An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0212
Sector:	Banking
Product / Service:	Mortgage
Conduct(s) complained of:	Arrears handling (non- Mortgage Arears Resolution Process) Dissatisfaction with customer service Incorrect information sent to credit reference agency Maladministration (mortgage)
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants have a number of Buy-to-Let (**BTL**) mortgage loans with the Provider. The Complainants have been making interest-only repayments in respect of most of these loans. The Provider requested that the Complainants put in place a deleveraging strategy which would allow them to begin making full capital and interest repayments on all loans.

The Complainants' Case

The Complainants have made a number of complaints to this Office in respect of the Provider's conduct. These complaints have been set out in detail by the Complainants in a letter of complainant to the Provider dated **30 May 2016** and have been further supplemented by detailed submissions and supporting documentation.

The Complainants have made a number of complaints regarding the Provider's conduct. In particular, the Complainants submit that the Provider rejected three sustainable alternative proposals; failed to consider a strategy other than asset disposals; forced them to sell one

of their properties; and wrongfully caused them to have a negative Irish Credit Bureau (**ICB**) rating.

The Complainants further submit that the Provider moved them between a number of branches and ten relationship managers; wrongfully charged them for unpaid direct debits; failed to honour its promise of free banking; made an unsolicited call and sent an unsolicited text message; and threatened them with legal action.

Complaint 1

The Complainants state that they were moved from the Provider's home mortgages section to its commercial section without any form of communication. Originally, the Complainants dealt with the Provider's [Branch 1]. The Complainants were then moved to the [Branch 2] and from there to [Branch 3] and finally to [Branch 4]. The Complainants state that each move necessitated dealing with a new person and meetings were spent getting the Provider's relationship manager familiar with their situation and were not bringing them any closer to a solution. The Complainants state that when dealing with their local branch communications were fast, effective and efficient and with the changes this was no longer the case.

The Complainants state that they first met with one of the Provider's relationship managers in **March 2015**. They state that it became apparent that their position had changed overnight. From the Provider's point of view the Complainants had gone from being model customers to being repeatedly told at this meeting that they were *"The worst case they had ever come across."*

At this meeting the Complainants state that without any negotiations or discussions, a demand was made to sell their three Co. [West of Ireland] properties by early 2016. The Complainants state that this would have necessitated the liquidation of their business which they spent the past 24 years building. This request was then put in writing by the Provider in a letter dated **2 October 2015**. The Complainants state that they sought independent financial advice from four highly respected agencies and each of these cautioned against this course of action as it would result in huge financial loss. The Complainants state that the consensus was that the immediate sale of properties was unnecessary as their assets were in positive equity and of no risk to the Provider. The Complainants state that at **30 May 2016** their capital exposure was reducing by more than €50,000 together with capital gains that were also materialising. The Complainants state that the Provider failed to consider alternative solutions and would only accept asset disposal.

Complaint 2

The Complainants state that in **July 2015** they engaged the services of a mortgage and debt resolution organisation to act as intermediary/mediator on their behalf and assist in proposing sustainable solutions to the Provider. They further submit that the Provider failed to understand the mediation process and was responsible for its breakdown. The

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Complainants state that all of the proposals put forward by them were rejected by the Provider and it failed to give adequate reasons for rejecting them.

The Complainants state that at the start of the process they were led to believe that the three Co. [West of Ireland] properties would remain on interest-only payments until a repayment plan was agreed. The Complainants state in a letter dated **2 October 2015** the Provider states: *"We can look at reinstating reduced payments i.e. continuation of recent Interest-only Arrangements re 3 Co. [West of Ireland] Properties as an interim arrangement."* The Complainants state that the Provider's relationship manager re-credited their accounts on the three Co. [West of Ireland] properties every month and had accepted the interest-only payment in its place.

In correspondence dated **1 November 2015** the Complainants wrote to the Provider and raised concern that the interest payments were not taken from their account: *"Please note interest payments have not been applied to the Co. [West of Ireland] Properties for the last two months, can we bring payments up to date please."* The Complainants refer to the reply they received from the Provider dated **9 November 2015** referring them to the Provider's 24-hour banking and that it had no ready means of effecting repayments. Up to that point the Complainants state that there were no arrears showing on the Co. [West of Ireland] property accounts.

On **24 January 2016** the Complainants submitted their most recent proposal to the Provider through their intermediary. The Provider responded on **24 February 2016** rejecting this proposal without any explanation or any contribution towards a sustainable solution. The Complainants point out that the Provider also stated *"the [Provider] will have no choice but to look at our legal options."* The Complainants state that this was premature and threatening as they were not afforded the opportunity to respond and the parties were still in the negotiating process.

On **25 February 2016** the Provider sent a letter to their residential address. The Complainants state that this action undermined the negotiation process as all communications were to be sent to their intermediary. In this letter the Complainants state that the Provider informed them that *"your mortgage on the 3 properties at [address] continue to reflect arrears now amounting to €31,000 in total."* The Complainants state that they replied to the Provider through their intermediary on **28 February 2016** and requested clarification on the arrears of which they were unaware. At the time of their letter of complaint in **May 2016** to the Provider, the Complainants state that no reply had been received.

The Complainants state that the action of the Provider of balancing their mortgage account every month points to a deliberate intention to lead them into a false sense of security. They state that their records do not reflect any arrears. The Complainants state that the sudden announcement that they were in arrears of €31,000 was a carefully planned sharp practice engineered by the Provider to try and force the Complainants to liquidate a profitable and viable small business in order to increase its profits and was an abuse of power.

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The Complainants state that in the days that followed this correspondence they contacted the ICB and were informed that their credit rating showed multiple missed mortgage payments. The Complainants state that they had a perfect credit rating for 36 years and this was destroyed by the Provider's sharp practice. They further state that this would not have happened at their local branch.

Complaint 3

In complying with the Provider's request to sell some of their properties, the Complainants state that they commenced with the sale of one of these properties which I will refer to as, *"Property O".* As part of their proposal, the proceeds from the sale would clear the current mortgage and the residue would be used to clear a number of smaller mortgages.

The Complainants state that this would enable them to direct rental income towards the three Co. [West of Ireland] properties. This would comprise equal interest and part capital repayments.

The Complainants state that in order to achieve the best price for Property O, they needed vacant possession. They state that this would require interest-only payments because they rely on the rent to pay the mortgage. The Complainants state that they requested approval for interest-only payments on three separate occasions over a four month period. They state their request was refused by the Provider and no logical reason was given.

The Complainants state that they served the tenants of Property O with notice of termination together with the Rental Accommodation Scheme (**RAS**). The Complainants state that rental payments from RAS ceased at the end of February and this resulted in a missed mortgage payment. They state this was due to the confusion of the interest-only facility because they were still waiting for a reply from the Provider.

The Complainants state that they lodged the balance that was due but they are annoyed at the inaction and inefficiency of the Provider which could result in possible damage to their credit rating.

Complaint 4

The Complainants state that they were being charged €10 per month on each of their accounts in respect of the Co. [West of Ireland] properties for unpaid direct debits due to the process of debiting and crediting these accounts as outlined in Complaint 2 above.

Complaint 5

The Complainants state that on **13 May 2016** they received an unsolicited call and text message from the Provider's mortgage arrears unit contrary to being in a resolution process and having been given until the end of **May 2016** to submit a proposal.

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Complaint 6

The Complainants state that while at a meeting with one of the Provider's agents in **April 2005** they were promised free banking as an incentive to switch their mortgages from another provider to the Provider which is the subject of this complaint. The Complainants state that they have a clear recollection of this meeting and state that there was no mention of any time limit attaching to the offer of free banking. The Complainants state that they would not have entertained the prospect of moving to the Provider on the basis of an offer of free banking for 24 months considering the costs involved with such a move.

The Complainants state that fees were reinstated by the Provider without any consultation and this matter was first raised with the Provider in **November 2012** and on further occasions.

The Complainants refer to a letter furnished to them by the Provider stating that free banking was for a period of 24 months. The Complainants dispute that they were ever made aware of this time limit and that the document was never signed and is not valid. The Complainants state that their bank charges are costly at present due to the number of accounts they have with the Provider.

Complaint 7

Further to the above complaints which are contained in the Complainants' letter dated **30 May 2016**, the Complainants state that the sale of Property O was the ultimate price they paid for the Provider's appalling conduct. The Complainants submit that the Provider engineered a situation where all of their options were cut off and they were forced to sell the property under duress.

The Complainants' poor credit rating denied them the right to borrow which they say was crucial to the running of their business. They state that their increasing arrears meant that all of their properties were at risk of foreclosure by the Provider. The Complainants state that at this crucial time, the Provider had disengaged and they did not have a relationship manager to help and guide them through this period. The Complainants assert that they would not have sold Property O if they had not been in such a desperate situation. They state that they only ever considered selling this property as part of a final resolution but proceeded with the sale in a desperate effort to prevent the Provider from calling in their loans.

The Complainants state that their financial situation changed significantly between **September 2015** and **September 2016** in that they had reduced their debt and their property portfolio had increased in value. The Complainants also point to the increase in rental income obtainable for the properties at the time. The Complainants assert that it made no financial sense to sell this property.

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The Provider's Case

The Provider acknowledges that it is correct to say that the management of the Complainants' file did move to various case managers/departments over the course of a number of years. It states that this was done so that the most appropriate personnel at the time were dealing with the Complainants' case.
In early 2014, the Complainants met with their case manager to discuss their mortgage accounts as part of an agreed annual review. The Provider points out that the majority of the Complainants' debt related to the three Co. [West of Ireland] BTL properties and these continued to be funded on an interest-only basis at a time when LTV was greater than 100%. It was stated by the case manager that an asset de-leveraging strategy, over time, would be required. The Provider states that the Complainants were not in a position to meet their contracted capital and interest repayments and were in default on their original loan agreements relating to these properties as the loans were contracted to revert to capital and interest repayments in 2007. The Provider states that the LTV on the Complainants' portfolio was not sustainable on full capital and interest repayments in accordance with the agreed terms.

The Provider states that the evidence shows that on numerous times from then until early 2016, deleveraging was discussed between it and the Complainants in meetings and communications with both the Complainants and their advisors. The Provider states that it is clear that the Complainants and their advisors were not willing to dispose of assets to reduce the debt to sustainable levels despite the fact that the Provider had, by 2015, provided significant forbearance of interest-only repayments on the Co. [West of Ireland] property loans for a period of 8 years. During this period, the overall property portfolio LTV remained greater than 100% and was unsustainable on its existing terms. It was clear that asset sales were required. The Provider states that there is significant correspondence from the relationship manager which outlines this position to the Complainants and their advisors.

The Provider states that all three of the Complainants' proposals were rejected. It states that this is clear evidence of the Provider re-iterating on three separate occasions that a deleveraging strategy was required to bring the Complainants to a level where the debt was sustainable long term and repayments were affordable in line with their income. The Provider submits that the Complainants and their advisors disagreed with this and chose their own strategy of selling one asset – Property O.

The Provider states that it did not pressurise the Complainants into selling Property O and argues that the evidence shows this to be the case especially in light of the fact that the sale of this property was put forward by the Complainants in their first proposal and subsequent proposals. The Provider states that it never identified this particular asset as one to be sold.

The Provider rejects the Complainants' position that their debt was sustainable if Property O was not sold. The Provider refers to the repayments spreadsheet it has put into evidence. The Provider states that this rejects the Complainants' argument and indicates that if the property had not been sold the debt was not sustainable. The sale of this property cleared off a number of mortgages identified by the Complainants in the third proposal which

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assisted with repayment capacity as the repayments on the loans cleared from the sale were approximately €3,500 to €4,000 per month when the rent from the property was only €750 to €1,000 per month. The Provider states that it is clear the Complainants identified this property to be sold and the corresponding loans to be cleared as it was of benefit to them to do so.

The Provider also dealt with other issues relating to direct debit fees being charged and free banking in the submissions provided to this Office. The Provider has also addressed certain specific issues raised by the Complainants which are set out below.

Sale of Property O

The Provider states that loans relating to the Co. [West of Ireland] properties were granted to the Complainants in 2006 with a repayment structure of interest-only repayments for one year followed by capital and interest repayments over the remaining term to amortise the debt in full.

After one year the Complainants were not in a position to commence full capital and interest repayments. The Provider states that at the request of the Complainants, it agreed to extend the interest-only repayments for a significant period of time on the three Co. [West of Ireland] properties. Forbearance was granted on several occasions which resulted in the continuation of interest-only repayments being granted on the loans relating to the Co. [West of Ireland] properties until 2015. The Provider states that this ensured the Complainants' ICB rating was not negatively impacted.

The Provider submits that the Complainants did not have sufficient repayment capacity to repay the loans on a full capital and interest amortising schedule and their property portfolio could not be repaid over the agreed term. Further to this, the Provider states that the Complainants' property portfolio was in negative equity.

The Provider states that the case manager at the time communicated that there was a continuing requirement on the Complainants to deleverage their property portfolio. This deleveraging strategy was put to the Complainants in a letter dated **11 March 2014**.

The Provider points out that granting forbearance for a period of 8 years from 2007 to 2015, was in excess of what would normally be granted in such scenarios where initial repayment terms could not be adhered to. It would usually grant forbearance of 1 to 2 years.

The de-leveraging strategy (a reduction in overall exposure through asset disposal) for 'out of contract' loans relating to property portfolios was and remains consistent with the Provider's policy and was consistent with other similar cases the Provider dealt with at the time. The Provider states that the Complainants did not wish to entertain such a strategy as evidenced by their supporting documentation. The Provider states that while it would consider a term extension of loan facilities, the maximum term is 25 years for BTL properties and not 40 years as alluded to by the Complainants. It points out that mortgage terms of 40

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years apply to Private Dwelling House mortgages only and are subject to suitability and based on a borrower's age.

In **August 2015**, the Complainants submitted a proposal to the Provider seeking an interest and part capital repayment arrangement for 5 years on the three Co. [West of Ireland] property loans and also proposed the sale of Property O.

The Provider states that it declined this proposal as it was not suitable. A further two proposals were submitted by the Complainants in **October 2015** and **January 2016** again requesting interest-only repayments and/or part capital and interest repayment arrangements. These were declined.

With respect to the sale of Property O and particularly the Complainants' statement that the Provider *'forced'* this upon the Complainants, the Provider states that it rejects this statement and that the documentation furnished provides clarity on this issue. The Provider states that while it was clear that a deleveraging strategy was being pursued, this property was not identified by it as one to be sold. It was the Complainants who identified this particular asset.

In **September 2017**, the Provider states that the Complainants sold Property O and used the proceeds to repay a number of loan facilities and significantly reduce their monthly repayments. This decision allowed the Complainants sufficient capacity to commence capital and interest repayments on the Co [West of Ireland] loan accounts which were restructured on **1 December 2017** by way of term extensions and arrears absorbed onto mortgage accounts.

Management of Accounts and ICB Issue

The Provider states that it issued its final response letter on **10 August 2016** detailing its response to the complaint. The Complainants were not satisfied with this response. They found the response did not deal with the issues raised and alleged that it contained inaccurate and misleading statements.

The Provider acknowledges that the Complainants' ICB rating was affected from **August 2015** to the date of restructure in **2017**. During this time the Complainants were in discussions with their relationship manager to agree a formal restructure on their accounts. At this time the Complainants did not have the affordability to service capital and interest repayments so their relationship manager advised them to make the offered repayments of interest-only while a restructure was formalised. This was communicated to the Complainants through their third-party advisor. The Provider states that this was not a formal arrangement and as the accounts were not restructured, there was still a requirement for capital and interest repayments. The Provider acknowledges that while the Complainants did make their offered repayments their ICB rating was affected as the report showed a repayment shortfall each month due to the fact that capital and interest was not being paid.

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In response to the adverse consequences the Complainants say they have suffered as a result of their ICB rating, the Provider states that the Complainants had an unencumbered investment property with no lien that could have been sold in order to release cash. The Provider further states that while the Complainants wished to borrow funds to fund education costs, they were not in a position to fully repay their existing debt from their cash flow. The Provider states that this lack of repayment capacity on existing debt may have contributed to their inability to borrow additional funds.

Unpaid Direct Debits

Dealing with a transaction on **28 September 2015** when a scheduled direct debit was returned unpaid on **29 September 2015**, the Provider states that it rejects the Complainants' allegation that a member of staff *'manually credited'* the Complainants' accounts.

The repayments called for on the date in question were a full capital and interest repayment as the interest-only arrangement had ceased and as there was insufficient funds in the Complainants' current account to meet this payment it was automatically reversed and appears as *'unpaid D/Debit'*. The Provider states that the Complainants then lodged the interest-only portion to their account in **November 2015**. The Provider asserts that this is evidenced in the Complainants account statements dated **31 December 2015** for the Co. [West of Ireland] properties. The statements show the transactions as unpaid and not as a manual intervention and there were no unauthorised transactions. The Provider states that the case manager did advise the Complainants to manually make the interest-only payments through its internet banking which would have been the only way to make payments other than those requested by direct debit which is what the Complainants did and the account statements show these transactions.

The Provider refers to a further transaction on **28 January 2016** when a scheduled direct debit was deducted from one of the Complainants' accounts. The Provider states that at this time the Complainants were in discussions with their relationship manager regarding an extension of interest-only repayments. This was a verbal agreement that the Complainants would pay the interest-only amount that month, **January 2016**, while the restructure was in progress. As there was no formal agreement in place when the direct debit was called, the full capital and interest amount was deducted from the relevant account. There were insufficient funds in the current account to cover the capital and interest payment and as a result this left the Complainants' account in an overdraft situation. The Provider states that the Complainants contacted their relationship manager and a reversal of the direct debit was organised on their request. The relationship manager kept the Complainants updated on how this reversal was progressing as he was unable to process the transaction locally. The funds were manually credited by it to the Complainants' account on **17 February 2016**. The delay in completing this reversal was due to the fact that a SEPA refund needed to be completed and had to be done centrally by the Provider's head office.

The Provider states that at all stages of the process the Complainants were kept up to date of the progress of the reversal. The Provider rejects the Complainants' allegation that a member of staff *'balanced'* the Complainants' accounts on a monthly basis. This is not the

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case as reversals have to be undertaken centrally as set out in the Provider's Final Response letter.

Compliance with the Consumer Protection Code 2012

The Provider submits that it has acted in line with the principles of the Consumer Protection Code 2012 (the **Code**).

It states that when the Complainants' overall indebtedness was reviewed in 2014/2015 it was evident that they were not in a position to meet their repayment obligations. In order to reach a sustainable arrangement some de-leveraging was necessary.

The Provider's lending policy at the time did not allow it to extend interest-only repayments for long periods or offer term extensions as a long term solution. It states that when this option did become available, it engaged with the Complainants and a term extension was put in place on their BTL property portfolio.

The Provider refers to the Complainants' argument that they should have been granted a term extension and states that it is not within its policy to allow a BTL mortgage term exceed 25 years. A mortgage term can operate up to a maximum term of 40 years however, it is not its policy to allow a BTL term to go this length and it is on this basis that such an option was not available to the Complainants. The Provider states that it acted in the best interests of the Complainants and all information requested from the Complainants was in line with its policy.

The Provider states that its case manager did all in his power to act with due skill, care and diligence in the best interests of the Complainants. In 2014/2015 there were limited options available to the case manager. This was due to the fact that it was not the Provider's policy to offer the range of sustainable solutions which were in place later when the Complainants were offered a term extension. The case manager facilitated the Complainants with an informal arrangement to make interest-only repayments on their accounts while a formal restructure request was in progress. The Provider states that the Complainants believed there was a formal agreement in place however, this had not been sanctioned at this point and this led to a negative ICB record during that period.

Addressing the Complainants' complaint that their proposals were never sent to Dublin for approval, the Provider states that under its Dual Credit Authority, before a proposal is submitted for credit approval in Dublin or other locations where credit unit teams are present, a proposal must be supported by the branch. The Provider states that it is normal practice for a case manager to review proposals from a suitability point of view before submitting them to its credit unit. The Provider states that the Complainants' relationship manager's line manager held a senior position within the Provider and without his support the Complainants' proposals were not presented to the Provider's credit unit as they were not commercially acceptable. The Provider states that it is satisfied that each proposal presented by the Complainants was adequately assessed.

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The Provider states that the alternative solutions as detailed in the MARP booklet sent to the Complainants by it arrears support unit were solutions available only to PDH mortgage holders and not BTL debts. The Provider acknowledges that the MARP booklet was incorrectly sent to the Complainants.

With respect to the handing of the Complainants' complaint by the manager of its [Branch 1], the Provider states that at the time the complaint was lodged it did not have a centralised complaints unit and as such, all complaints were dealt with locally.

The Provider states that it is satisfied that the complaint was dealt with in line with the procedures in place at the time.

The Complaint(s) for Adjudication

The complaint for adjudication is that the Provider:

1. moved the Complainants between a number of branches and relationship managers;
2. failed to consider alternative solutions other than asset disposals;
3. rejected the Complainants proposals without providing adequate reasons;
4. forced the Complainants to unnecessarily sell one of their properties;
5. wrongfully threatened the Complainants with legal action;
6. wrongfully caused the Complainants to have a negative ICB rating;
7. wrongfully charged the Complainants €10 per month for unpaid direct debits;
8. failed to honour its agreement for free banking;
9. made an unsolicited call and sent an unsolicited text message to the Complainants during a debt resolution process.

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.

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A Preliminary Decision was issued to the parties on **29 May 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.

The Complaint made a further submission on **9 June** which was exchanged with the Provider.

The Provider made a further submission on **8 July** which was exchanged with the Complainant.

Following consideration of all of the evidence and submissions and taking into account the additional submissions from the parties following the Preliminary Decision, my final determination is set out below.

Interest-Only Repayments

The Complainants entered in three separate mortgage loan agreements with the Provider for the purchase of the three Co. [West of Ireland] Properties. The *Offer Date* on the *Particulars of Offer of Mortgage Loan* for these loans are **16 September 2005**, **19 September 2005** and **6 February 2006**.

There is a dispute between the parties as to whether the amounts advanced for each of the loans was €270,000 or €280,000 per loan. I do not propose to resolve this as the amounts in question make no material difference to the outcome of the complaint. The *Special Conditions* to each of these loans are effectively identical and state that the repayments quoted in the respective letters of offer are interest only for 1 year after which they will revert to principle and interest repayments.

The Complainants made a request for a continuation of the interest-only arrangement on the above three loan accounts together with a reimbursement of the capital portion of the repayments made on **27/28 March 2007** by letter dated **3 April 2007**. By two letters dated **26 April 2007** and a further letter dated **8 May 2007**, the Provider applied interest-only repayments to the three loan accounts for a 3 years period. The Provider agreed to apply interest-only repayments in respect of these account for a further 2 years by letters dated **14 April 2010**. By letter dated **8 June 2012** and two further letters dated **11 June 2012** the Complainants were granted interest-only repayments on these loans for 12 months. A further 12 month interest-only repayment arrangement was granted by letters dated **20 March 2013**. The Provider has furnished correspondence dated **11 April 2014** which shows that interest-only repayments were in place for 12 months in respect of one of these loan accounts. Finally, by letters dated **3 March 2015** the Provider applied interest-only repayments in respect of the three loan account for a period of 6 months.

In a letter dated **1 December 2009**, the Provider wrote to the First Named Complainant (**FNC)** informing him that the Provider was not agreeable to extending the interest-only

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period on three further loans accounts as the Provider's policy at that time was to only allow such arrangements for a 2 year period of which the FNC had already availed. The FNC replied by letter dated **1 January 2010** stating that he was *"absolutely disgusted when I received a reply that my request was being refused."* The FNC set out his employment and banking background in the letter and requested the provider to review its decision.

Referring to the three Co. [West of Ireland] properties that FNC stated:

> *"… My next purchases were 3 Apartments' in Co. [West of Ireland] (Feb/March 2007), which were Section 23 with a Tax Break of [in excess of €700,000] These are currently Interest only and are due to revert to "Capital & Interest in Feb/March 2010.*
>
> *At this stage I have reverted back to "Capital & Interest payments on 10 mortgages since Aug/Sep 2009. With the recession, if I were to sell the 3 latest properties (which I wish to continue on "Interest Only") these are Section 23 properties and therefore would not hold as an attractive selling price at present and would also result in a substantial Tax Allowance Clawback. …"*

From a review of the Land Registry folios appended to the documentation submitted by the Provider, it is evident that during **April 2006** and **June 2006** the Complainants acquired 999 year leases in respect of the three Co. [West of Ireland] properties commencing on **1 May 2005**.

In a letter dated **11 March 2014**, the Provider wrote to the Complainants in the following terms:

> *"The 4 Home Mortgages on interest only have been extended to 14/03/2015 as requested. We have forwarded instructions to [the Provider's] Home Mortgage Dept. and when they put them in place you will receive separate advice.*
>
> ***We require the following conditions to be satisfied as part of this annual review:***
>
> *1. …*
>
> *2. The [Provider's position in relation to your Mortgages is that we would like to see Debt reduced to a level where Capital & Interest repayments can be made on the full portfolio of Debt. In order to achieve this you will need to give consideration to disposal of some properties. Further discussions therefore will need to take place prior to next review to agree a schedule of properties earmarked for sale following which repayment schedules can be reviewed on all Mortgages."*

In an email from the Provider to the FNC dated **2 March 2015**, the Provider writes:

> *"further to our conversation just now, just to confirm that in addition to the arrangements for the BTLs, your 2 overdraft facilities are also being extended & we will be organising letter of sanction re same.*

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There are 2 conditions of sanction re the Buy To Lets and the Overdrafts. The 2nd is the more significant one in terms of the [Provider's] position bearing in mind we are not able to continue to extend forbearance arrangements (e.g. Interest only or reduced repayments) on an ongoing basis and instead need permanent solutions.

1. …

2. 'The [Provider's] agreement to provide interest only repayment arrangements on borrowers Buy to Let facilities in relation to [Co. [West of Ireland] properties' addresses] is (i) for a period of 6 months only and (ii) is being provided on the basis that borrowers now actively look at putting an asset disposal schedule in place (starting with these 3 properties in 2016) with a view to reducing their borrowing levels down to more manageable levels in the short to medium term, or alternatively provide the [Provider] with alternative proposals that are acceptable to the [Provider]'

3. Further review with you by August 2015 given Interest Only forbearance will be due to expire at that time.

As I said to you on the phone, I will meet you both again either later March or in April to go through the review outcome. …"

The Complainants' Proposals

The First Proposal

The Complainants submitted their first proposal to the Provider through their third-party adviser on **12 August 2015**. The proposal consisted of the following:

*"Interest only period on 3 properties. Numbers ***, *** and *** is due to end. Borrowers wish to make the following proposal;*

1. Net rent (85% of €700, €750 and €750 respectively) to be paid monthly against the 3 properties for a 5 year period.
*2. House No ** … to be sold. Net proceeds after discharge of mortgage and fees, circa €60k, to be used as follows. Mortgages on no ** €6k, No * €16k and No ** €23k to be cleared. Remainder, circa €15k, go reduce mortgages on No **.*
3. Full review to take place at end of 5 year period."

There was a delay with this proposal reaching the Provider as it was addressed to the arrears support unit of another provider. By email dated **25 September 2015**, the Provider wrote to the third-party advisor informing him of this. The Provider responded to the Complainants' proposal by letter dated **2 October 2015**. This proposal was not acceptable to the Provider for the reasons set out in this letter and its submissions outlined above. At the fourth and fifth paragraphs of this letter the Provider states:

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"… it is quite clear that BTLs need to be sold to reduce overall BTL debt levels to a level where full Capital & Interest repayments can be sustained. We had spoken to clients about a structured approach where they would identify the BTLs to be sold on a year on year basis over not more than 5 years and we had identified, for example, that the 3 properties in Co. [West of Ireland] could be part of this asset sale programme as they were due to be free to sell maybe from early 2016 forward.

However, we do not want to be prescriptive. Instead, clients & their advisors need to look at their portfolio and decide what properties they are going to sell as part of planned asset disposal/debt reduction programme. From the [Provider's] perspective, such a programme of debt reduction should have (i) property sales commencing immediately (ii) a focus on higher value in proposed sales in the earlier years rather than the later years (iii) an outcome where by the end of the 5 years, the residual debt level can be sustained on a full C&I repayments basis within the remaining term of the respective facilities."

In response to the Provider's correspondence, the Complainants wrote to the Provider by letter dated **13 October 2015**. The letter states, among other things:

"Our most recent review was in Feb 2015 with [the Provider], whom advised us that we would need to start selling properties on an annual basis over the next five years.

We decided to seek independent financial advice from four highly respected agencies on the on-going financial implications of the potential outcome of this course of action."

The Complainants then summarised the advice given to them which effectively was that an immediate sale of properties was not necessary. The Complainants state:

"The Initial recommendation from [the third-party advisor] was to increase the repayments on the Co. [West of Ireland] Properties to Interest and Part Capital without selling any properties. We suggested that we go further on the recommendations of the [Provider] to sell a property and use the proceeds to clear some of the smaller mortgages. This would put us in a position to make part capital repayments on the three larger mortgages …

After five years, we plan to sell three Co. [West of Ireland] Properties on a phased basis in conjunction with other properties to repay all monies owed with minimum liability for Capital Gains Tax.

We have spent the last 25 years developing and building our thriving property business and we are concerned that the forced sale of properties over the next five years will result in significant financial loss to us.

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All financial advisors have cautioned us against this course of action as it could be detrimental to the business. The immediate sale of properties is unnecessary as our assets are in Positive Equity and no risk to the [Provider]."

The Second Proposal

The Complainants' second proposal was set out in a letter to the Provider dated **13 October 2015**. The Provider responded to the Complainants' third-party advisor by email dated **9 November 2015** acknowledging the proposal and making some points in reply which required the Complainants' advisor to discuss matters further with them. Replies to the Provider's queries were furnished by email dated **16 November 2015**. By way of two further emails dated **21 November 2015** and **18 December 2015** the Provider informed the Complainants' advisor that it was quite hectic at the moment with end of year paper work and deadlines and he did not have the opportunity to review the Complainants' proposal further. The Provider advised that it would be early in the New Year before he would be in a position to revert to the Complainants and their advisor.

The Provider responded to the second proposal by email dated **15 January 2016** and states:

"The [Provider's] view currently is that the level of asset disposal/debt reduction proposed is inadequate on the basis that the objective has to be to get the level of overall debt down to a level where full Capital & Interest repayments are sustainable & that is not the case with the proposal to hand.

We certainly don't doubt the value of the properties as outlined by the clients or the fact that clients' overall property portfolio is in positive equity, but the reality is that we have to find a way of getting the borrowings down to a level where full repayments can be maintained, the [Provider] can only work with a solution that involves the discontinuation of reduced repayments/forbearance agreements.

We need to meet you and clients to discuss the overall position and to try and find an acceptable/workable solution. …"

The Third Proposal

The Complainants offered their third proposal to the Provider by letter dated **24 January 2016**. It is stated in this letter that:

"We have served statutory notice to the Tenants in [Property O] since Nov-2015 as the property will be put on the market for sale as requested by the [Provider]. They have until 28th February to vacate the premises and we have informed the RAS Unit of our intention. It would be necessary to put this property on "Interest only" commencing March 2016 Mortgage Repayment until close of sale."

The Complainants then set out how the proceeds of sale of the Property O were to be apportioned. Below this the Complainants state:

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> *"Regarding the [Provider's] concerns with returning to "Full Capital and Interest Repayments" to discontinue the reduced repayments/forbearance arrangements, we would need to extend the remainder of the mortgages out until my 70th Birthday. This would spread the repayments over a number of years and in doing so will achieve the [Provider's] goal of terminating the current arrangements."*

The Provider responded to this proposal by emailed dated **24 February 2016** and addressed to the Complainants third-party advisor:

> *"The [Provider] are not satisfied with the clients' proposals as they reflect a significantly inadequate level of debt reduction from asset sales. The [Provider] are not in is position to extend the borrowing term on the Mortgages so an acceptable asset disposal/debt reduction schedule has to have an outcome of reducing overall mortgage debt to a level where clients will be able to meet full Capital & Interest repayments within the original contracted term/expiry dates on a sustainable basis. This is clearly not the case with either the proposal to hand (only 1 property identified for sale at a value of €120k) or the previous proposals. The fact that the clients' portfolio is in positive equity is noted and acknowledged, but it does not change the reality that clients cannot meet their contracted repayment.*
>
> *In the absence of acceptable debt reduction proposals, the [Provider] are not in a position to extend forbearance arrangements …*
>
> *We would ask you to discuss matters further with clients with a view to deciding on an amended proposal, with a far greater level of debt reduction from asset sales than has been proposed by clients to date. The required asset sales can, as previously advised be scheduled over a period of 4 to 5 years … In the absence of such proposals, the [Provider] will have no choice but to look at our legal options, but we would stress that the [Provider] would far prefer to have an agreed approach with clients."*

The Provider also sent a letter dated **25 February 2016** to the Complainants informing them that their most recent proposal was not acceptable.

Free Banking

In the letter dated **11 March 2014** and referred to above, the Provider states:

> *"We note your advice in relation to the fee charging on your personal current account, and we are currently investigating same. We hope to revert to you within 2 weeks at the latest on this enquiry."*

The Provider responded to the Complainants' fee query by letter dated **14 April 2014**:

> *"We contacted your local Branch and they located a letter on your file, in relation to your Fee's (a copy of which is attached). This outlines that free banking was*

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applicable, but only for the period 01/09/2005 to 01/09/2007, at which point full fees were to apply.

This has been the case, and full fees are applicable to your accounts at present."

The letter being referred to is dated **22 December 2005** and is addressed to the Complainants. The letter which refers to an attached account list in the subject line states:

"I am pleased to confirm that we will not charge your Account Maintenance or Account Transaction fees on your account for 24 months from 01/09/2005 until 01/09/2007."

The account list referred to in this letter has not been provided by either party in the documentation submitted to this Office.

The Provider's Relationship Managers

The Provider has furnished evidence of the two relationship managers (**RMs**) who attended the meeting with the Complainants on **18 February 2015**.

These managers state that there is no file note of the meeting and it is not a specific requirement of the Provider to prepare file notes of meetings particularly where meetings are followed immediately by an application, in this instance to extend interest-only repayments, which they state would have documented their findings from the meeting.

The RMs state that the written request from the Provider in **March 2014** requesting the Complainants to dispose of assets was 11 months prior to the **February 2015** meeting. The RMs also refer to extracts from the February 2014 annual review meeting in support of this.

The Complainants assert that there was no request to dispose of assets but rather to give consideration to the possible disposal of properties and that further discussion would need to take place.

They disagree that they were unprepared for this meeting and state that a scheduled meeting is never attended unprepared. They then set out what their preparation for a meeting would typically involve. They state that in the February 2015 application they sought the urgent re-instatement/continuation of interest-only arrangements on the relevant loans for a further six months as capital and interest repayments were due to recommence in **March 2015**. This application also constituted a full review by the Provider of the Complainants' borrowings.

At the meeting, the RMs state that it was clear that the Complainants had not given due consideration to asset disposal but instead wanted a continuation of interest-only repayments for €940,000 of their €1.3 million BTL loan facilities which comprised the four largest loans and as the smaller loans were paid off, the extra funds would be re-directed to

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the other larger loans. The alternate arrangement offered by the Complainants was a term extension.

The RMs state that they explained to the Complainants that they were not in a position to continue to approve ongoing interest-only/forbearance arrangements unless these arrangements were part of an agreed permanent solution. They state that this was the approach they had to take with all BTL portfolios that had interest-only/forbearance arrangements and that it was part of the steps that the Provider had to take to address/resolve the wider issues with its property/BLT book. It is also stated that one of the RMs informed the Complainants that the Provider was not in a position to provide a term extension as it was not an option that the Provider could offer at the time. The Complainants assert that the RM's did not state that the term extension was not an option.

The RMs' state that the Complainants were not accepting the Provider's position and that they had not considered the need for asset disposals. It was at this part of the discussion that one of the RMs pointed out to the Complainants that only 28% of their €1.3 million BTL debt was on full capital and interest repayments and 72% was on interest-only. The Complainants dispute that the figure of 72% was mentioned at the meeting. The RMs state that they would also have mentioned the level of repayments required if all loans were to revert to full capital and interest in contrast to what the Complainants were paying at that point in time. One of the RMs states that he said that of all of the cases his section was dealing with, that this was the worst/highest case of interest-only repayments he had come across on a BTL portfolio except in cases where customers had already agreed to asset sales to reduce debt. The RMs state that this was the context in which this statement was made. It is denied that the Complainants were told they *'were the worst case ever'* in the manner suggested by the Complainants. It is further denied that the RMs told the Complainants that they *'would have to close down their business'*.

The RMs state that in the conversation that followed it was sought to explore what BTL properties could be considered for sale in order to effect a debt reduction. They state that the Complainants expressed reluctance to sell BTLs but did say that they would begin doing so in three years. The RMs assert that it was explained to the Complainants that the Provider could not wait three years and could not extend interest-only repayments/forbearance indefinitely. The Complainants' view was that the end of interest-only would mean that their loans would go into arrears and if the Provider wanted to go legal then it could.

The RMs state that it was when the possible sale of the three Co. [West of Ireland] properties was discussed that the FNC commented that none of those properties could be sold because they had to be held for 10 years after purchase to avoid a clawback of capital tax allowances. One of the RMs noted that the loans in respect of those properties appears to have been taken out in 2006 meaning the 10 year period would be expiring in 2016 and the Complainants would be free of the clawback and these properties could be included/considered in any asset sales.

The RMs state that a conversation followed on the possible inclusion of the Co. [West of Ireland] properties in a schedule of properties to be sold. The RMs explained that asset sales could be spread over a period of time up to five years but it would need to start in 2015 or

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2016. The RMs state that it appeared that the Complainants were at least contemplating the prospect of selling the Co. [West of Ireland] properties to the point that the FNC told the RMs that these properties would have a market value of €100,000. The FNC further mentioned that there would be a need to counterbalance the CGT losses against the CGT gains if any of the properties were being sold in order to reduce any potential CGT liability. The RMs state that this issue was not raised by them as it had not occurred to them at the time. The Complainants state that this conversation did not take place and that the CGT was not mentioned.

The RMs state that by the end of the meeting they were not fully sure if the Complainants had changed their mind with respect to asset disposals. However, they did not indicate at any stage of the meeting that they were in agreement with this course of action. The RMs further state the fact that a specific discussion regarding the possible sale of the Co. [West of Ireland] properties had taken place at the meeting and the discussion regarding the expiry of the 10 year clawback indicated that the sale of those properties was put forward by the RMs as a possible starting point in a potential asset disposal plan as per the **February 2015** review application commentary and in subsequent communications with the Complainants. The RMs then refer to the overdraft facility granted in **March 2015** and the conditions attaching to this.

In practical terms, the RMs state that this did not mean that their asset disposal proposal absolutely had to commence with or was limited to, those three properties. But the RMs say they did hone in on those properties as a specific discussion was had at the meeting regarding these properties.

The RMs state that they explained at the meeting, as with all such meetings, that any further forbearance/interest-only arrangements was subject to an agreed asset disposal arrangement where the proceeds would have to be sufficient to bring the Complainants' debt down to a level where full capital and interest repayments within the original terms of the remaining loan facilities could be met. In this instance, the 6 month extension of interest-only was to give the Complainants the opportunity to put together an asset disposal/debt reduction proposal to submit for the Provider's consideration. The RMs state that it was indicated to the Complainants that subject to the Provider's agreement with them on an asset disposal/debt reduction plan that further forbearance/interest-only period of up to 12 months at a time could be agreed as part of such a resolution.

The RMs say that this would have been 100% in line with the approach taken in all cases where they were dealing with BTL portfolio cases where there were forbearance arrangements in place and repayment capacity was not evident on a full capital and interest basis. It is stated that this would have been detailed in the commentary under *'Sought'* on page 2 of the February 2015 AMU where the RMs say they stated that if they could get agreement on an asset disposal programme, they would be prepared to facilitate an extension of interest-only on all three Co. [West of Ireland] properties for 12 months. This was also detailed in the recommendation on page 10.

The RMs state that the FNC provided them with some detailed information in relation to their property portfolio at the meeting. An Asset and Liability schedule, as at February 2015,

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set out each of the Complainants' BTL properties and relevant cost/value/repayments/rental income. The FNC also provided detail of rental costs/expenses, gross rents and net rental profits over a number of years and relevant taxation charges. The RMs state that the Complainants explained at the meeting that their section 23 allowances covered their normal liabilities on their BTL rent, but not taxation in the form of USC and the like. To help the RMs value the properties, they state that they quickly ran through square footage size of each BTL. This was a standard request at the time. The RMs state that they then discussed the Statement of Means provided by the Complainants and their management and maintenance of their properties.

While the RMs acknowledge that they do not recall the specific order at the end of the meeting, they say that they would have conveyed to the Complainants that they intended to complete the application/request for an extension of interest-only repayments as soon as they could process the review/paperwork as capital and interest was due to re-start in March and there were delays processing requests in the Provider's mortgage bank section; that the Complainants needed to revert in due course regarding asset disposal/debt reduction and that the RMs' recommendation regarding any extension of interest-only would be on that basis; the Complainants were to check their own records with respect to the year of purchase of the Co. [West of Ireland] BTLs and revert to the RMs if their understanding of the clawback was incorrect; and the Complainants were asked for a tax clearance certificate and fire cover schedules.

The RMs state that they would have indicated to the Complainants that they were available to meet. They acknowledge that while they did not meet the Complainants subsequent to this they did not contact either of the RMs to arrange a meeting. When the Complainants' third-party advisor became involved, a meeting was sought to be arranged with the third-party advisor and the Complainants however, the third-party advisor was only available to meet in Dublin, whereas the RMs were based in [two other counties]. The RMs state that it was difficult for them at the time to consider a meeting in Dublin due to internal work pressures.

Consumer Protection Code

A number of the provisions of the Code are of relevance to this complaint. In particular, I note the following.

> *"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*
>
> *2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*
>
> *2.2 acts with due skill, care and diligence in the best interests of its customers;*
>
> *2.3 does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;*

/Cont'd…

…

2.7 seeks to avoid conflicts of interest;

2.8 corrects errors and handles complaints speedily, efficiently and fairly;

2.9 does not exert undue pressure or undue influence on a customer;"

In terms of telephone contact, the Code states:

"3.40 A regulated entity may make telephone contact with a consumer who is an existing customer, only if:

a) the regulated entity has, within the previous twelve months, provided that consumer with a product or service similar to the purpose of the telephone contact;
b) the consumer holds a product, which requires the regulated entity to maintain contact with the consumer in relation to that product, and the contact is in relation to that product;
c) the purpose of the telephone contact is limited to offering protection policies only; or

d) the consumer has given his or her consent to being contacted in this way by the regulated entity."

In terms of arrears, the Code states:

"8.3 Where an account is in arrears, a regulated entity must seek to agree an approach (whether with a personal consumer or through a third party nominated by the personal consumer in accordance with Provision 8.5) that will assist the personal consumer in resolving the arrears.
…

8.5 At the personal consumer's request and with the personal consumer's written consent, a regulated entity must liaise with a third party nominated by the personal consumer to act on his or her behalf in relation to an arrears situation. This does not prevent the regulated entity from contacting the personal consumer directly in relation to other matters.
…

8.12 Where arrears arise on an account and where a personal consumer makes an offer of a revised repayment arrangement that is rejected by the regulated entity, the regulated entity must formally document its reasons for rejecting the offer and communicate these to the personal consumer, on paper or on another durable medium.
…

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8.13 A regulated entity must ensure that the level of contact and communications from the regulated entity, or any third party acting on its behalf, with a personal consumer in arrears, is proportionate and not excessive.

8.14 Each calendar month, a regulated entity, and/or any third party acting on its behalf, must not initiate more than three unsolicited communications, by whatever means, to a personal consumer in respect of arrears.

The three unsolicited communications include any communication where contact is attempted but not made with the personal consumer but do not include:

a) any communication that has been requested by, or agreed in advance with, the personal consumer; and
b) any communication to the personal consumer the sole purpose of which is to comply with the requirements of this Code or other regulatory requirements."

Chapter 10 of the Code deals with complaints. In particular, I note the following:

"10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;
b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;
c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;
d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and
e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:

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i) the outcome of the investigation;
ii) where applicable, the terms of any offer or settlement being made;
iii) that the consumer can refer the matter to the relevant Ombudsman, and
iv) the contact details of such Ombudsman."

Analysis

It is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the re-negotiation of the commercial terms of a mortgage loan which is a matter for the Provider and the Complainant and does not involve this Office whose role is an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants.

Complaint 1

The Complainants are dissatisfied with having been moved between a number of branches by the Provider and having to deal with different relationship managers on each such occasion. The Provider states that this was done so that the most appropriate personnel at the time were dealing with the Complainants' case. I do not accept that the conduct of Provider in respect of this aspect of the complaint was contrary to the ***Financial Services and Pensions Ombudsman Act 2017*** (the **Act**) or the Code. While the Complainants may have been inconvenienced by having to travel to different branches and deal with different relationship managers, the Provider cannot be expected to have the required personnel at the Complainants' local branch or at every branch it operates.

Therefore, I do not believe there is any basis to uphold this aspect of the complaint.

Complaint 2 and Complaint 3

The Complainants state that the Provider failed to consider solutions other than asset disposals and that the Provider also rejected the Complainants' proposals without providing adequate reasons. When the Complainants entered into the Co. [West of Ireland] property loans it was agreed that they would make interest-only repayments for the first 12 months of each loan term after which they would make capital and interest repayments. The evidence in this complaint demonstrates that the Complainants did not comply with their repayment obligations under these loans and several applications were made for a continuation of interest-only repayments.

From 2014 the Provider made clear to the Complainants that they would have to put in place a strategy that would enable them to begin making full capital and interest repayments. The strategy suggested by the Provider was asset disposal. However, the Provider was willing to

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consider any alternative proposal the Complainants were willing to offer. It is important to remember that the Provider wanted a situation where the Complainants would be able to begin making full capital and interest repayments and any proposal offered by the Complainants was required to satisfy this criterion.

The Complainants put forward three proposals all with the benefit of financial advice. None of these proposals were satisfactory from the Provider's perspective and were rejected because they did not allow the Complainants to begin making full capital and interest repayments. This was communicated to the Complainants and their third-party advisor by the Provider. The Complainants have advanced a number of reasons against an asset disposal strategy. These principally relate to the changing property market. The Complainants have also submitted that asset disposal was contrary to the expert advice they received. Neither this expert advice nor a statement from their expert advisors supporting their position has been provided in evidence. What is clear from the evidence supplied is that one of the reasons for not agreeing to an asset disposal strategy is that the Complainants wished to avoid a section 23 tax clawback, avoid a capital gains tax liability and they also wanted to retain their properties as part of their pension fund.

Furthermore, the evidence in this case indicates that the Complainants' advisors were not strictly against an asset sale but rather an immediate asset sale. The Complainants have submitted one of the Provider's internal emails which discusses the **February 2015** meeting. I note that the heading of this email is not visible and therefore, it is not possible to view the author, recipient or date of this email. However, commenting on a conversation had with one of the Complainants' advisors, the Provider's agent states:

> *"Clients recently engaged [third party advisor] to act for them in negotiations with the [Provider]. Initial letters exchanged with the [Provider] this month (August) and I spoke to [third party advisor] last week. He appears to share our view that clients need to sell assets to reduce debts to manageable levels, but the finer points of what shape this will take from their perspective v's the [Provider's] will no doubt take a bit of discussion, particularly to get to a point of agreement (clients have been very reluctant to consider asset sales in our discussions with them)."*

I do not accept that the Provider failed to consider alternative solutions other than asset disposal. The Provider wanted the Complainants to be in a position to make full capital and interest repayments and the strategy it proposed in order to facilitate this was asset disposal. The Provider was willing to consider the Complainants' proposal, which I believe it did, subject to those proposals achieving this end. From the Provider's perspective, the proposals offered by the Complainants did not allow them to make full capital and interest repayments. In the evidence outlined above, I do not accept that the Provider failed to give adequate reasons for the rejection of the Complainants' proposals. The Provider's objective was clear and while the Complainants are dissatisfied that their proposals were rejected, the Provider was under no obligation to accept their proposals.

Therefore, I do not believe there are any grounds to uphold these aspects of the complaint.

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Complaint 4

The Complainants submit that the Provider forced them to sell their Property O. The basis of this complaint is that the property was sold under duress from the Provider. When the Provider suggested an asset disposal strategy to the Complainants it did not specifically identify the Property O. This property was identified by the Complainants in their first proposal dated **12 August 2015**. This proposal was submitted with the benefit of expert financial advice. The Complainants then proceeded to serve a notice of termination on the occupants of this property and take steps to market the property for sale. These steps were taken prior to the Provider replying to or agreeing to this course of action.

Further to this, the Complainants state at pages 4 and 5 of their submissions *Updated FSP Submission – Aug 2018*

> *"In the Schedule of evidence, page 11 paragraph 1 – it states 'The [Provider] never identified this asset to be sold' – We disagree with statement as it is irrelevant as the [Provider] demanded a number of properties to be sold …*
>
> *The offer to sell [Property O] was made under duress from the [Provider] for the following reasons:*
> *…*
>
> *It was for these reasons that we reluctantly offered the sale of [Property O], but only as a final solution to put an immediate halt to the situation deteriorating further."*

The Provider wanted the Complainants to implement a deleveraging strategy and begin making full capital and interest repayments. To achieve this, the Provider wanted the Complainants to sell assets. The evidence shows that the Provider wanted the Complainants to start with the sale of higher value properties such as the Co. [West of Ireland] Properties and not (in comparative terms) lower value properties like the Property O. Having considered the evidence and submissions in respect of this aspect of the complaint I do not accept that the Provider forced the Complainants to sell the Property O whether under duress or otherwise.

Therefore, I do not believe there is any basis to uphold these aspects of the complaint.

Complaint 5

This aspect of the complainant is that the Provider wrongfully threatened the Complainants with legal action. The basis of this complaint is the letter dated **24 February 2016** sent by the Provider to the Complainants' third-party advisor. A number of points can be made in respect of this aspect of the complaint. This correspondence is quite extensive and the Complainants have focused one particular sentence. The letter must be read as a whole and the reference to *legal options* must be considered in the context of the letter as a whole. Furthermore, it was sent to the Complainants' third-party advisor and not to the Complainants directly. A letter was sent to the Complainants by the Provider dated **25**

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February 2016 updating the Complainants on matters however, this letter did not contain any reference to *legal options*.

I do not accept that the Complainants were wrongfully threatened with legal action by the Provider. The letter was sent at a time when three proposals had been rejected by the Provider and the Complainants were not making their contracted repayments. Furthermore, I do not consider that the sentence identified by the Complainants constitutes a threat of legal action. The Provider was entitled to consider its legal options. The letter was simply making the Complainants' third-party advisor aware of this.

Therefore, I do not believe there is any basis to uphold this aspect of the complaint.

Complaint 6

This aspect of the complaint concerns the Complainants' negative ICB rating which the Complainants say was wrongfully caused by the Provider. In an email from the Provider to the FNC dated **2 March 2015**, set out above, the Provider informed the Complainants that its agreement to provide interest-only repayments was for a period of 6 months only and required the Complainants to *"…actively look at putting an asset disposal schedule in place …"* and that there would be a further review in **August 2015** given that this interest-only arrangement was due to end at that point. While the Provider wanted a deleveraging strategy in place, this email did not make it an explicit requirement that such a strategy was to be in place by **August 2015**. The email refers to a further review at the expiry of the 6 month period.

In a letter to the Provider dated **1 November 2015**, the Complainants state:

> *"Please note Interest payments have not been applied to the Co. [West of Ireland] properties for the last 2 months, can we bring payments up to date please."*

The Provider has also indicated in its submissions dealing with the unpaid direct debits that there was a verbal agreement with the Complainants the they would make interest-only repayments for the month of **January 2016** while a restructure was in progress. Following this, in an email dated **24 February 2016** to the Complainants' third-party advisor and outlined above the Provider states:

> *"… In the absence of acceptable debt reduction proposals, the [Provider] are not in a position to extend forbearance arrangements …"*

The Provider acknowledges that the Complainants' ICB rating was affected from **August 2015** to the date of restructure in **2017**. The Provider further acknowledges that its communication with respect to interest-only payments in **August 2015** could have been clearer. However, the Provider states that there was no formal arrangement in place at that time and as the accounts were not restructured, there was still a requirement for capital and interest repayments The Provider acknowledges that while the Complainants did make their offered repayments their ICB rating was affected as the report showed a repayment shortfall each month due to the fact that capital and interest was not being paid.

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While the Provider did express the limited nature of the forbearance, I accept that the Complainants believed that they would be required to make interest-only repayments during the negotiation process. The interest-only repayments were made by the Complainants and accepted by the Provider. There is no evidence to demonstrate that the Provider sought to specifically address or clarify this issue or inform the Complainants that there was no formal agreement in place or that the forbearance had expired and they were to commence full capital and interest repayments and the impact this would have on their ICB record.

Therefore, I believe the Provider has a case to answer in regard to this aspect of the complaint.

Complaint 7

The essence of this aspect of the complaint is that the Complainants were wrongfully charged €10 per month by the Provider for unpaid direct debits. In the Provider's Final Response letter when dealing with this aspect of the complaint the Provider states:

> *"It is recognised, however, that some unpaid charges were applied during this period and you were not advised beforehand, or at the time, that the charges would be applied. In such circumstances, and as a gesture of goodwill, we will refund the historic unpaid charges that have been applied on your accounts in relation to unpaid Mortgage repayments since September 2015 and up to the current date …"*

In the Complainants' response to the Provider's Final Response letter dated **22 September 2016**, they *"… accept the [Provider's] offer to refund the fees which resulted due to the process of Debiting and Crediting our accounts."*

I consider the Provider's goodwill gesture to be a reasonable sum of compensation in this instance and I note the Complainants have accepted it. Therefore, I do not uphold this aspect of the complaint.

Complaint 8

The Complainants submit that the Provider promised them free banking for an indefinite duration on their accounts if they transferred their business to the Provider. The Provider is relying on a letter dated **22 December 2005** which states that the free banking was to last only until 2007. The Complainants make a number of observations in respect of this letter. Chief among these is that they never received it. The submissions of the parties on this aspect of the complaint indicate that charges were not introduced to the Complainants accounts until **September 2013**. The Provider's conduct in this regard is not consistent with the terms contained in the letter from 2005. I would also note that no explanation has been advanced by the Provider as to why fees were not introduced to the Complainants' accounts in 2007 as per the terms of its letter. Furthermore, the evidence in this complaint indicates that no notice of the introduction of fees was given in 2013. Also, no explanation as to why fees were introduced in 2013 was offered by the Provider to the Complainants.

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Therefore, I believe the Provider has a case to answer in regard to this aspect of the complaint.

Complaint 9

The Complainants state that the Provider made an unsolicited call and sent an unsolicited text message to them during a debt resolution process. In further submissions dated **22 September 2016**, the Complainants state that they were unhappy with the Provider's final response and wished to change their complaint to a request for further information from the Provider as to what initiated the text message. The Complainants submit that the text message was the direct result of the Provider being informed by the Complainants that they intended to make a formal complaint about its conduct. In its Final Response letter, the Provider informed the Complainants that a text message issued automatically on **13 May 2015** in connection with the arrears on the account in question.

The evidence furnished by the parties shows that the Complainants received a text message on **13 May 2015** from the Provider's arrears support unit in connection with arrears on one of the Complainants' loan accounts. The FNC contacted the Provider on the phone number contained in the text message and was then advised by the Provider's agent to talk to his relationship manager. A copy of the text message has been furnished by the Complainants. The message from the Provider states:

"Please call [Provider] your mortgage lender on [telephone number]."

I accept that while the FNC did receive a text message from the Provider and this message may have been unsolicited, I do not accept that it amounts to conduct that is contrary to the provisions of the Act or the Code particularly having regard to sections 8.13 and 8.14 outlined above.

In its Final Response letter the Provider states that it did not appear that an unsolicited call was made to the Complainants. The Complainants have not provided any detail about this unsolicited call as to when it was made, by whom and what was discussed.

Therefore, I do not believe there is any basis on which to uphold this aspect of the complaint.

The Provider's Conduct and Handling of the Complainants' Complaint

The Complainants have made some quite serious allegations in respect of the Provider's conduct. I have been provided with no evidence to support the allegations that the Provider engaged in sharp practice, tried to force the Complainants' business into liquidation or deliberately undermined or frustrated the mediation/negotiation process.

The Complainants lodged a complaint with the Provider's [Branch 1] by letter dated **30 May 2016**. This was dealt with locally, as the Provider did not have a centralised system for complaint handling at that time. While a 5 day letter was not sent to the Complainants as

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required by the Code, the Provider issued its Final Response by letter dated **10 August 2016**. I find that the Complainants' complaints were appropriately dealt with by the Provider.

Finally, I am aware that as part of its written submissions to this Office the Provider has made the following goodwill gesture:

> ***"The [Provider] would like to formally place on the record its offer to resolve the complaint as follows; -***
>
> 1. *Amendment to rectify ICB Record for the period from August 2015 to November 2017*
> 2. *Refund of fees from 2013 – 2018.*
> 3. *Refund of Direct Debit Fees, which we understand to be in the region of €70-€100.*
> 4. *Provide Free Banking for the [Complainants] on their facilities*
> 5. *Provide the [Complainants] with a goodwill gesture in the amount of €10,000"*

While I have outlined above a number of failings where the Provider has a case to answer, I consider the Provider's offer to be a reasonable compensation and rectification for the inconvenience caused to the Complainants by those aspects of the Provider's conduct.

In these circumstances, on the basis that these sums and the redress outlined remain available to the Complainants, I do not uphold this complaint.

Conclusion

My Decision is that this complaint is rejected, pursuant to ***Section 60(1)*** 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

31 July 2019

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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.