named Complainant on **8 September 2017** advising her of the Provider's decision to decline the MMR. The Provider states that it properly and fully considered the First Named Complainant's proposal and submissions and the contents of the MMR and engaged fully with the First Named Respondent. The Provider further states that there is no obligation on it to provide the reasoning for declining the MMR in writing.

The Provider does not accept that it failed to provide the First Named Complainant with adequate and credible reasons for its decision to decline the MMR and submits that in respect of declining the MMR in both 2016 and 2017, it informed the First Named Complainant that she did not meet the Provider's lending criteria.

The Provider states that the First Named Complainant would have qualified for a mortgage in the region of €260,000/€265,000 if she had the capacity to reduce the mortgage loan repayments to this level but from the financial details provided by the complainant, she did not have this capacity.

The Provider states that in August/September 2017, the Provider was willing to consider the following options:

“a. approve transfer subject to the mortgage being reduced to €285,000 (currently €316,000)

b. Review the application again in 2 years when mortgage will have reduced”

In July 2018, the Provider submitted to this office that since twelve months had elapsed since the last decline and all repayments have been met by the First Named Complainant, the Provider was willing to re-assess the request again at that present time. In this regard, the Provider noted that it is a significant mortgage borrowing and the First Named Complainant had demonstrated repayment capacity over the previous 18 months.

The Provider submitted that if it was to reconsider the first Named Complainant's application, this would be strictly subject to it being provided with the finalised Separation Agreement confirming the financial terms of the separation between the Complainants, as

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no details had yet been furnished to the Provider in terms of a buyout, if any, in respect of the outgoing borrower's equity interest in the property. It also would require details of how such a payment would be funded, the source of such a payment and any potential impact on overall repayment capacity.

As regards the decisions of the Provider in 2016 and 2017 to refuse the MMR, the Provider states that when a decision is made by its Credit Department, the reasoning behind the decline is discussed with the mortgage advisor and in turn, the adviser explains the reasoning behind the Provider's decline to the customer.

The Provider states that the mortgage adviser spoke to the First Named Complainant in August 2016 to explain the reasoning behind the Provider's decision. The Provider further states that the mortgage adviser again spoke to the First Named Complainant in September 2017 to explain the reasoning behind the Provider's decision. The Provider states that the First Named Complainant did not allow the mortgage adviser to provide her with the reasoning and asked for the decline letter to be issued.

The Provider states that it complied with Chapter 10 of the Consumer Protection Code (as amended) in relation to investigating and trying to resolve the complaint with the Complainants. The Provider states that it complied with all timelines referred to in Chapter 10 as follows:

"7 September 2017 Letter of complaint dated 6 September 2017 received from the First Named Complainant;

8 September 2017 The Provider's Premier Relationship Adviser contacted the First Named Complainant and advised her of the Provider's decision as requested in her letter of 6 September 2017;

3 October 2017 The First Named Complainant contacted the Provider to request a written response to her complaint dated 6 September 2017;

5 October 2017 The Provider issued a Final Response letter to the First Named Complainant."

The Provider apologises for the fact that the First Named Complainant did not feel that the Provider furnished her with sufficient information and clarity at the time of declining the MMR and that she further felt that the application was not fully assessed within a timely manner. However the Provider submits that its mortgage adviser did communicate the reasoning behind the decision to the First Named Complainant orally and that the decision was also communicated in writing to the First Named Complainant.

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The Complaints for Adjudication

1. The first complaint is that the Provider wrongfully rejected the Complainants' MMR on two occasions, in 2016 and 2017.
2. The second complaint is that the Provider failed to handle the MMR request properly and did not provide sufficient detail to the First Named Complainant in an appropriate timeframe relating to the reasons for the decisions to refuse the requests.

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 5 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.

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

It is apparent to me that in respect of both MMR applications the Complainants had to wait a number of weeks before getting a response from the Provider as to whether their application had been successful or not.

The first MMR (2016 Application) was submitted in late June/early July 2016. Having received no correspondence from the Provider, the First Named Complainant sent an email

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dated **4 August 2016** to her mortgage adviser looking for an update on the MMR. The First Named Complainant wrote as follows:

".... Hope you are well. Just checking to see if there has been any response from Head Office regarding my mortgage modification request. I'm thinking of calling Head Office myself as this is taking far too long and I really need an answer so that if I must get a separation agreement I can start the process...."

The Provider's position is that it sent a letter dated **19 July 2016** to the Complainants informing them that the MMR had been declined. The First Named Complainant states that she never received a letter advising her of the Provider's decision in relation to the 2016 Application.

From the documentary evidence before me, I accept that the First Named Complainant did not receive the letter dated **19 July 2016**. If the Complainants had received the letter, it seems unlikely that the First Complainant would have emailed the mortgage adviser looking for an update on her MMR two weeks later on the **4 August 2016** as she would have been aware of the Provider's refusal at that stage. It remains unclear as to why she had not received the letter in question.

It is clear from the email dated **4 August 2016**, that the First Named Complainant was anxious to progress matters but she did not receive a reply to the email of **4 August 2017**. On **12 August 2016**, the mortgage adviser contacted the Provider's Credit Department seeking reasons for the refusal of the MMR. On **15 August 2016**, the Credit Department advised the mortgage adviser that repayment capacity was not evident. The Provider states that this information was then relayed to the First Named Complainant.

The First Named Complainant states that in late **August 2017** she contacted the mortgage adviser again regarding the MMR. The First Named Complainant submits that the mortgage adviser informed her that it had received notification that the MMR had been declined. The First Named Complainant further states that the mortgage advisor told her that the letter received from the Credit Department gave no reason why the MMR was rejected except that repayment capacity was not evident. The First Named Complainant states that she did not however receive a written response from the Provider to confirm this.

The second MMR (2017 Application) was submitted on **3 August 2017**. The Provider acknowledges that there was a delay by the Provider in submitting this application for assessment as the mortgage adviser was unexpectedly out of the office for a three-week period following a meeting with the Complainants in respect of the second MMR.

It was unfortunate that the Complainants' 2017 application was delayed due to the absence of the mortgage adviser. I accept, however, that this absence was unforeseen and that the mortgage adviser then ensured that the application was progressed immediately on an urgent basis, upon her return to the office.

I note that at all times, the First Named Complainant was anxious to regulate her affairs in the aftermath of her marital breakdown. It is evident that the First Named Complainant

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followed the instruction and advice of the Provider prior to her application to transfer the mortgage into her sole name.

From the documentary evidence before me, it is clear that the First Named Complainant attempted, on multiple occasions, to obtain reasons for the rejection of the MMR applications. I note that the First Named Complainant received a letter dated **8 September 2017** from the Provider informing her that the MMR was declined.

"I acknowledge your recent letter requesting our consent to the proposal for the removal of the Second Named Complainant from the mortgage on the above account.

Our Credit Department have fully assessed this proposal and I regret to inform you that this request has been declined"

The First Named Complainant was told on the telephone by her mortgage adviser that the reason the MMR was declined was again due to her repayment capacity not being evident. The First Named Complainant sought confirmation in writing of these reasons from the Provider which was not forthcoming until the Provider ultimately responded in writing to the First Complainant's complaint, by letter dated 5 October 2017.

I note from the documentary evidence before me that the Provider indicated in 2017, that it was willing to review the MMR application in 2019; indeed, it since indicated that it was agreeable to re-assessing the MMR before 2019 if the Complainants submitted a new MMR and supporting documentation. If the Complainants were to submit a new MMR along with supporting documentation, the Provider has confirmed that it will re-consider the application strictly subject to being furnished with the finalised Separation Agreement confirming the financial terms of the separation. On the basis that this remains the position of the Provider, it is therefore open to the Complainants to submit a new MMR application. Whilst the Complainants have been very keen to progress this aspect of their separation, they must bear in mind that the home loans they entered into in 2009 and 2010 were joint loans, in respect of which each of them individually remains fully liable unless the MMR is accepted, and that contractual arrangement is then varied. The MMR is a request of much significance from the point of view of the security held by the Provider, and the Provider is entitled to exercise its commercial discretion when deciding whether or not such a request can be facilitated.

The Provider's letter of 5 October 2017 offered details to the Complainants which, it is to be hoped, made available to them a better understanding of why the MMR had twice been declined. The Provider's response to this complaint has also given a clear illustration of the issues to be considered by the Provider in examining any future MMR. In that regard, I note that any such future request will be considered by the Provider, but strictly subject to it being furnished with the Complainants' finalised Separation Agreement confirming the financial terms of the separation, as such details have not yet been made available to the Provider in terms of any buy-out of the Second Complainant's equity in the property, how any such a payment might be funded and how any such payment might affect the First Complainant's overall repayment capacity.

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Having considered all of the documentary evidence before me, I am satisfied that the Provider complied with its obligations under Chapter 10 of the Consumer Protection Code 2012. The First Named Complainant made a formal complaint to the Provider on 6 September 2017 when she wrote as follows:

"I am writing to you to make a complaint regarding a Mortgage Modification Request that I submitted to the Provider in July 2016, and again in August 2017

...

I would be very grateful if you could investigate this matter as soon as possible. I would like to know if my Mortgage Modification Request has been approved. If it has not, I would like a clear explanation of why it has been refused."

The Provider acknowledged the Complainants' complaint within five business days of the complaint being received. Prior to issuing a substantive response to that letter of complaint, in the meantime, the letter from the Provider dated **8 September 2017** to the Complainants in response to their MMR request, was issued advising that:-

"I acknowledge your recent letter requesting our consent to the proposal for the removal of the Second Named Complainant from the mortgage on the above account.

Our Credit Department have fully assessed this proposal and I regret to inform you that this request has been declined"

On **3 October 2017** the First Named Complainant contacted the Provider again to request a written response in relation to her complaint dated **6 September 2017**. The Provider issued the First Named Complainant with a Final Response Letter dated **5 October 2017**.

The First Named Complainant did not receive any reasons in writing as to why the two MMR applications were rejected. I note from the Final Response Letter dated **5 October 2017** that the Provider states:

"...in July 2016 after a number of follow up calls by you, the mortgage adviser confirmed that your application had been declined. A decline letter was subsequently issued to you giving the reason for the decline as repayment capacity to take over the mortgage solely was not evident"

From the documentary evidence before me, I take the view that the decline letter dated 19 July 2016 did not give any reasons for the decline of the MMR:

"I acknowledge your recent letter requesting our consent to the proposal to remove the Second Named Complainant from mortgage on secure property.

Our Credit Department have fully assessed this proposal and I regret to inform you that this request has been declined"

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It seems to me that the reason for the rejection of the Complainants' MMR, was only given to the First Named Complainant orally by the mortgage adviser. The reason for the rejection of the MMR was that repayment capacity was not evident. This reason, or any other reason, was never put in writing to the First Named Complainant, until the letter of 5 October 2017 was issued in response to her formal complaint. Indeed, in circumstances where the MMR was a joint application from both Complainants, I take the view that it would have been best to have communicated the reasons for the refusal, to both Complainants by way of written confirmation.

In respect of the Complainants' complaint that the Provider should not have rejected the Complainants' MMR in 2016 and 2017, the Provider states that it is not obliged to accede to an MMR request and the acceptance of any such proposal is at the commercial discretion of the Provider. The Provider asserts that the overall level of the proposed borrowing in the First Named Complainant's sole name was outside the Provider's lending criteria. The Provider states that it advised the Complainants, through its mortgage advisor, that repayment capacity was not evident and it indicated a lower level of borrowing which could be made available if she had capacity to reduce the mortgage, or advised that it would review the MMR with a suitable replacement borrower.

I am satisfied that the Provider was indeed entitled, in its commercial discretion, to refuse the Complainants' MMRs on that basis. It is unfortunate however that these reasons were not confirmed to the Complainants when the letters of 19 July 2016 and 8 September 2017 were issued. It is unclear to me why the Provider believes that communicating the reasons for the decline of an MMR, orally to one applicant is the best way of progressing matters, in circumstances where an MMR request must be made in writing supported by all appropriate vouching documentation. Whilst one can well understand that a discussion with the mortgage adviser might be useful by way of expansion of the detail surrounding the reasons for an MMR decline, nevertheless, I don't accept that the Provider's position that it is not obliged to confirm the reasons in writing, complies with the spirit of Provision 4 of the Consumer Protection Code, regarding the provision of information. In particular, Provision 4.2 prescribes that a regulated entity must supply information to a consumer in a timely basis, and that in doing so, it must have regard to the following:-

- "a) the urgency of the situation; and*
- b) the time necessary for the consumer to absorb and react to the information provided."*

In my opinion, the Complainants were not given the opportunity to absorb the reasons why the MMR had been declined, in circumstances where the reasons communicated in very general terms only were communicated orally, and to the First Complainant only.

Accordingly, I take the view that the Provider should consider amending its protocol so that, at the very least, an MMR applicant or applicants, can be given a letter with adequate detail which will make available to him/her/them an overall understanding of the reasons why such an application has been declined.

In this instance, I take the view that the Complainants understood on the first occasion why the MMR had been declined. Indeed, it seems that it was as a result of the First Complainant's discussions with the mortgage adviser after the first MMR had been refused, that she arranged to take on the full responsibility of all mortgage payments and household related expenses, in order to establish a pattern of repayment capacity. No doubt, thereafter, when the second MMR had been declined by the Provider, the First Complainant will have been very disappointed given the efforts she had gone to. It is to be hoped that, taking into account the details in the Provider's response to this complaint explaining the nature of the issues which will require examination, that the Complainants will have a better understanding of the issues which are taken into account by the Provider when considering an MMR. The Provider has acknowledged that when the First Complainant originally made her complaint, it was necessary for that complaint to be upheld regarding the lack of information and clarity she had received in relation to her applications and indeed, the Provider's response to this formal investigation has given the Complainants some insight regarding the Provider's requirements in considering an MMR.

For the reasons outlined above, I do not believe that it would be appropriate to uphold the Complainants' first complaint. I am satisfied that it was entirely within the commercial discretion of the Provider to consider the Complainants' application for an MMR in 2016 and again in 2017, and to reach its decision in that regard, taking into account, amongst other things, the First Complainant's repayment capacity.

I am satisfied however that the second complaint should be upheld. I am conscious that on two separate occasions the Provider responded to the Complainants' joint MMR, by issuing a letter of declinature with no explanation of the reasons why the application had been refused. The oral explanation which accompanied those letters was made available only to one Complainant verbally on each occasion, and then when the reasons were offered in a more comprehensive fashion, this only became available by way of written correspondence by way of reply to the First Complainant's complaint. I am conscious that once the First Complainant indicated her dissatisfaction and made a formal complaint to the Provider, it was in a position to furnish her with better information in the Final Response Letter dated 5 October 2017. If the Provider was in a position to make those details available to her at that time, it raises the question as to why such details could not have been made available to both Complainants at the time when the MMRs were declined.

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 Provider to re-examine its protocols for dealing with MMRs from its customers in order to examine what appropriate changes can be implemented which might prevent a complaint of this nature occurring in the future. I also direct the Provider to make a compensatory payment to the

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Complainants in the sum of €400, by way of capital payment to the mortgage balance, due and owing on foot of the first account drawn down in 2009, within a period of 35 days from today's date. 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

1 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.