An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0259
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Settlement amount (mortgage) Delayed or inadequate communication Dissatisfaction with customer service Failure to provide correct information Fees & charges applied (mortgage)
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants hold a mortgage loan account with the Provider in respect of their primary residence. The complaint relates to the Provider's ongoing assessment of the mortgage under its Mortgage Arrears Resolution Process (MARP), between **2010** and **2016**. The complaint is that the Provider failed to complete an assessment of the Complainants' position under MARP and to offer an Alternative Repayment Arrangement (ARA). They further complain that the Provider failed to respond to purchase offers presented to it with regard to the sale of the mortgaged property.

The Complainants seek the following resolution from the Provider:

1. that the mortgage loan account be assessed under the Provider's MARP;
2. that a designated official be appointed to the case; and
3. that a response to the proposals and offers made to the Provider regarding the sale of the Complainants' home, be provided.

The Provider has generally refuted the complaint but acknowledges some administration failures, including a 3 week delay in transferring the Complainants' complaint letter to its complaints handling centre. In recognition of any inconvenience and delay, the Provider offered a goodwill gesture of €280 to the Complainants.

The Complainants' Case

The Complainants state that the Provider failed to complete an assessment of the private dwelling house mortgage under its MARP policy or to offer them an ARA. The Complainants argue that offers were presented to the Provider for consideration, when the house was put on the market and that various proposals and Standard Financial Statements (SFSs) were submitted for consideration. The Complainants state that no written response was received from the Provider to these offers.

The Complainants request that the mortgage be assessed by the Provider and that the case not be passed from one relationship manager to another but for an individual official to take responsibility for it. The Complainants seek a written response to their proposals and subsequent offers on the property. They argue that if these proposals had been accepted or an indicative sale price agreed, the Provider could have mitigated the loss and assisted their financial situation at any point between 2010 and 2016.

In an email dated 14 March 2016 from the Complainant to his financial adviser, the first Complainant set out various proposals he made to the Provider in 2010 and 2012. He indicated that he proposed that the property would be split into an upstairs apartment and a downstairs apartment but that this proposal was rejected. He also suggested that a small part of the property would be turned into apartment and rented, or that he would vacate the property completely in order to rent it.

A financial adviser acting on behalf of the Complainants argues that it was the understanding of the Complainants that the loan was an interest only mortgage until **2028**. They argue that the loan was on a tracker rate of interest and that it was originally classified as an endowment mortgage but that the Provider never actioned the endowment policy. The Complainants argue that €100,000 was paid towards the mortgage in 2009 from the sale of another property which, according to the Complainants, means that the interest only repayments have been fully paid with no arrears. The Complainants note that they have been advised that the mortgage is part of a loan sale by the Provider, even though the contractual payments are up-to-date. In a further submission, the Complainants' financial adviser states his understanding that the terms of the loan were varied through a broker of the original lender, in 2008.

The Complainants argue that the letter of offer of **27 August 2003** demonstrates that the first 12 months of the mortgage were agreed as interest-only repayments at €1,376 per month at a discounted interest rate of 2.5%, followed by 288 months of interest only of €1,882.67 per month based on the then prevailing standard variable rate. They argue that this arrangement is confirmed by section 14 of the Provider's terms and conditions of the original offer, which is an illustrative amortisation table and which, they argue, clearly shows that the loan balance at the end of the 25 years was to be the principal sum of €640,000, unless either of the secured assets was sold in the meantime.

The Complainants argue that the letter of offer of 27 August 2003, accepted by the Complainants on 29 September 2003, shows that the Complainants had and still have an interest only mortgage for the full term. They argue that with capital and interest

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repayments, this would amount to monthly repayments of approximately €3,000 which would never have been affordable for the Complainants. They argue that there was never any affordability for capital and interest repayments and the Provider recognised that by granting several interest-only periods. They argue that this was always the understanding of the Complainants that the mortgage was an interest only mortgage, for its full term and that letters of offer are not easily understood by most borrowers.

The Provider's Case

The Provider states that the mortgage loan was originally drawn down as an interest only mortgage on 6 November 2003 for a duration of 12 months. The account was transferred to capital and interest repayment mortgage on 31 January 2008. It states that although the mortgage account went into arrears in January 2011, this was remedied and it was from **July 2013** that arrears accrued, and only sporadic and partial mortgage repayments were made.

The Provider argues that the secured property is no longer the principal primary residence of one or both of the Complainants. It argues that it changed over the years from the principal private residence to a residential investment property and therefore falls outside the MARP framework. The Provider states that although the property address for the mortgage account is that of the secured property, the correspondence address is a different address, supporting the fact that neither of the Complainants currently reside at the property address.

The Provider points to certain sections of the letter of offer dated 27 August 2003 to demonstrate that the interest only period was for 12 months only. In section 8 entitled "*interest only*", the Provider notes that it states "*12 months at €1,376 followed by 288 repayments at €1,882 67*." It further draws attention to section 14 entitled "*illustrative amortisation table*" which notes repayments of €1,376 per month for the first 12 months but annual repayment of €22,592.04 from years 2 to 25 which equates to €1,882.62 per month after initial 12 months.

The Provider states that in **March 2012**, a letter was sent to the Complainants enclosing a Standard Financial Statement (SFS) which was populated and an interest-only repayment period of 12 months was approved. A note on 18 April 2012 reflects the fact the Complainants were separated, and indicates that the first Complainant was trying to sell a property in Romania to recoup monies invested there. In **January 2013**, a further SFS was prepared with the Complainants' relationship manager, GH. In February 2013, the first Complainant sent a letter to GH stating that he was unable to meet with him. In April 2013, a further SFS was prepared in conjunction GH. The Provider states that the required CCMA letters were issued to the Complainants from June 2011 onwards and issued separately to the first and second Complainants from 21 March 2016 as it was noted that they were separated. On the basis of the SFSs available, the Provider confirms that the Complainants were jointly assessed for the purpose of forbearance arrangement applications.

In relation to a letter of **10 March 2015** in which the third party acting on behalf of the Complainants outlines details of an offer on the property in the amount of €420,000, the

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Provider states that its representative GM telephoned the third party on 24 March 2015 and advised of the shortfall process i.e. where property sale amount was less than the mortgage balance outstanding. GM referred the matter to GH. The Provider states that a further call was made on 26 March 2015 to the third party that outlined the supporting documents which would be required to proceed with a shortfall case on behalf of the Complainants and an email was sent on the same date. A face-to-face meeting then occurred between GH, the third party adviser and the first Complainant on **18 June 2015**.

In relation to a letter of **26 February 2016** sent from the third party adviser to GH, the Provider states that the letter was not received until 4 March 2016. As this letter stated that there was no offer on the property and that the Complainants had no proposal for any shortfall that might arise in the event of the sale of the property, the case was transferred by GH from the Arrears Support Unit to the recoveries department.

In relation to an email dated **14 March 2016** sent from the first Complainant to his third party financial adviser and which outlines several offers made on the property, the Provider states that the email was never received by it and it makes no further comment on the contents of same.

In relation to health concerns raised by the Complainants, the Provider states that the information contained in the detailed SFS and correspondences received from the Complainants was used in assessing the Complainants' personal and financial information which would include any family and health situations. While the Provider states that it empathises with their position, the Provider considers that it has engaged with the Complainants in its dealings with them to try and come to a sustainable and viable arrangement on the mortgage account. Unfortunately it is not always able to agree to certain arrangements as requested by its customers.

The Provider states that 3 interest-only arrangements were agreed in relation to the account from 2011 onwards. (1) From July 2011, a 12 month arrangement was agreed which was notified to the Complainants by letter. (2) From May 2012, a further 12 month interest only arrangement was agreed in relation to the account and again notified to the Complainants by letter. (3) A third reduced payment arrangement for six months was agreed from June 2013. The Provider states that the Complainants complied with the terms of the first and second interest-only arrangements but not the third as €850 was received per month rather than the €1,000 that the deal had outlined.

The Provider argues that in relation to the first and second-interest only arrangements, they were arranged prior to the introduction of the Code of Conduct on Mortgage Arrears (CCMA) 2013. In relation to the third arrangement, the Provider states that it followed its procedures with regards to appeals and communicated a resolution to the Complainants in writing, as to the outcome of the appeal they had raised. No further SFS was required by the appeals board to offer a financial arrangement to the Complainants in June 2013. The Provider states that its agents assisted the Complainants with the completion of their SFS in March 2012, in January 2013, in April 2013 and January 2015. In relation to the Provider's obligation under Provision 39 of the CCMA to explore all options for alternative repayment arrangements (ARAs) offered by each lender, the Provider argues that a review of the Complainants'

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financial and personal information concluded that an offer of interest-only reduced payments was considered as the best option for the Complainants' circumstances. The Provider also argues that solutions were discussed with the Complainants with regard to disposal of other assets that they had, from which sale proceeds could then be used in reduction of their indebtedness.

The Provider argues the Complainants were assigned a relationship manager for their dealings with the Provider's ASU and that GH was the relationship manager for a sizeable portion of the mortgage arrears process. The Provider states that the relationship manager did change over the years and while that was unavoidable, it was understandably frustrating for the Complainants. The Provider stresses that any information gathered from the Complainants or their representatives, together with all the transaction history on the account, was recorded on its systems for further review.

In relation to the Complainants' argument that proposals and SFSs were submitted for consideration but no written response was obtained from the Provider, the Provider contends that it kept the Complainants and their representatives thoroughly updated as to its position regarding the shortfall on the mortgage amount. It refers to systems notes and records which show that there was engagement and follow up with the Complainants with regard to the contact with the Provider. It notes that the Complainants are dissatisfied that in October 2012, it did not accept a sale price of €455,000 for the mortgage property. It points out that, at the time, the balance of the outstanding debt was €537,920. The Provider notes that the Complainants wrote to the MARP appeals committee on 14 March 2013, stating that their offer still stood i.e. that they wished to sell the property. The Provider notes that the first Complainant stated he could pay down €50,000 during his working life and that the Provider could write off the balance following the sale of the property. The Provider states that the letter was acknowledged by the appeals administration team on 24 March 2013. On 13 June 2013, the appeals administration team issued its formal response to the Complainant and advised that the appeal was upheld due to:

> "*inconsistencies with information received from bank representatives. The delays in getting forbearance arrangement agreed/applied for [the property*]."

The Provider states that in resolution of the appeal, the appeals board agreed to a reduced repayment of €1,000 for six months effective from June 2013. It states that on 2 December 2013, the ASU sent the Complainants a letter stating that the interest-only/reduced payment arrangement on the mortgage account had ended, and detailed the new monthly repayment amount due.

The Provider points to a letter dated **10 March 2015** from the Complainants' financial adviser, where the adviser outlined that the Complainants had an offer of €420,000 for the property and asked if the Provider was willing to consider this in full and final settlement of the outstanding amount or, if this was not agreeable, that the Provider would outline its consideration of the offer along with addressing the residual balance based on affordability. The Provider states that supporting documents and a further valuation was required before the matter could progress further and the matter was referred to GH in the ASU. The Provider states its understanding that at that point, the property was not on the market for

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sale. The Provider refers to a meeting between GH, the first Complainant and the adviser on 18 June 2015 in which it was advised that there was an offer of €420,000 on the property in March 2015, but it had fallen through.

The Provider refers to an email sent from GH to the financial adviser on 18 June 2015 noting that the Provider was seeking further clarification in relation to a valuation conducted on the property on 1 April 2015 and noting that if the Complainants were in a position to provide a new "*sale agreed*" proposal, which he could present to the credit committee, certain listed documentation would be required from the Complainants with the new proposal. The Provider states that GH's records indicate that up to 31 March 2016, he continued to chase outstanding actions and documentation with the Complainants' adviser in order to progress the case but without success as there was no response. He then referred the case to the specialised support unit in **April 2016** as no offers had been made on the property at that point.

The Provider argues that it reserves the right to assess the type of ARA that may be made available and that it is a matter for its commercial discretion as to whether or not to accept any particular repayment proposals. The Provider argues that it may never have been possible to assist the Complainants to the extent that they may have wished (ie with debt forgiveness) but that it did not act in any way unreasonably, unjustly, improperly or in an unjustly discriminatory manner when attempting to assist the Complainants with their mortgage repayments. The Complainants were advised that proposals which incorporated a debt write-off did not come within the Provider's forbearance policies.

The Provider denies that the Complainants' mortgage was agreed on an interest-only repayment basis until 2028. The Provider points to the letter of offer dated 27 August 2003 and confirms that the interest rate was fixed for 12 months at an interest rate of 2.58%. The Provider also disputes that the mortgage was originally classified as an endowment mortgage and states this was not the case. It states that there is no mention in the loan offer that the loan was agreed as an endowment mortgage. Instead, the mortgage was approved on a capital and interest repayment basis. The Provider accepts that €100,000 was credited to the mortgage account on 13 March 2008 and this reduced the mortgage balance accordingly. It states that the current arrears balance on the mortgage as of **4 October 2018** was the sum of €172,771.30. The Provider confirms that it is within its rights under section 8 of the terms and conditions of the loan agreement to sell parts or all of the debt to an external party. It confirms the sale of the mortgage account to a third party loan assignee, as communicated to the Complainants in August 2018.

In a further submission, the Provider states that the mortgage loan was drawn down as an interest-only mortgage on 6 November 2003 for the duration of 12 months and was transferred to capital and interest repayment mortgage on 31 January 2008. It states that the original terms of the mortgage remained in place as documented in the loan offer and that there is no documentation in relation to any variations. The Provider argues that the loan was agreed on an interest-only repayment basis for the first 12 months from drawdown and this was extended to the first 60 months from drawdown, after which the account was due to change to full capital and interest repayments from November 2008. The Provider then agreed to a further two year interest-only arrangement in November 2008. It confirms

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that the interest rate applied after the 12 month fixed rate was the standard variable rate, until such time as the mortgage changed to a tracker rate in April 2008.

The Provider states that according to its notes, the Complainants consented to an extension of the interest-only repayment arrangement of the mortgage for two years from December 2008 and this demonstrates that the Complainants knew the mortgage account was not on an interest-only repayment agreement for the full term of the mortgage. In relation to the Complainants' argument as to the non-affordability of capital and interest repayments, the Provider states that it considers this issue to go beyond the scope of the original complaint.

The Complaint for Adjudication

The complaint is that:

(i) the Provider failed to adequately assess the Complainants' mortgage loan account under the MARP and has failed to respond to the Complainants proposals for the settlement of the mortgage loan in order to enter into an alternative repayment arrangement; and

(ii) the mortgage was agreed as an interest-only loan for the entire duration of the loan and so there are no arrears on the loan.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 9 July 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

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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.

Following the consideration of an additional submission from the Complainants, the final determination of this office is set out below.

It should be noted at the outset that this Office can investigate the procedures undertaken by the Provider regarding the MARP but will not investigate the details of any renegotiation of the commercial terms of a mortgage loan, which is a matter between the Provider and the Complainants and does not involve this Office, as 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 a Complainant, within the meaning of ***Section 60(2)(b***) of the ***Financial Services and Pensions Ombudsman Act 2017***.

Insofar as the complaint touches upon potential breaches of data protection legislation, these are not matters which this Office can investigate and instead are matters to be brought to the attention of the Data Protection Commission. This Decision therefore addresses only the other issues raised in the complaint and not any suggestion that there were deficiencies in the response received to a Data Access Request.

The FSPO has noted a certain lack of detail in the contentions of the Complainants, and it has also noted a certain dearth of documentation, especially correspondence, submitted by either party to the complaint. The majority of the evidence submitted by the Provider to the present complaint appears in the form of systems notes (rather than copies of letters or call recordings) which are challenging to interpret and difficult to verify without further documentation. The Complainants however, do not appear to have specifically challenged many of the assertions that the Provider has made, based on its systems notes. The systems notes provided are therefore accepted as prima facie evidence of what is contained therein.

Duration of Interest-Only Repayments Agreed

There is a dispute between the parties as to whether the mortgage loan was originally agreed as an interest only mortgage for the full duration of the term, or for a 12 month period. This is fundamental to the Complainants' allegation that the loan account should not be in arrears, as the interest-only payments have been met.

In the letter of loan offer dated 27 August 2003, the following terms appears:

> *"Loan Offer Letter*
>
> *. . .*
>
> ***Applicant(s)*** ***Solicitor:***
> *[The Complainants]* *[Complainant's Solicitor]*

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Security Details	***Security Details***
[the secured property]	*[a second secured property]*
Building Insurance Cover	***Building Insurance Cover***
€263,000.00	*€152,00.00*

Purpose of Loan:

R.I.P.	*€375,000*

Repayment Details	***Loan Account***
Customer Account Number:	*••••••••••9501*
Loan Type:	*GUARANTEED INV*
Loan Amount:	*€640,000.00*
Interest Rate:	*2.58%*
Interest Type:	*FIXED FOR 12 MONTHS*
Term:	*25 YRS*
*Monthly Loan Amount**	*€1,376.00*
Retention Amount	*€0.00*

Indemnity Bond Amount
Indemnity Bond Premium

(The Euro Conversion Rate is 0.787564)

**This does not include any step-up payments you may have chosen to make to accelerate repayment of your loan or to enable you to taken payment breaks*

Specific Loan Offer Conditions

(1) What you (applicant(s)) have to attend to

The Borrower(s) must have a suitable Life Assurance policy in the amount and the term of the loan. . . .

A copy of the comprehensive Household Buildings Insurance policy document is to be forwarded to [the original lender] prior to requesting the loan cheque. . . . This is an Investment Property. . . .

It is a condition of the loan offer that a valid direct debit mandate or internal transfer instruction be provided by you to the Company prior to drawing down your loan cheque. . . .

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(2) What your solicitor has to attend to

Receipt confirming that existing loan with [another Provider] has been discharged to be obtained by the Solicitor within five days of completion of Mortgage and placed with the title deeds.

(3) What requires no further action

The rate of interest applicable to this loan will be fixed for the fixed rate term specified in the loan offer letter.

The fixed rate quoted shall be subject to variation prior to drawdown in accordance with any variations in the fixed rate offered by the Company to new applicants for similar loans.

[The original lender] has agreed that the borrower(s) pay interest only for the first 60 months of this loan facility. Thereafter, repayment will revert to capital and interest for the remaining term of the loan.

(4) Other

It is a condition of this loan that a solicitor confirm the purpose of the funds prior to the issue of the loan cheque.

LOAN OFFER – CONSUMER CREDIT ACT 1995

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IMPORTANT INFORMATION AS AT 27/08/03

1.	*Amount of credit advanced*	*€640,000.00*
2.	*Period of agreement*	*25 YRS*
3.	*Number of repayment instalments*	*300*
4.	*Amount of each instalment**	*€1,376.00*
5.	*Total amount repayable*	*€1,052,800.00*
6.	*Cost of this credit (5 minus 1)*	*€412,800.00*
7.	*APR***	*3.53%*
8.	*Amount of endowment premium* (if applicable)*	*To be advised*
9.	*Amount of mortgage protection premium* (if applicable)*	*To be advised*
10.	*Effect on amount of instalment of 1% increase in first year in interest rate ****	*€533.33*

** As calculated at the time making agreement.*
*** Annual percentage rate of charge.*

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**** This in the amount by which the instalment repayment will change in the event of a 1% increase in the interest rate of which the above calculations are based.*

[WARNINGS]

LOAN OFFER – GENERAL CONDITIONS
. . .
5
(e) Investment or Endowment Loans - If the capital is be repaid by way of an investment policy and monthly payment of interest only are to be made to the Company, then the investment or endowment policy must be assigned to the Company, the original policy received by the Company before drawdown of the loan, and noted that this assignment served on the relevant insurer. Where a policy is linked to growth of investments, the proceeds of the policy may not repay the loan in full and the applicant(s) will be responsible for any shortfall. The assurance premiums may be subject to review by the insurer may therefore need to be increased by the applicant(s) during the term of the policy.
. . .

8 ***Securitisation***

The Company made any time and time to time transfer, assign, mortgage and/or charge the benefit of all or any part of the mortgage, the Loan or any part thereof and all of the rights and interests of the Company in and to any life assurance assigned to the Company and all other contracts and policies of insurance relating to the property on such terms as the Company may think fit, with or without notice to the applicant(s) or any other person.
. . .

10 Interest Rate

(a) All loans are subject to the prevailing interest rate at the date the loan is taken up. Subsequently, the interest rate may vary in accordance with the mortgage terms.

(b) In the case of a fixed-rate loan the following conditions will apply:-

(i) The rate of interest applicable to this loan will be fixed at the rate and the period specified in the loan offer.

(ii) The applicant(s) on the expiry of the fixed term may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period if such an option is made available by the Company.

Where such option is not available or, if available, the applicant(s) fail to exercise the option, the interest rate applicable will be a rate of interest which may be increased or reduced by the Company from time to time at any time (the variable interest rate), and in this respect, the decision of the

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Company will be final and conclusively binding on the applicant(s).

. . .

"This document does not constitute a legally binding offer.

The figures are provided in good faith and are an accurate representation of the offer that the lender would make under current market conditions based on the information that is been provided. It should be noted, however, that the figures could fluctuate with market conditions.

The provision of this information does not oblige the lender to grant a credit."

ITEM	***DESCRIPTION***
1. Lender	*[original lender]*
2. Description of Product	*Loan Type: GUARANTEED INV* *Purpose of Loan: RIP* *Security Details: the loan is secured by a legal mortgage on a property. See loan offer details.*
3. Interest Rate	*Interest Rate: 2.58%* *Interest Type: FIXED FOR 12 MONTHS* *(a) In the case of a fixed-rate loan the following conditions will apply . . . [as above]*
4. Annual Percentage Rate (APR)	*3.53%*
5. Amount of Credit Advanced	*€640,000.00*
6. Duration of Home Loan Agreement	*25 years*
7. Number and frequency of payments	*300 monthly payments*
8. Amount of each instalment	*Not Applicable*
9. Interest Only Home Loans	*12 months at €1376 followed by 288 repayments of €1882.67* *"(a) Investment or Endowment Loans* *If the capital is to be repaid by way of an investment policy and monthly payments of interest only are to be made to the Company, then the investment or endowment policy must be assigned to the Company, the original policy received by the Company before drawdown of the*

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	loan, and noted that this assignment served on the relevant insurer. Where a policy is linked to growth of investments, the proceeds of the policy may not repay the loan in full and the applicant(s) will be responsible for any shortfall. The assurance premiums may be subject to review by the insurer may therefore need to be increased by the applicant(s) during the term of the policy. . . .
10. . . .	
11. . . .	
12. Earlier Repayment	*The borrower(s) may not repay the principal of the loan in part and if the borrower(s) wish(es) to repay the principal of the loan before the expiry of the fixed term the borrower(s) shall pay in addition to all principal and interest accrued to the date of the repayment of the principal sum a sum equal to an additional six months interest.* *A release fee will be applied on mortgage redemption.*
13. . . .	
14. Illustrative Amortisation Table	***Opening Balance*** ***Capital and Interest Repayments*** ***Interest Charges*** ***Closing Balance*** *Month 1* *€640,000.00* *€1,376.00* *€1,376.00* *€640,000.00* *[Months 2 to 12 in identical terms]* ***Balance at end of Year 1*** *€640,000.00* ***Year*** ***Opening Balance*** ***Capital and Interest Repayments*** ***Interest Charges***

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	Closing Balance
	2 *€640,000.00* *€22,592.04* *€22,592.04* *€640,000.00*
	[Years 3 to 25 in identical terms]

Section 14 of the above table is illustrative only based on prevailing interest rate and are subject to fluctuation in line with interest rate changes. The actual schedule is likely to vary from this as this illustration assumes that the loan was drawn down on the 1st of the month.

Tax Relief at Sources not included in the above Table

IN THE EVENT OF DISCREPANCIES BETWEEN THE INFORMATION PROVIDED IN THIS INFORMATION SHEET AND OTHER DETAILS, THE DETAILS ON THE LOAN OFFER LETTER PREVAIL.

[WARNING]"

Anaysis

Far from providing clarity in relation to the repayment obligations of the Complainants in the present case, the loan offer, special conditions, general conditions, and illustrative table appear in conflict with one another. Nevertheless, the loan was accepted by the Complainants in those terms as follows:

"LOAN ACCEPTANCE

(a) I/We acknowledge receipt of the general and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, Terms and Conditions explained to us by our Solicitor and I/We fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. We undertake to complete the Mortgage Deed as soon as possible.

(b) I/We hereby confirm that I/we understand that the mortgage and all associated rights and interest (including the loan and any other debt secured thereby and the interest in related insurances and assurances) will be freely transferable by the Company on such terms of the Company may think fit as part of the loan transfer and mortgage securitisation scheme.

(c) . . .

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[Signed by the Complainants]
DATED THIS 29 DAY OF SEPT 2003"

With their signatures, the Complainants accepted the terms and conditions attaching to the loan, confirmed that the terms and conditions had been explained by their solicitor, and that they understood those terms and conditions.

I accept that the illustrative amortisation table contained within the offer of loan, suggests that the loan in question was agreed on an interest only basis for its entire duration. The illustrative table suggests that payments of €1,376 per month were to be made for the first 12 months and that payments of €1,882.67 per month would be made from years 2 to 25, leaving a balance of the principal loan amount of €640,000. This table is expressed to be illustrative only and is subject to the following:

> "IN THE EVENT OF DISCREPANCIES BETWEEN THE INFORMATION PROVIDED IN THIS INFORMATION SHEET AND OTHER DETAILS, THE DETAILS ON THE LOAN OFFER LETTER PREVAIL."

In addition to this clear clause as to the supremacy of the special conditions, I am cognisant that in ***Allied Irish Banks plc v Pollock*** **[2016] IEHC 581**, in the context of the construction of loan facilities, Baker J confirmed that any special condition of a loan facility will trump any general terms and conditions that have been incorporated into it. According to Baker J:

> "*That the special conditions will prevail where there is any difference between applicable special conditions and the general conditions is not in doubt*."

The special condition relevant to the interest only period in the loan offer states as follows:

> "[The original lender] *has agreed that the borrower(s) pay interest only for the first 60 months of this loan facility. Thereafter, repayment will revert to capital and interest the remaining term of the loan*."

While I accept that other terms of the loan offer and illustrative table leads to some confusion in relation to the duration of the interest only period, in my view special condition 3 is very clear in this regard. The contract between the parties provides for a five-year interest only period and the loan was then to revert after five years, to capital and interest repayments. From my review of the available documentation and account statements, I am satisfied that the Complainants were afforded the five-year interest-only period that they contracted for.

There are three other circumstances surrounding the present loan that would indicate that neither party to it understood that the interest-only period would last for the duration of the loan. Firstly, there is no suggestion that any endowment policy (or other similar investment policy) was taken out by the Complainants to repay the principal at the end of the 25 year term, or that such a policy was requested by the Provider at the time. This tends to point against an agreement that the loan was an interest-only loan for its duration. Secondly, and at the end of the five-year interest only period, further interest only periods

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were agreed between the parties and made available to the Complainants in 2011, 2012 and 2013.

Thirdly, although the Complainants had expressed dissatisfaction with the manner in which various proposals as to the sale of the property were dealt with by the Provider, during the period 2010 to 2016, there is no evidence before me that at any time during this period, the Complainants expressed their view to the Provider that the loan was an interest-only loan for its 25 year duration. This argument was not articulated by the Complainants when this complaint was initially submitted to this Office, and was not raised until the letter of offer was submitted by the Provider in response to the complaint. Although it was not originally raised, the matter has been dealt with in much subsequent correspondence between the parties, and so it is considered appropriate to address that issue, as part of this adjudication.

These three factors (ie no endowment policy, further grants of interest-only periods, and no previous complaint by the Complainants) coupled with special condition 3, lead me to firmly conclude that the loan agreement was not one for interest-only, for the duration of the loan.

It should be noted, however, that I can find no basis for the Provider's assertion that the loan was initially agreed for a 12 month interest-only period. Rather, the only 12 month agreement in the initial loan offer appears to me to be in relation to the applicable interest rate which was fixed for a period of 12 months at 2.58%. Indeed the Provider's own systems notes (set out below) from January 2008 state clearly that the loan in question was subject to a five-year interest-only period, that was due to expire in November 2008. The Provider's stance on this in the present complaint is difficult to understand.

On the basis of the terms of the loan offer and the surrounding circumstances, I am of the view that the interest-only period on the loan was agreed to last for five years. Though the clarity of the loan offer in its entirety, leaves a lot to be desired, I note that the Complainants had the benefit of legal advice during the loan application and further acknowledged in their acceptance of the loan, that the terms and conditions had been explained to them.

In all of these circumstances, I am not willing to uphold this aspect of the complaint.

MARP Assessment

It appears that the Complainants' mortgage account first went into arrears in January 2011 and a payment was missed in July 2013 but an additional payment was received in September 2013. After that, sporadic and partial mortgage repayments were made to the account and the account was in arrears of more than €170,000 by the end of 2018.

It appears that while the secured property in question was initially purchased as an investment property, the first Complainant lived there as his principal dwelling house for several years. It is not apparent from the information available to me what the exact dates of the first Complainant's occupancy of the secured property were. The Provider has argued that by 2018 at the latest, the correspondence address associated with the secured property was no longer that of the secured property, which indicates that the Complainants no longer occupied the secured property. For this reason, the Provider says that the CCMA and the

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MARP policy no longer apply to the loan account. This has not been refuted by the Complainants.

Log of Calls, Meetings and Correspondence

The Provider has submitted a record of letters sent to the Complainants in relation to the arrears. This record indicates that the first letter notifying the Complainants of arrears were sent in **June 2011**. Thereafter monthly and quarterly matters in accordance with the CCMA were sent to the Complainants. Between 2011 and 2016 those letters were sent to the correspondence address only. From March 2016, the record indicates that the Complainants were separated or divorced and thereafter the relevant letters were sent both to the secured property and correspondence address.

Five sample CCMA letters have been submitted by the Provider dated 29 June 2011, 19 July 2011, 20 March 2012, 19 December 2016, and 20 March 2017. These letters indicate the date the mortgage fell into arrears, the number of repayments missed, and the total amount of missed repayments and the arrears on each given date. The letters indicate that the mortgage account is covered by the Provider's Mortgage Arrears Resolution Process (MARP) and contain various warnings in relation to the impact of missed payments on the credit rating of the Complainants and the potential for legal action. The letters encouraged the Complainants to engage with it, to agree a solution. The letters also encourage the Complainants to seek the advice of the Money Advice and Budgeting Service.

Copies of the Provider's debt management notes and mortgage notes (which are not in date order) have been submitted. Some of the relevant entries are recorded as follows:

- 01/01/2008 – 5 year interest only facility due to expire in November 2008
- 04/02/2008 – letter sent advising of transfer to capital and interest
- 21/02/2008 – call from first Complainant seeking to continue interest only for a further 5 year period
- 30/04/2008 – loan transferred to tracker rate as per customer request
- 18/02/2011 – call from first Complainant to state that he could only afford payments of €1000 per month; directed Provider not to contact the second Complainant as she has an ongoing mental health illness
- 28/06/2011 – 12 month interest only period approved to allow customers to arrange their finances and seek a long term solution; noted as a separation case
- 30/06/2011 – applied 12 month interest only July 11 – Jun 12; letter sent to customer
- 18/04/2012 – Interest only approved for 12 months; customers are separated; facility being granted to allow customer to sell the property; customer trying to sell property in Romania to recoup monies invested there
- 25/12/2012 – meeting with GH to go through and complete SFS; despite interest-only deal in place, first Complainant requesting a 6 month moratorium to put the property on the market and move tenants out for viewings etc
- 30/11/2012 – INO Interest Only

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- 01/02/2013 – GH meeting with first Complainant; noted SFS from October not yet returned to Provider; new SFS completed, to be signed by second Complainant; proposal for 6 month moratorium for sale of property
- 28/02/2013 – A deal expiry letter issued
- 19/03/2013 – appeal received from Complainant as to his treatment under MARP
- 15/04/2013 – First Complainant requested meeting with GH even though appeal is pending; wants to extend interest only payments for 12 months
- 01/06/2013 – Reduced Payment Amort (Arrangement Amount €1,000.00, term 6 months, start date 25/06/2013, end date 25/11/2013)
- 28/06/2013 – SFS submitted for a reduced repayment of €850 per month. GH
- 17/09/2013 – Inbound call from first Complainant; advised he was sticking to deal of €850 per month arranged by GH; advised deal is €1,000 per month as SFS indicates the €1,000 per month is affordable; disputed by first Complainant
- 16/01/2014 – outbound call to first Complainant requesting certain documentation and an SFS if customer is looking to pursue the sale of the property at an expected shortfall
- 23/01/2014 – inbound call from first Complainant; very annoyed as he says he has sent in 3 requests and had no response
- 07/02/2014 – outbound call to first Complainant; arranged call back to complete SFS on 17/02/2014 and for first Complainant to send bank statements and bills confirming secured property is his personal dwelling house
- 20/02/2014 – SFS appointment; customer seeking monthly repayments of €850; agent recommended that no affordability demonstrated so look at figures again
- 16/03/2014 – outbound call to first Complainant on back of post received; no answer; customer sent in utility bills confirming this is now his PDH; bank statement required to confirm and no SFS attached; request to be treated as a single party and receive correspondence at property address
- 29/04/2014 – email of complaint from first Complainant re treatment under MARP; forward to appeals department
- 15/05/2014 – complaint call to follow up from complaint email; agent explained to first Complainant that a new SFS was required to propose a new deal; he indicated SFS completed in February 2014 and he did not want to go over details again; requested copies of all documents to be sent to third party adviser
- 16/05/2014 – follow up call, first Complainant to pass issue to financial adviser; confirmed people were viewing the property; agent reminded him that no deals could be offered
- 08/07/2014 – complaint call that the first Complainant did not receive prior notice of legal proceedings; informed no legal proceedings issued yet but account passed to third party and he was advised of this in previous letters (20/01/2014, 10/04/2014, 13/05/2014)
- 02/10/2014 – inbound call from first Complainant; states Provider is accusing him of not living at the property address which he says that he is; requested a call back; call backs unsuccessful
- 28/01/2015 – outbound call to third party adviser, no answer and left voicemail to return call to complete a SFS; later agreed call back to complete SFS

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- 29/01 to 03/02/2015 – multiple unsuccessful attempts to call third party adviser to complete SFS; completed 03/02/2015, proposal to pay €650 per month for 3 years
- 03/03/2015 – call back re email stating SFS deferred; agent explained why deferred (reason not recorded); third party unhappy as had understood the SFS was approved; wants to make complaint

- 24/03/2015 – GM called the third party adviser who said there was an offer of €420,000 for the property; shortfall process explained to her
- 26/03/2015 – outbound call to third party adviser; told adviser the Provider needed supporting documentation and information to proceed with shortfall case for first Complainant; emails sent listing supporting documentation required; property not on the market
- 02/04/2015 – valuation was ordered on correspondence address in error; apology made through third party
- 15/06/2015 – meeting between GH and adviser; Complainants' health problems noted, trying to sell the property for a number of years; offer of €420,000 in March has fallen through; first Complainant would not commit to a forbearance deal as fears tenants will move out but will lodge the proceeds of all rental income; GH explained that the Provider does not write down any debt so Complainants would be liable for any shortfall on the sale
- 18/06/2015 – email from GH to adviser following meeting; Provider awaiting some clarifications from valuer; if Complainants are submitting a new 'sale agreed' proposal, certain listed supporting documents will be required eg bank statements
- 29/06/2015 – second valuation needed; email sent to Complainants seeking permission
- 14/07/2015 – documents received; Provider awaiting permission to conduct a visit to the property
- 04/08/2015 – outbound call to third party looking for an update; agent explained the Provider could not proceed without the valuation and paperwork
- 10/11/2015 – email received from third party regarding an update to the sale of the property and advising that the SFS currently being completed
- 07/01/2016 – email to third party adviser; to assess any offer, the Provider needs the SFS and supporting documentation as per email of June 2015
- 18/01/2016 – email to third party adviser; Provider requesting an up-to-date valuation on application from the customer to sell the property; customer authorisation needed for valuation of property
- 10/02/2016 – email to third party adviser confirming receipt of SFS for both Complainants and requesting certain listed additional documents to proceed with a proposal to sell the property
- 29/03/2016 – third party adviser email to GH indicating surprise that ASU threatening to deem the Complainants uncooperative as they have submitted all required documentation
- 31/03/2016 – GH email to adviser stating no correspondence received
- 27/04/2016 – letter and supporting documents received from adviser; letter states that there is no offer on the property

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- 25/05/2017 – outbound call to adviser; meeting arranged for 29/05/2017 to go through details of the case
- 29/05/2017 – no reply to email to adviser to confirm meeting; local branch representative also unable to contact adviser by text or email

Standard Financial Statements Submitted

I have been furnished with certain documentation from the relevant period. By letter dated 30 June 2011, the Complainants were informed that an interest-only period of 12 months had been approved on the basis of their SFS, from 25 July 2011 to 25 June 2012. The relevant SFS has not been furnished in evidence.

A complete SFS from March 2012 has been furnished. The SFS was assessed on the basis that a 12 month interest-only period would be provided to allow the Complainants to sell the secured property and other property in Romania. The document indicated that various ARAs are considered by the Provider but that the interest-only period requested was the only affordable and viable option and so it was approved. This was confirmed to them by letter dated 26 April 2012, with the interest-only period to run from 25 May 2012 to 25 April 2013.

Two further SFSs from January and April 2013 have been furnished in evidence, but neither appear to have been assessed.

By letter dated 13 June 2013, Provider wrote to the Complainants in relation to an appeal submitted about their treatment under MARP. This letter set out the complaints made as follows:

- the Complainants contacted the Provider in 2010 to sell the property for €455,000 and were informed that it was its policy not to do deals to write-off shortfalls;
- information relating to the mortgage sent to another party in error; and
- length of time taken to get arrangement place on the property.

The letter indicated the expected resolution was that the Provider accept the proposal to sell the property with a payment of €50,000 towards the shortfall and the remainder of the debt to be written off.

The decision of the appeals board was to uphold the appeal due to "*inconsistencies with information received from bank representatives*" and delays in getting a forbearance arrangement agreed applied in relation to the secured property. In resolution of the appeal, the appeals board agreed a reduced payment of €1,000 for six months from June 2013. The letter notes Provider would be in contact to go through options for long-term ARAs.

An SFS from January 2015 was submitted with a proposal for repayments of €650 per month for 36 months. The assessment indicates that the analysis of the SFS shows affordability of €537 only and there was no long-term plan in place. The decision made by the Provider was to defer a decision in relation to the reduced payment sought. The note indicates that is was

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not satisfied that the Complainants were prioritising their personal dwelling house loan account. The assessment indicates that the Provider needed to see an improvement in the levels of repayment of the total debt in favour of the secured loan in question. There is no record of any written explanation of the decision or its rationale being sent to the Complainants.

Other Documentation

By letter dated **25 February 2013**, the first Complainant wrote to GH explaining that he was unable to meet him on 22 February due to correspondence received from Revenue which upset him greatly. The letter notes that he no longer has the emotional or financial capacity to deal with the varying demands. He requested a resolution from the Provider to negotiate the negative equity situation in relation to the secured property. He stated that in October 2010, an offer of €455,000 was on the table but that he was informed by the Provider at the time that the Provider would not negotiate. Quotations received in relation to the secured property in recent times indicated valuations of €300,000, €350,000 and €375,000. The letter concluded by stating that if there was no prospect of resolution with the Provider, he would have to consider his options. There is no record of a reply to this letter, though there was some correspondence between GH and the first Complainant at the time and the first Complainant's appeal was upheld in June 2013.

By letter dated **28 April 2014**, the first Complainant wrote a letter of complaint in relation to his account being forwarded to a third party collection agency which he stated was in breach of the MARP process. He stated that he had made four proposals to resolve the difficulties since October 2010 and not one of these proposals were acknowledged or discussed. He stated that these proposals were made to relationship managers. He stated that he completed MARP forms by phone in February AND March 2014 and is still awaiting result of the application. He noted that the Provider HAS been kept updated in relation to his financial, physiological and psychological health and considers the Provider's actions to be incomprehensible and inhumane. He noted the refusal of an offer of €455,000 on the property in October 2010, or a further three offers.

A response was received from the Provider on **8 July 2014,** which apologised for the delay in responding and noted that in error, the letter of complaint was not sent to the complaint handling centre until 16 May 2014. The letter stated that no legal proceedings had been commenced against the Complainants, though a letter of demand was sent on 10 April 2014. The Provider indicated that a number of unsuccessful attempts to contact the first Complainant by telephone were made between 16 January and 4 April 2014. In relation to applications for forbearance, the Provider states that it reviewed and assessed the applications and, as a result, a number of arrangements were put in place on the mortgage account:

- interest only payments from July 2011 to July 2012;
- interest only repayments from April 2012 for 12 months; and
- reduced repayment of €1000 per month from June 2013.

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The Provider expressed its regret that it was unable to accept the offer of €455,000 with a further repayment of €50,000 over 11 years, as it could not agree to write off the shortfall of approximately €42,000.

The letter noted that a phone call was made to the first Complainant on 20 February 2014 to advise that the affordability of the fourth application was not evident and he was to review the figures and update the Provider.
The letter noted that the third party adviser was acting on his behalf to provide the Provider with a repayment proposal and a completed SFS for consideration. As a gesture of goodwill, the first Complainant was offered a sum of €280 in compensation.

By letter dated **3 March 2015**, the third party adviser acting on behalf of the Complainants wrote to the Provider stating that it was receiving mixed messages on calls on 29 January and 3 February 2015. It states that it was made aware of 6 February 2015 that the proposal was declined but that it awaited a decline letter from the Provider. On 26 February 2015, the adviser stated that the Provider's agent informed her that the proposal was approved on the system, but on 3 March 2015, she was again advised that the proposal was declined and that there was no record on the system of a call on 26 February 2015. The adviser requested a decline letter, but was informed that was not the Provider's policy to provide this. The adviser was subsequently informed that the proposal was actually deferred and not approved or declined.

In a letter dated **10 March 2015**, the Complainants state that they did not receive a call back within a timeframe agreed on the call of 3 March 2015, nor written acknowledgement of receipt of the complaint dated 3 March, nor a response to the complaint, nor an up-to-date position in respect of the assessment of the proposal submitted. The letter further indicated that the Complainant had an offer on the property for €420,000 and they requested that the Provider consider whether it would accept same in full and final settlement of the outstanding mortgage, or alternatively would outline whether the Provider would consider the offer and then address the residual balance based on affordability.

By letter dated **26 February 2016**, the Complainants' financial adviser confirmed that there were no current offers on the property but that a number of offers on the property had been made during the period of financial difficulties. It noted the following:

- October 2010 offer of €455,000 (declined)
- Summer 2015 enquiry of potential offer of €400,000 (no response); and
- December 2015 enquiry potential offer of €420,000 (no response)

The adviser noted that the Complainants had no proposal for any shortfall that may arise given that the repayment capacity is limited. They argued that had previous proposals been acceptable, the shortfall arising would have been significantly less.

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Analysis

It has been noted above that this Office can investigate the procedures undertaken by the Provider regarding the MARP but will not investigate the details of any renegotiation of the commercial terms of a mortgage loan, which is a matter between the Provider and the Complainants and does not involve this Office, as 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 a Complainant, within the meaning of ***Section 60(2)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017***.
The crux of this aspect of the complaint is that proposals were made in 2010 and 2012 for the sale of the property at a shortfall and that had these been accepted, the arrears on the account would be substantially less. This Office is not in a position to interfere with the commercial discretion of the Provider in this respect and notes that there does not appear to have been any proposal to repay the entirety of the shortfall, that would have arisen. The Provider has stated that it does not have any policy of debt forgiveness, and this is not an issue with which this Office can interfere.

In relation to the process itself, it difficult to pinpoint the date and details of the proposals which the first Complainant states that he made in 2010 and 2012, as these do not appear to have been set out in the form of letters or other documentation. The CCMA 2010 (applicable from January 2011) obliged the Provider to assess any SFS completed by a customer in arrears and further obliged it to explore all options for ARAs and document same. By letter dated 30 June 2011, the Complainants were informed that an interest only period of 12 months been approved on the basis of their SFS from 25 July 2011 to 25 June 2012, but the relevant SFS has not been furnished in evidence. The Provider has, in that manner, therefore failed to provide evidence that it complied with its obligations under Provisions 32, 33 and 34 CCMA 2010.

In relation to the SFS from March 2012, the SFS does not refer to any specific sum offered for the secured property. It was assessed on the basis that a 12 month interest-only period would be provided to allow the Complainants to sell the secured property and other property in Romania. The document indicates that various ARAs were considered by the Provider but that the interest-only period requested was the only affordable and viable option and so it was approved. This was confirmed to them by letter dated 26 April 2012, with the interest-only period to run from 25 May 2012 to 25 April 2013. I am satisfied that the Provider complied with its CCMA obligations with regard to the 2012 proposal, though I note that the first Complainant is of the view that a specific offer was made which was not responded to. As no further detail of this has been made available, I am unable to uphold this aspect of the complaint.

In January and April 2013, two further SFSs were completed by the Complainant and do not appear to have been assessed. This was prior to the effective date of the CCMA 2013 and so the CCMA 2010 continued to apply. As the SFSs were not assessed in any way, it appears that the Provider was in breach of Provisions 30, 21, 32, 33 and 34 CCMA 2010.
The Provider has sought to explain this by arguing that the Appeals Board was then dealing with the matter but this did not relieve the Provider of its obligations under the CCMA to

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properly assess the proposals and no documented evidence of any assessment has been submitted. The Provider's own systems notes indicate that a further SFS was submitted on 28 June 2013 for a reduced repayment of €850 per month. Again, there is no record of any assessment of this proposal and so the Provider was again in breach of CCMA provisions in this regard. The relevant SFS has not been submitted to this Office. The CCMA 2013 was then in effect, so Provisions 35, 36, 37, 39, 40 (relating to the assessment) and Provision 45 (relating to the Provider's obligation to provide reasons why an ARA has not been deemed appropriate) have been breached.

From about January 2014 onwards, the systems notes indicate that the Provider was seeking a completed SFS in conjunction with supporting documentation if the Complainants wished to put a proposal for the sale of the secured property forward to the credit committee. Though there is some reference to an SFS being completed in 2014, it is not clear to me that this process was completed at any point, or what the proposal at that time was. There appear to have been multiple unsuccessful attempts to call the Complainants' third party adviser to complete and progress an SFS in early 2015. When the SFS was submitted with the proposal to pay €650 per month for three years, a decision was taken by the Provider to defer a decision on the proposal. On the basis of a complaint letter then received from the Complainants' third party adviser in March 2015, it appears that the Provider did not provide clarity to the Complainant in relation to the proposal.

Provision 45 CCMA 2013 states that when a lender does not offer a borrower an ARA, the lender must provide reasons on paper or another durable medium to the borrower and inform the borrower of matters such as other options available, and the borrower's right to appeal. There is no record of any letter or email having been sent to the Complainants informing them that their proposed ARA would not be assessed for the time being and why this was so. This is clear breach of provision 45 CCMA 2013.

It appears that an offer of €420,000 made on the property in March 2015 and when the Provider was informed of this, the shortfall process was explained to the third party adviser and certain supporting documentation and information to proceed with an application for shortfall approval was sought. By June 2015 when the parties met, the offer had fallen through and no new proposal was in fact submitted by the Complainants. In June 2015, the Provider sent an email outlining the various documentation that would be required should a new offer be made on the property.

Thereafter it appears that there were various communications between the Provider and the third party adviser but no further offers were made on the property and there were no formal proposals made to the Provider. I note that a letter of complaint was sent by the first Complainant in April 2014 and although this was responded to in July 2014, the Provider has acknowledged that there was a three week delay in sending this to its complaints Department and has offered the Complainants €280 in compensation for the delay.

The Complainants have requested that their situation now be assessed under MARP, though it is not clear what proposal, if any, is being made by the Complainants as there is no evidence before me that there is a current offer in relation to the property. In addition, it appears that the mortgage loan in question has been sold to a third party entity and, in such

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circumstances, it would no longer be open to the Provider to conduct an assessment of any alternative repayment proposal by the Complainants.

In these circumstances, I consider that the only appropriate course is to direct the Provider pay a sum of compensation to the Complainants for the various failures by the Provider to comply with its obligations under the CCMA 2010 and 2013 as set out above, in relation to ARA proposals submitted by them which were not adequately assessed, or where the rationale for the decisions taken, was not adequately documented or communicated.
As previously noted, these failures relate to the procedures applied by the Provider in assessing proposals made by the Complainants, and do not concern the ultimate decision of the Provider not to approve a sale with a shortfall, or to write down the debt.

I note that 3 separate ARAs were afforded to the Complainants from 2011 to 2013 to assist with their financial difficulties, and that there was a considerable amount of communication in terms of calls and meetings between the parties between 2010 and 2016. On the other hand, the various breaches of the CCMA 2010 and 2013 outlined above in relation to the Provider's failures to assess and properly document its assessment of proposals submitted by the Complainants are significant.

Further concerns arise in the present case in relation to records retained by the Provider and submitted to this Office. Provision 52 CCMA 2013/55 CCMA 2010, for example, requires a lender to maintain an up-to-date log of all appeals received to include details of relevant correspondence. This Office has not been furnished with any correspondence from the Complainants that led to the holding of an appeal by them in 2013 and the subsequent decision to afford them reduced repayments of €1,000 per month for six months. Provision 62 CCMA 2013/53 CCMA 2010 obliges a lender to maintain full records of all steps taken, and all of the considerations and assessments required by the CCMA. This provision was also breached in relation to the Provider's failure is to properly document its assessments of SFSs received in 2013. Provision 63 CCMA 2013/54 CCMA 2010 obliges a lender to maintain records of all communications with borrowers in a manner that is readily accessible. Although the notes submitted by the Provider are not as clear as I would like, I accept that this provision has been complied with.

In all of the circumstances, to take account of the Provider's failures, I consider it appropriate to partially uphold this complaint.

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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)(a) and (g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €6,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

- The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

15 August 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.