An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0267
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Fees & charges applied Delayed or inadequate communication Level of contact or communications re. Arrears Legal fees charged Arrears handling (non- Mortgage Arears Resolution Process)
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants have two loan accounts with the Provider in relation to buy to let properties. After falling into arrears on the accounts in **December 2011**, the Complainants argue that they have experienced customer service difficulties and an unwillingness on the part of the Provider to engage with them in an attempt to resolve the situation. They state that the Provider has breached commitments made to them and applied incorrect interest rates. Further, the Complainant states that since a receiver was appointed over one of the properties, the Provider has failed to engage with them at all, in relation to the accounts.

The Complainants' Case

The Complainants state that they purchased two apartments in **March 2006**, partially funded by two loans from the Provider. They indicate that their experience of dealing with the Provider is one of very poor customer service and a lack of regard to the commitments made by it during negotiations to deal with the two loan accounts. They state that in **2008**, the Provider apologised and refunded their accounts four times, for the overcharging of interest. They state that although the account only went into arrears in December 2011,

they had commenced engagement in **2009** to address the difficulties in meeting their loan commitments. They state that they dealt with numerous officials that came and went over the period, which has resulted in delays in dealing with the problem of mounting loan arrears.

The Complainants state that on **24 July 2014**, the Provider indicated that it was unwilling to offer them an alternative repayment arrangement as the mortgage was unsustainable. They state that they had a meeting in **September 2014** and followed up with the necessary the paperwork by **February 2015**.
They further state that they made a proposal to the Provider in **May 2015** on how to deal with the accounts. The Complainant states that on **17 July 2015**, they received notification that the account had been passed to the legal team but there was no engagement or communication in relation to their last offer. They argue that since that date, they have been unable to achieve any meaningful engagement with the Provider. In **January 2016**, the Complainants state that they were informed that a receiver was appointed over one of the properties. They state that there has been no engagement from the Provider since then. They claim that they sought to engage with the receiver in relation to the residual amounts that will be owed on the loans, but were informed that the residual is dealt with by the Provider and not the receiver. When the Complainants attempted to engage with the Provider in relation to this, there were told that they had to engage with the receiver. They say that they cannot get engagement from anyone, in an attempt to resolve the situation.

The Complainants state that the position adopted by the Provider in relation to an interest rate change was not in accordance with the agreement they made. They argue that delays in dealing with their account have resulted in additional loan arrears. They argue that the Provider did not engage fully with them in assessing proposals to deal with the arrears or to agree a resolution. They further argue that they have not been able to get any engagement with the Provider, since a receiver was appointed. The Complainants submitted a detailed chronology of events in relation to the complaint and set out dates of meetings, correspondence and telephone calls.

The Complainants indicate that there was no agreement in place in relation to the sale of the properties in **April 2015** and they did not receive settlement figures. The Complainants state that only a lump sum in relation to residual debt was discussed and that they were not presented with the opportunity to repay over a 20 year period. They refute the suggestion that the Provider's case manager called their financial adviser on the 27 May 2015 advising that a proposal was required before 19 June 2015 and they say that there is no record or note of this call having been received. They question why it took 18 months for a receiver to be appointed to the second property after the first appointment. The Complainants argue that they did not have an opportunity to place the property on the market as the Provider insisted on having an agreement in place first, to deal with the residual debt, as reflected in the notes of the meeting from 6 November 2014. The Complainants also raise queries about the sale price of the properties, in the receivership process.

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The Provider's Case

In relation to complaints concerning an agreement reached between the parties whereby the Provider agreed to reduce the interest rate on both mortgage accounts to 3.41% for a 12 month period, the Provider accepts that it made an error in applying this interest rate. The Provider points to correspondence issued to the Complainants on **12 February 2013** which confirmed that the interest rate on both of the accounts had been reduced to 3.41% for 12 months from March 2013. The Provider acknowledges the error made in applying the rate and apologises for any inconvenience caused to the Complainants thereby. The Provider states that correspondence issued to the Complainants on 17 June 2013 and 9 February 2015 advising the Complainants that adjustments were made to their accounts to rectify these errors.

In relation to the Complainants' assertion that the increase in their debt from €400,000 in November 2012 to €430,000 in June 2015, could have been avoided if the Provider had continued to engage with the Complainants, this is refuted by the Provider. The Provider argues that the increase in the amount owed by the Complainants was due to their failure to meet the contractual repayments due to be paid on their accounts. The Provider also refutes the allegation that the delays resulted in additional loan arrears for the same reason. The Provider also argues that the failure by the Complainants to place the properties on the market, despite the mortgages being deemed unsustainable in **February 2012** and **July 2014,** resulted in the increased arrears. The Provider contends that it provided the Complainants with a reduced repayment arrangement for 12 months from December 2012 to facilitate the sale of the properties, but the Complainants did not proceed with the sales.

The Provider states that correspondence issued to the Complainants on **27 February 2012** following an assessment of their financial circumstances which advised them that their two mortgages had been deemed unsustainable. There were further advised that asset disposal was the only course of action in the Provider's view. The Complainants were advised that the Provider would be willing to extend the interest only period on the Complainants' loan to facilitate the sale of the two properties. The Provider states that it held a meeting with the Complainants on **22 March 2012**, after which it was to consider a temporary rate reduction thereafter, if the Complainants made payments of at least €1,200 per month between the accounts. Following this meeting, the Provider states that payments to the two accounts for the following six months averaged €763 per month.

On **23 August 2012**, a representative of the Provider spoke to the first Complainant on the telephone and advised him that based on repayments being made to the accounts, the mortgages were not sustainable. He was advised in relation to the voluntary surrender process and informed that they would remain liable for any shortfall following the sale of the properties. A letter explaining the process was sent to the Complainants on **19 October 2012** in which they were asked to submit a completed Standard Financial Statement (SFS).

The Provider states that a further meeting was held with the Complainants on **14 November 2012**, following which the Provider approved interest only payments on both mortgage accounts from December 2012 for a period of 12 months. Correspondence issued to the Complainants on 19 December 2012 to confirm the arrangement. A reduced interest rate of

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3.41% was then applied to both mortgage accounts for a period of 12 months from March 2013. The Provider states that these arrangements were agreed so that the total monthly repayment was approximately €1,200.

The Provider states that the interest only arrangement ended in December 2013 and repayments reverted to full capital and interest repayments totalling €2,701 per month. Arrears at this time were over €22,000. The Provider states that it received a completed SFS and supporting documentation from the Complainants on **1 May 2014** but the case was not assessed until **July 2014** as not all of the required supporting documentation had been received. On assessment, the Complainants' mortgages were deemed to be unsustainable and correspondence issued to the Complainants on **27 July 2014** to confirm this.

The Provider states that on a call on **14 August 2014**, the first Complainant indicated to the Provider that he had discussed the Provider's "unsustainable" decision with the second Complainant and that they were going to place both properties on the market for sale. A meeting was held between the parties and the Complainants' financial adviser on **4 September 2014** and it was agreed that the Complainants would submit a notice of assessment along with the proposal in relation to the repayment of the residual debt following the sale of their property. By letter dated **22 September 2014**, a proposal was submitted on behalf of the Complainants for the Provider to accept an amount of €30,000 in full and final settlement of the debt remaining following the sale of the properties. A representative of the bank contacted the Complainants' financial adviser on **13 October 2014** and advised that the proposal put forward was not acceptable to the Provider.

A further meeting was held on **6 November 2014**, following which the Complainants were to submit a proposal in relation to the residual debt. The relevant information and documentation from the Complainants was received at the end of **February 2015**. On assessment, consent to sales approved on both properties – Property A to be sold for €110,000 with a residual balance of approximately €124,000, and Properly B to be sold for €100,000 with the residual balance of approximately €114,000. Residual balances were to be repaid with payments of €822 per month and €757 per month respectively. Alternatively, the Provider indicated that it was willing to accept a lump sum payment of €180,000 in full and final settlement of the residual €237,759 debt. The Provider states that its representative spoke to the Complainants' financial adviser on 12 March 2015 to advise him of the Provider's decision, and correspondence issued on **13 April** and **21 April 2015** with the details of the decision.

Correspondence was received from the Complainants on 1 May 2015 proposing a lump sum payment of €45,000 per property (ie €90,000) in full and final settlement of the residual balances of the two mortgage debts. On 6 May 2015, a representative of the Provider called the Complainants' financial adviser and advised that the proposal was not acceptable to the Provider as there was affordability to repay the residual debt in full. A further proposal on the same terms (i.e. €90,000 lump sum payment) was received by the Provider on **26 May 2015** and the Complainants' financial adviser was again informed on **27 May 2015** that the proposal was not acceptable.

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On **19 June 2015**, the same staff member contacted the financial adviser and advised that if no alternative proposal was submitted by 24 June 2015, the case would be referred to the Provider's legal department. Correspondence was received from the Complainants on 23 June 2015 in which the Complainants outlined a number of issues with how the Provider had managed their accounts. The Complainants stated that once the queries have been answered and reparation secured, they would enter into meaningful negotiations with the Provider. At this point, the management of the Complainants' case was passed to the legal department and a demand letter is issued to the Complainants on **27 July 2015**.

The Provider argues that it is not obliged to enter into an alternative repayment arrangement with borrowers. It notes that it assessed the Complainants' financial circumstances a number of occasions since arrears originated in December 2011.
The outcome of all assessment carried out was that the mortgages were not sustainable and the properties would need to be sold. The Complainants were informed in 2015, that the Provider consented to the sale of the properties and they were advised that that the Provider would accept a lump sum payment of €180,000 in full and final settlement of the residual debt of approximately €231,800 or alternatively the residual balance could be repaid over the remaining term with payments of 822 and €757 per month respectively. The subsequent proposal submitted by the Complainants in relation to the residual debt was not acceptable to the Provider. The Provider argues that in light of the Complainants' failure to accept the Provider' proposal, arrears on the accounts totalled over €61,000 at the time that demand letters were issued to the Complainants on 27 July 2015.

The Provider argues that once a receiver has been appointed to a property, arrears need to be cleared and full contractual payments met, before the Provider would agree to discharge a receiver. The Provider argues that it made it clear to the Complainants on a number of occasions that the mortgages were not sustainable and the properties would need to be sold but the Complainants did not progress the sale of the properties.

The Provider confirms that a receiver was appointed to Property B on **7 January 2016** and the property sold, with net sale proceeds of €112,205.26 lodged to the relevant account on 16 November 2017. The Provider states that a receiver was appointed on Property A on **10 July 2017**. The Provider states that it is satisfied that the decision to appoint a receiver on the Complainants' properties was justified in light of the level of arrears on the Complainants' account, the fact that neither mortgage was sustainable, and the Complainants' refusal to sell the properties. The demand letter that issued to the Complainants on 27 July 2015 demanded repayment of the balances on both mortgages in full by 6 June 2015 or the Provider would take whatever steps are deemed necessary to recover the debts or enforce its rights, including the appointment of a receiver.

The Provider has reiterated that the error made in applying the interest rate reduction to the Complainants' mortgage account of February 2013 was rectified, but offered the Complainants a goodwill gesture of €500 in relation to this.

The Provider states that the 18 month delay in the appointment of a receiver to Property A was due to an industrywide review of the tracker mortgage cases. Upon review, the property in question was not impacted so the Provider proceeded with the appointment of a receiver.

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The Provider has also reiterated that it agreed to an interest only repayment period from December 2012 for 12 months, and discounted interest rate for 12 months from February 2013 and further agreed to the sale of the properties subject to conditions, in April 2015. The latter offer was not accepted by the Complainants.

The Provider explains that certain calls were not recorded as the representatives in question was stationed in regional centres but that where recordings are not available, the call notes as entered on the file, have been provided instead.

The Provider confirms that in order for it to consent to the sale of the Complainants' property, a repayment arrangement would have to be approved in relation to the residual debt.
This repayment arrangement approval was made in April 2015 and letters of agreement sent to the Complainants but these offers were not accepted. The Provider further states that a number of calls took place between the Complainants' financial adviser and the Provider's case manager in which it was explained that the residual debt could be repaid by a lump sum amount of €180,000, or repayment over a 20 year term.

The Complaint for Adjudication

The complaint is that the Provider failed to engage fully with the Complainants in assessing proposals to address their loan arrears and made no effort to achieve a resolution with them. They complain that associated delays in dealing with their proposals have resulted in additional loan arrears, and that the position adopted by the Provider has not been in accordance with an agreement between the parties.

The Complainants state that an agreed interest rate reduction was not applied to their accounts. The Complainants suggest that they have been unable to get any engagement with the Provider, since a receiver was appointed over one of the properties in January 2016.

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

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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 17 June 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.

Following the consideration of a number of additional submissions from the parties, the final determination of this office is set out below.

It should be noted from the outset that this Office cannot examine the conduct or actions of a receiver, as a receiver is not a regulated financial service provider. Equally, this Office cannot examine a complaint against a financial service provider for the conduct of a receiver on the basis that a receiver is considered at law, to be an agent of the mortgagor (i.e. of the borrower) and not an agent of the financial service provider. This Office can, however, investigate the circumstances surrounding the appointment of a receiver. Insofar as the present complaint concerns the actions of the Provider prior to the appointment of the receiver, this can be investigated. Issues relating to the amount realised by the sale of the investment property by the receiver, falls outside the remit of this Office.

In addition, this Office will not investigate the details of any renegotiations of the commercial terms of a mortgage 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 decision of a financial service 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***.

LOAN A

By letter of loan offer (Loan A) dated **7 November 2005**, the sum of €216,000 was offered to the Complainants towards the purchase of Property A with a three-year interest only period. The security for the loan comprised the first legal charge over Property A. This loan offer was accepted by the Complainants on 10 November 2005 who thereby accepted the terms and conditions attaching to the loan, to include the standard commercial loan conditions attached thereto.

LOAN B

By letter of loan offer (Loan B) dated **15 November 2005**, the sum of €216,000 was offered to the Complainants towards the purchase of Property B with a three-year interest only period. The security for the loan comprised the first legal charge over Property B. This loan offer was accepted by the Complainants on 19 December 2005 who thereby accepted the

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terms and conditions attaching to the loan to include the standard commercial loan conditions attached thereto.

I have been furnished with the details of the communications between the parties between 2012 and 2015. Before dealing with specific complaints raised by the Complainants, is appropriate to set out this history.

INTER-PARTES CORRESPONDENCE, MEETINGS AND PHONE CALLS

By letter dated **30 December 2011**, the Provider wrote to the Complainants indicating that Loan A had gone into arrears that month in the sum of €521.26. A comparable letter was written on the same date in relation to Loan B referencing arrears of €510.79.

By letters dated 30 June 2012, the Complainants were advised that arrears had increased to €5,016.88 in respect of Loan A and €4,296.56 in respect of Loan B. Further arrears letters were sent over the years. It appears that arrears on the accounts were over €60,000 when a receiver was appointed over Property B in **January 2016**.

February 2012 – Loans are Deemed Unsustainable:

By letter dated **27 February 2012**, the Provider wrote to the Complainants in respect of Properties A and B confirming receipt of completed standard financial statements (SFSs) and noting that a review had been undertaken of their financial situation. The letter informed the Complainants that based on the assessment and information received, the Provider considered the loans "*to be no longer sustainable*". The Provider stated that it was of the view that:

> "*in the medium term we view that the only course of action available to you, would be asset disposal. However, in the short term we are willing to extend the interest only on the Buy To Let mortgage accounts above for a maximum period of six months, with funds being lodged against these accounts to facilitate the interest only repayments at a minimum. This agreement is subject to the properties being put on the market for sale*."

The letter went on to suggest that the disposal of the properties could be progressed by the borrowers themselves with the assistance of the Provider or in the alternative by way of 'voluntary surrender' of the property whereby the Provider would take full ownership of the properties which would be sold by it. The letter further reminded the Complainants that they would remain liable for any amounts owed, including any accrued interest, which was not recovered from the sale of the properties. The Complainants were encouraged to contact the letter writer, to arrange a suitable time to meet to discuss next steps.

A meeting took place between the parties on **22 March 2012**. Per a letter dated 19 October 2012, the Provider was to consider a temporary rate reduction following the meeting if the Complainants maintained payments of at least €1,200 per month between the accounts. It appears that payments made in the months following the meeting, fell well short of the €1,200 per month that had been discussed.

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The Complainants' March 2012 Proposal

By letter dated 27 March 2012, the Complainants' referred to the meeting the previous week and noted that there had been three suggested options put forward by the Provider. One of these options was to agree an interest only repayment period, paying approximately €1,200 per month, with a lower fixed interest rate than the current 4.5% they were being charged. The Complainants indicated that this level was not sustainable for them due to inconsistent rental income. They requested that the Provider would look to its cost of funds for the next number of years and apply a modest margin to their mortgage to ensure that they did not incur extra bank fees or penalties. This proposal was in essence a request to the Provider to reduce the interest rates applying to the loans. It does not appear that this proposal was responded to by the Provider at any point.

By letter dated **18 July 2012**, the Provider wrote to the Complainants indicating that the SFSs received along with the recent repayment history had shown that the interest payments on the loan accounts were "*currently unaffordable*". The letter continued as follows:

> "*If your loans are to be considered sustainable the minimum payment [the Provider] can accept would be the current interest repayments. If the situation is to continue whereby you are not in a position to maintain the interest repayments you may need to consider disposal of the properties.*
>
> *It is important for you to note that [the Provider] does not have a policy of debt forgiveness and therefore should [the Provider] agree to a sale where the proceeds are insufficient to repay the full debt you will remain liable for the outstanding balance of the loan*."

The first Complainant responded by email dated 28 July 2012, noting the content of the letter and questioning whether it represented the official response of the Provider to try and work through the situation. The author of the letter responded by email dated 30 July 2012 and noted that if the Complainants were unable to meet at least the interest payments, the loans would be considered unsustainable. By email dated 2 August 2012, the first Complainant asked that the Provider make contact with himself or of the second Complainant by phone as they made a series of proposals to try to work through the arrears problems. He further indicated that a number of commitments were made to them which were not followed through by the Provider and that the current input was not helpful. By email in response dated 3 August 2012, the Provider noted that while it was its intention to work with customers, it could not allow the situation to continue in light of the Complainants' repayments falling far short of the monthly interest due. The email stated that in the absence of a sustainable payment arrangement, the Provider encouraged alternative measures to be explored such as property disposal. He noted that he would call the first Complainant later that day by telephone to discuss the sale of the property more detail. There is no record of any call made on this date so it does not appear that this happened.

A record of a call from the first Complainant to the Provider on 23 August 2012 has been provided which follows up from the email chain. On the call, the first Complainant notes that

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a letter was sent by the Complainants to the Provider dated 27 March 2012 with proposals and was not replied to. The Provider's representative referred to the meeting of 22 March where the Provider had suggested payments of €1,200 per month but this did materialise. The Provider noted that as a monthly amount of less than the interest sum was being paid, the loans were considered to be unsustainable.

The first Complainant was given two options. One was to maintain full interest payments on both accounts. The other option was the disposal of the properties. The first Complainant stated that the interest rate being charged was ridiculous and noted that the Provider was to come back to them on it. The Provider stated that the 4.83% interest charged on one account was the standard variable rate and other account had the benefit of a 4.4% discounted rate.

The first Complainant complained that no response was made to the borrowers in relation to their March proposal and that the Provider was not making an effort to come to an arrangement with them. The Provider emphasised that the payments being made on the accounts were too low, though the representative agreed that the Provider should have responded to the proposal. Its representative noted that the proposal of an interest rate reduction was based on the Complainants paying €1,200 per month but nowhere near that figure was being paid. Rate reduction was therefore not an option. The Provider then discussed options for the sale of the properties with the first Complainant. Its representative noted that if the borrowers wanted to control the sale, there would have to be a proposal in place for the payment of the residual debt. Otherwise, the properties would have to be surrendered to the Provider for sale, though the Complainants would still be liable for any residual balance and Provider would then seek a proposal from them for the residual debt.

The Provider emphasised that sale was the only option unless the Complainants could make their interest payments. The Provider's representative recommended that the first Complainant speak to second Complainant and seek independent legal advice before making a decision on voluntary surrender. The overall tone of this call was very helpful and the Provider accepted that it should have responded to the proposal of 27 March 2012.

In an email dated 5 September 2012 submitted in evidence by the Complainants, the Complainants expressed their frustration that their proposal of 27 March 2012 was not responded to. They also indicated that they were disappointed that the Provider was unwilling to look at any interest rate reduction because of what the Provider claims was their failure to maintain repayments of €1,200 per month which the Provider appeared to believe they promised in the March meeting. The Complainants state that they instead promised to pay the Provider any monies received in rent, less any expenses, until they came to a manageable medium-term arrangement. They state that their situation had deteriorated further since the meeting due to excessive interest and surcharges being applied. The Complainants stated their belief that the Provider had failed to deal with them appropriately under the consumer code and requested that a further meeting be held to deal with the outstanding residual debt that they would face if they were forced to sell the properties at current market prices, as the Provider seemed to be insisting on.

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This email did not appear in the list of correspondence submitted by the Provider but since the Preliminary Decision issued, and following the Complainants' additional submission, the Provider has acknowledged that the email in question, was in fact sent to the Provider.

By letter dated 19 October 2012 and in response to an email of complaint via the Provider's website on 9 October (which has not been submitted in evidence) the Provider noted that the payments made since March 2012 had fallen considerably below the €1,200 expected and that it was not tenable to allow a situation to continue where unpaid interest continued to increase the level of debt. The author of the letter stated that the outcome of the meeting on 22 March 2012 was that the Provider would consider a temporary rate reduction if the Complainants maintained payments of at least €1,200 per month. He expressed his willingness to meet the Complainants again to discuss the ongoing management of the landing relationship and requested the completion of up-to-date SFSs.

Another email dated 31 October 2012 has been furnished in evidence by the Complainants in which they complained that they sent emails on 11 June, 4 July and 28 July looking for a response to their proposal of 27 March 2012 but that they had yet to receive one. The Complainants suggested that the situation had not been assisted by the lack of urgency of the Provider in dealing with them. It states that they would welcome the opportunity to meet again but would not see any point in providing any further financial information to the Provider.

12 Month Interest Only Arrangement:

Notes from a meeting dated 14 November 2012 indicate that the Complainants agreed that they would start making payments of €1,200 per month and that the Provider was then to look at a rate reduction to 3.41% in interest. Thereafter an interest only period would continue for 12 months until the situation was reviewed. Confirmation of the 12 month interest only period was sent to the borrowers by letter dated **19 December 2012**. An email was sent by the case manager on 5 February 2013 indicating that there was positive movement in relation to the rate reduction request, with agreement to reduce the rates to match the €600 per month to each account for a period of 12 months. By letter dated **6 February 2013**, the Provider wrote to the Complainants stating as follows:

> "*I am writing to inform you that in accordance with your recent request we have converted the above mortgage accounts to interest only repayment and reduced your interest rate to 3.41%. This arrangement is to last until the 31st December 2013. During this period you have agreed to lodge €600 per month to each account*. . . ."
>
> [My emphasis]

A further letter confirming the interest rate reduction to 3.41% was sent to the Complainants dated 12 February 2013. This letter stated that the rate being charged would be reviewed in February 2014.

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On 23 April 2013, Provider wrote to the Complainants in respect of Loans A and B notifying them of an interest rate increase of 0.25% on each facility. The Complainants responded by email to their case manager dated 30 April 2013 questioning whether the increase had been applied in error as it did not conform to the agreement between the parties in respect of the €1,200 per month payment. The case manager responded by email dated 30 April 2013 stating that "*I will make sure your accounts as amended to keep the interest rates at 3.41% for the agreed period*."

By letters dated 7 August 2013, the Provider wrote to the Complainants noting that arrears in respect of both loans have risen to more than €22,000 and requesting the completion of updated SFSs.

End of 12 Month Interest Only Arrangement:

On **7 December 2013**, the Provider wrote to the Complainants to confirm that the interest-only period on their facilities would expire at the end of the month and setting out the new monthly sum payable. The first Complainant rang the Provider on 6 January 2014 in relation to the letter received. The Provider confirmed that the interest only period expired in January 2014. The first Complainant expressed surprise at this as he was aware that it was for a 12 month period and he had been under the impression that it had commenced in March 2013 along with the change of interest rate. He indicated that it was a global solution so the rate change and interest-only period ought to have commenced at the same time. He was informed by the Provider that the interest only period had applied from January 2013 so it had expired. He was also informed that if he wished to apply for an extension of the interest only period, a new SFS would have to be submitted by him.

The Complainants contacted their case manager by email on 7 January 2014, stating that the expiration of the interest-free period was not as agreed. In an email dated 8 January 2014, the Provider confirmed that the interest only period that had applied was a 12 month arrangement and that interest only was no longer being offered. The Provider confirmed that the Complainants would "*have to return to capital and interest repayments or the properties will have to be sol*d." The Complainants were requested to complete updated SFSs.

The second Complainant responded to this email on the same date stating that the Complainants had lived up to everything that was agreed at the meetings and expressing surprise that the agreement was no longer an option. He stated that "*I agree with your opinion that leaves us only one option, as it was then, which is to sell the properties*." He also requested information on what would happen in relation to the residual debt on the accounts after sale. In further emails on 29 January 2014, the Complainants were encouraged to complete the SFSs and informed that the negotiation on the shortfall after the sale of the properties could be commenced once they have been placed for sale and an offer made on them.

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In a telephone call on 12 March 2014, the first Complainant indicated that he was told to get a valuation for the properties and then negotiate the residual balance with the Provider but that this did not make sense to him. He states that the Provider would not respond properly to his concern that once the property was on the market, it must be capable of being sold. He also requested an update in relation to the previous interest-only period. The Provider stated that interest-only was no longer being offered on the accounts. The first Complainant complained that the interest rate was increased despite a 12 month agreement on the rate and an assurance that it would not be. The Provider encouraged the first Complainant to complete a new SFS so it could progress matters.

In a telephone call on 23 March 2014, the first Complainant stated that no blank SFS had been received by him. He was encouraged to download a form from the Provider's website and return it within three weeks. The first Complainant stated that he was on hold for 15 minutes the last time he tried to call. The Provider highlighted that three months of bank statements and three recent payslips were needed, by way of supporting documents. The first Complainant was unable to confirm how much would be paid towards the mortgages that month but noted that €650 per month was being paid for Property A. He was asked him to confirm to the Provider how much he could pay per month as soon as possible, as it would take 6 to 8 weeks to assess the SFS. The Complainants submitted updated SFSs in May 2014 and were asked by their new case manager for supplemental documentation including a notice of assessment.

July 2014 – Loans Remain Unsustainable:

In a call on **23 July 2014**, the Provider contacted the first Complainant to inform him that its credit department had determined that the loans were unsustainable and both properties needed to be sold. He was informed that they would get a letter to that effect and the Provider would be in touch in several weeks, to make a plan with them in relation to the sales. He was informed there would be no agreement on the residual until the properties were sold. The first Complainant questioned how long the Provider would take to respond when an offer was made and he was told it should not take too long. The Provider also indicated that if the properties were not sold within 3 to 6 months, the Provider would sell the properties itself.

By letter dated 24 July 2014, the Provider informed the Complainants that it was unable to offer them an alternative repayment arrangement as their mortgages were unsustainable. It encouraged the Complainants to consider the voluntary sale or voluntary surrender of the properties. The letter noted that the Provider reserved its right to commence legal proceedings "*including the appointment of a fixed asset receiver*".

Proposals to Discharge the Residual Debt after sale of the Properties:

A letter was sent from a financial adviser acting on behalf of the Complainants, to the Provider's ASU dated **18 September 2014**, offering to pay €30,000 in full and final payment against the residual outstanding debt after the sale of the properties. The Provider called the financial adviser on 13 October 2014 and indicated that the €30,000 would not be sufficient.

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A meeting was then held on **6 November 2014**. A meeting note from the Provider's representative suggests that the Complainants were informed that their offer of €30,000 would not be sufficient and would not be accepted by the Provider in full and final settlement of the residual debt. The Complainants were also informed that the possibility of a reduced interest rate was not available to them. The Provider informed the Complainants that the Provider would expect a substantial repayment of the residual debt. The Complainants were also informed that the Provider would not be willing to split the debt between them as the debt was owed on a joint basis until the debt was cleared or an agreement reached. The Provider stated that it required that the residual debt be agreed, before the properties were sold. The properties were valued by the Complainants' auctioneer at €100,000 and €110,000 respectively.

An internal document prepared by the Complainants' case manager in and around February 2015 recommends that the Complainants are offered the choice to repay the residual debt of approximately €235,000 over 240 month period of approximately €1,550 per month or to make a lump sum payment of €180,000. This recommendation was based on available assets of the Complainants. The decision was communicated over the phone to the Complainants' financial adviser on 12 March 2015.

Formal letters reflecting the Provider's decision as regards the residual debt were sent to the borrowers dated **13** and **21 April 2015**. In addition to the application of the full sale proceeds of both properties to the loan accounts, the Provider stated that it required payment of €90,000 per property in respect of the residual debt. There was no mention in these letters of a repayment option over a 240 month period, even though this option appears to have been agreed by the Provider's credit department. The offers were made with certain terms and conditions as to the sale process. These letters were not accepted by the Complainants who continued to try to negotiate a lower lump sum payment on the residual balance.

By letter dated **28 April 2015**, the Complainants raised a number of concerns with the Provider's proposal, including the fact that VAT was payable on the sale of the properties and proposed instead that they would sell the property themselves and for the proceeds to be paid to the Provider after the VAT payment and sale costs. The Complainants also offered €45,000 per property in full and final settlement of the liability. In the letter of 28 April, the Complainants also raised a concern that there had been an error in the application of the interest rate.

In a call on **6 May 2015**, the Provider states that it notified the Complainants' financial adviser that the proposal of €45,000 per property was not acceptable and a more substantial lump sum was required as there was affordability for the residual debt to be paid in full. In a further call on 18 May 2015, the Provider states that it was agreed that an alternative offer would be submitted by the Complainants by the 22 May 2015. Contemporaneous systems notes of these calls rather than recordings of same, have been furnished by the Provider.

By letter dated **20 May 2015**, the Complainants offered to pay €90,000 on the residual debt as well as paying the VAT liability. The Provider states that it notified their financial adviser

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on a call on 27 May 2015 that this proposal was not acceptable given the level of affordability between the two borrowers. The Provider stated that it was agreed between them that contact would be made in relation to a new proposal by 19 June 2015, when the case would be transferred to the legal department for recovery. Again, contemporaneous systems notes of this call rather than a recording of same, have been made available by the Provider. The Complainants refute the suggestion that they agreed to revert with a new proposal by 19 June 2015.

The Provider responded to the concerns raised by the Complainants in relation to the interest rate by letter dated **12 June 2015**. The Provider stated that it had approved an interest rate reduction from 4.48% to 3.41% from February 2013. The Provider accepted that when a rate increase was applied to Loan A, from May 2013, the increase should have been 0.25% and not the 0.5% which was in fact applied. The Provider apologised for this error and refunded €731.72 to the account in relation to the incorrect rate, and confirmed that an adjustment would also be made in relation to the interest charged. A letter confirming the refund and interest rate reduction was sent from the loan administration department dated **17 June 2015**.

By letter dated **18 June 2015**, the Complainants wrote to the Provider stating that before they could deal with the outstanding amount due and reach an agreement on the repayment of the residual balance, a number of queries had to be addressed by the Provider which were raised in their letter of 28 April. They noted that the Provider had failed to deal with the interest rate issue in relation to the second account. They queried why the 3.41% interest rate reduction that was agreed to be applied for 12 months from February 2013 was increased in May 2013. The Complainants further stated that the agreement reached in November 2012 to allow interest only payments on the mortgage was wrongfully repudiated by the Provider in December 2013. They argue that arrears would not have increased had the Provider not gone back on its agreement. They noted that the offer made in their letter of 28 April 2015 had been rejected but they were not in a position to increase the amount offered, when their queries remain unanswered.

The Provider states that it left a voice message for the Complainants' financial adviser on **19 June 2015** informing him that if no alternative proposal was received by 24 June, the accounts would be transferred to the legal department. The Complainants deny that such a voicemail was left but the Provider has a contemporaneous system note to this effect.

In a further call on **24 June 2015**, the Provider states that it informed the financial adviser that as there had been no alternative offer made in relation to the residual debt, the accounts have been transferred to the legal department. The financial adviser was informed that the complaint raised in the letter of 18 June would be dealt with by the complaints department.

By letter dated **19 August 2015**, the Provider confirmed that the interest rate reduction of 1.42% that was offered to the Complainants in respect of Loan B remained in place for the duration of the 12 month period offered. In relation to Loan A, and the query as to how the interest rate increased in May 2013, the Provider stated that this was due to its variable rate increasing by 0.25% and that even though the overall rate increased, the Complainants were

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still availing of the interest rate reduction of 1.42%. The Complainants were informed that management of the mortgage accounts had now passed to the ASU's legal team.

Letters of Demand 27 July 2015:

Two letters of demand dated **27 July 2015** were sent to the Complainants in relation to both secured properties wherein the Provider demanded repayment of the entire sums due under the loan facilities by 6 August 2015. The letters of demand stated as follows:

> "*If all payment in cleared funds is not made by **5pm on Thursday, 6th August 2015**, the [Provider] will without further notice take the steps as is deemed necessary to recover this debt and/or enforce its rights under the security held to include the appointment of a Receiver and any other legal action*."

By letter dated 24 August 2015, solicitors on behalf of the Complainants responded to the demand letters expressing the regret of the Complainants that these letters had issued due to the extent of efforts made by them come to an accommodation in relation to the debt. Mediation was requested. As an alternative, the letter confirmed that the Complainants were prepared to agree to consensual sale of the properties and requested advice on what steps should be taken in that regard.

In a call on 14 October 2015, the Provider contacted the first Complainant to explain that it did not have a letter of authority to deal with the solicitor. The representative requested that the authority be sent promptly by email and indicated that the solicitor should then call the legal department on a given number.

Receiver Appointed:

The receiver appointed by the Provider wrote to the Complainants by letter dated 8 January 2016 informing them that he had been appointed as receiver over Property B by Deed of Appointment on **7 January 2016**. A letter in comparable terms was written to the Complainants on 11 July 2017 in respect of Property A referencing a Deed of Appointment dated **10 July 2017**.

The Provider called the first Complainant back on 19 January 2016 per his request. He stated that a receiver had been appointed and wondered what was happening as he was previously informed that the loan had been passed to the legal department. The Provider stated that any further negotiations would have to be dealt with through the receiver. The first Complainant was informed that once the receiver is appointed, the receiver manages things from there. The Provider gave the first Complainant an overview of what he could expect from the receivership process in terms of rental income and disposal of the property.
He was informed that once funds were allocated after the sale of the properties, the Provider would be in contact to negotiate the residual debt. The first Complainant was also informed to contact the receiver to collect personal belongings from the properties. The first Complainant indicated his disappointment that the Provider's legal department did not contact their authorised solicitor to attempt to progress the matter directly, with the Complainants selling the property as requested, and instead chose to appoint a receiver.

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ANALYSIS

Proposals, Increased Arrears and Communications

The Complainants have argued that they made extensive attempts to agree a solution to their overall debt with the Provider after the loans went into arrears. They suggest that if the Provider had come to an agreement with them or had abided by commitments made to them, that arrears on the loan accounts would not have increased to the level that they did.

When one views the correspondence and negotiations that took place between the parties from 2012 to 2015, in my opinion, the overall picture that emerges is one of both parties attempting to come to an agreement. I accept that the Complainants did try to seek to resolve their difficulties in meeting the loan commitments with the Provider. On the other hand, it is clear that as early as in February 2012, the Provider communicated its decision that the loans were unsustainable and encouraged the Complainants to sell the two secured properties in order to reduce the liabilities and the loans. I note that a six-month interest only period was applied on the accounts from February 2012. I further note that a 12 month interest only period was applied on the accounts from December 2012 coupled with an interest rate reduction from February 2013. I will return to the issue of the reduced interest rate.

There were a number of attempts by the Provider during this period to encourage the Complainants to sell the properties. In particular I note the call of **23 August 2012** in which the Provider explained to the Complainants that because they were not meeting their interest repayments on the loans, that the only option available to the Complainants was to sell the properties. I have already noted that the tone of this call was helpful. It is not clear what steps, if any, the Complainants took in the 2 year period between August 2012 and September 2014, to place the properties on the market. I note that there is some disagreement between the parties as to whether the Complainants had in fact committed to making repayments of €1,200 per month at the meeting that took place in March 2012, even though this was discussed, but I do not think that anything in fact turns on whether or not they did so.

The Provider made it clear during this period that because the Complainants were not meeting their interest payments on the accounts, the loans were unsustainable and therefore the properties would have to be sold. There is no suggestion from the Complainants that they were in a position to make the payments at the time, nor that there was any particular consequence arising out of whether they actually committed to making these payments at this time or not.

There appears to be some further confusion or disagreement between the parties during the relevant period as to whether the residual loan balance could be negotiated before the properties were sold. The Complainants have indicated that they were informed at the November 2014 meeting that an agreement regarding the residual debt would have to be agreed before the properties were sold. Earlier communications from the Complainants themselves had indicated that the Complainants wished for an agreement to be made on the residual, before the properties were sold, though in their submissions to this Office the

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Complainants seem to suggest that it was the Provider which insisted on this. It appears to me that the Provider encouraged the Complainants over a number of years to place the properties on the market, while the Provider's consent to the sale of properties would have to await a formal offer being made on the properties and an agreement on the residual debt. I do not believe there is anything unfair, unjust or unreasonable in the Provider's position in this regard.

The Complainants made a number of offers in relation to the residual debt, starting with an offer of €30,000 in full and final settlement in September 2014. When this was rejected by the Provider, increased offers were made culminating into offers in April/May 2015 to pay €90,000 in full and final settlement. These increased offers were also rejected by the Provider. I noted at the outset of this decision, at page 7 above, that this Office has no role in investigating the commercial terms of any negotiation on a reduction of debt. I note that in April 2015, the Provider made a formal offer to the Complainants to accept the sum of €180,000 in full and final settlement of the residual balance in addition to the proceeds of sale of both properties. This offer was not accepted by the Complainants. Although there is also disagreement between the parties as to whether the Complainants were offered the choice of repaying the full loan balance over a 240 month period, this to my mind goes to the commercial terms of the negotiation and is a matter which this Office has no role in investigating.

By letter dated **18 June 2015**, the Complainants wrote to the Provider stating that before they could deal with the outstanding amount due and reach an agreement on the repayment of the residual balance, a number of queries had to be addressed by the Provider which were raised in their letter of 28 April 2015. They noted that the Provider had failed to deal with the interest rate issue in relation to the second account. They further queried why the 3.41% interest rate reduction that was agreed to be applied for 12 months from February 2013, was increased in May 2013. The Complainants further stated that the agreement reached in November 2012 to allow interest only payments on the mortgage was illegally repudiated by the Provider in December 2013. They argued that arrears would not have increased had the Provider not gone back on its agreement. They noted that the offer made in their letter of 28 April 2015 had been rejected but they were not in a position to increase the loan amount offered when their queries remained unanswered.

Although there is some debate between the parties as to whether or not their financial adviser was informed that the loan would be passed to the legal department if no further offers were made by the Complainants by 19 June 2015, it appears from the letter of 18 June 2015 that the Complainants were not willing to increase their offer of €90,000 (€45,000 for each property) which had already been rejected by the Provider.

As this offer was not acceptable to the Provider, and in light of the fact that the Provider had been encouraging the Complainants to sell the properties for more than three years, I do not believe that there was anything unfair, unreasonable or unjust in the decision taken by the Provider to pass the mortgage accounts to its legal department at the point in time when it did so. The Provider had engaged with the Complainants and attempted to agree a deal

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with them on the residual balance but neither party was willing to agree the terms proposed by the other.

In light of the foregoing, I am unwilling to uphold the complaint that the Provider's unwillingness to engage with the Complainants resulted in increased arrears on their account. I accept that, when viewed in the overall, the Provider made numerous attempts to engage with the Complainants in relation to their debt and indeed entered into some short-term repayment arrangements with them, in conjunction with encouraging them to sell the properties. I note that all parties attempted to make an agreement in relation to the residual debt but that the offers made on either side, were not acceptable to the other. Ultimately, I accept the Provider's assertion that it is not under an obligation to agree an alternative repayment arrangement with borrowers. When the accounts were transferred to the legal department, the accounts had then been in arrears for three and a half years, and the arrears on the account then stood at over €60,000.

I am further unable to uphold the complaint that commitments made by the Provider were not upheld, other than in relation to the interest rate issue which I will next turn to. Any commitments made by the Provider in respect of time-limited interest only repayment periods were in my opinion met. I do not accept that any further commitment was made by the Provider to apply an open-ended interest only repayment option to the Complainants' accounts until the properties were sold.

I note however that there were two lapses in customer service during the relevant period which it is appropriate to highlight. The first and most significant, is the fact that a proposal made by the Complainants by letter dated 27 March 2012 was not responded to by the Provider. This proposal by the Complainants was that the Provider would seek to charge only a small margin over the cost of the loan, to the Complainants' account, until their financial position improved. Although the subsequent correspondence between the parties ought to have made it clear to the Complainants that this proposal was not acceptable to the Provider, I believe that the proposal should have been formally responded to. In fact a representative of the Provider accepted on a call dated 23 August 2012 that the Provider should have responded to this proposal, but this was not followed up by any letter rejecting the March proposal. It would also appear that a commitment was made in an email dated 2 August 2012 by the Provider to call the Complainants, but there is no evidence that any such call was made, and it was the Complainants who then contacted the Provider later that month. In my view, it is appropriate in those circumstances to partially uphold this aspect of the complaint, on the basis of these lapses of customer service.

Interest Rate Commitment in 2013

The Complainants have suggested that the Provider committed to a reduced interest rate of 3.41% in 2012 for a 12 month period but unilaterally increased this rate in May 2013. After the Complainants raised a complaint in relation to this with the Provider, the Provider accepted that it has applied an increase 0.5% on one of the accounts incorrectly, but that the rate should have increased by 0.25% in line with an increase in the standard variable rate. The Provider has indicated that it refunded the Complainants the additional interest charge and made the appropriate adjustments to the interest charged on the account to

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reflect this error, but that its commitment to reduce both interest rates by 1.42% was met. It has offered a goodwill gesture of €500 in recognition of its error.

Based on the evidence before me, it is unclear why the Provider's investigation of the interest rate complaint made by the Complainants, concluded that the Provider was entitled to increase the relevant interest rate by 0.25% within the 12 month period. The correspondence before me suggests that a clear agreement was reached between the parties, that the interest rate on both accounts would be set at 3.41% for a 12 month period, in conjunction with a 12 month interest only period. The rationale for this, as accepted by the Provider in its submission to this Office, was that the monthly repayment of €1,200 which the Complainants were then making, would be enough to prevent an increase in arrears on the accounts, while the sale of the properties was being progressed. In this light, it does not appear logical that the Provider could increase the agreed interest rate after only three months. There is no suggestion that the Complainants failed to abide by their repayment commitment at this juncture.

It is worth setting out once again the relevant evidence. Notes from a meeting dated 14 November 2012 indicate that the Complainants agreed that they would start making payments of €1,200 per month and that the Provider was then to look at a rate reduction of 3.41% in interest. Thereafter an interest only period would continue for 12 months until the situation was reviewed. Confirmation of the 12 month interest only period was sent to the borrowers by letter dated 19 December 2012, confirming a new mortgage payment of €774.78.

An email was sent by the case manager on 5 February 2013 indicating that there was positive movement in relation to the rate reduction request, with agreement to reduce the rates to match the €600 per month to each account for a period of 12 months. By letter dated 6 February 2013, the Provider wrote to the Complainants stating as follows:

> "*I am writing to inform you that in accordance with your recent request we have converted the above mortgage accounts to interest only repayment and reduced your interest rate to 3.41%. This arrangement is to last until the 31st December 2013. During this period you have agreed to lodge €600 per month to each account*. . . ."

A further letter confirming the interest rate reduction to 3.41% was sent to the Complainants by letter dated **12 February 2013**. This letter stated that the rate being charged would be reviewed in February 2014. This is perhaps why considerable confusion then arose as to whether the 12 month arrangement ended in December 2013, or February 2014.

The letter of 12 February 2013, in itself, makes it clear in my view, that what was agreed was an interest rate of 3.41% for the 12 month period, and not a reduction in the interest rate by 1.42% which could be increased if the overall interest rate increased. My decision in relation to this is confirmed by an email from the Complainant's case manager, an email which I note was provided by the Complainants but does not appear in the Provider's file. The Complainants responded to the notification of the increased rate by email to their case manager dated 30 April 2013, questioning whether the increase had been applied in error

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as it did not conform to the agreement between the parties in respect of the €1,200 per month payment. The case manager responded by email dated 30 April 2013 stating that "*I will make sure your accounts as amended to keep the interest rates at 3.41% for the agreed period*."

It is clear that despite this commitment by the case manager, and its consistency with what the Complainants maintain was agreed between the parties, this commitment was not met. By the time the Provider investigated the matter, increased rates of 0.5% and 0.25% had been applied to the accounts and while a refund was made to reduce the 0.5% interest rate to 0.25%, the Provider failed to acknowledge that no increased rate should have been applied during the 12 month period.

I consider it appropriate therefore to uphold this aspect of the complaint on the basis that the Provider made an agreement with the Complainants, in respect of a discounted interest rate, which it then wrongfully and unilaterally amended. This error was then compounded by the fact that the complaints raised by the Complainants in respect of the increased rate, were not properly responded to by the Provider.

I am of the view that it will be appropriate to direct that the Provider calculate and apply an appropriate refund and interest adjustment due to the Complainants' accounts, on the basis that the interest rate that should have been applied between the period February 2013 and February 2014 was 3.41% on both accounts. I am also of the view that it will be appropriate to direct that a sum of compensation be paid to the Complainants in relation to the Provider's failure to honour its commitment, and its subsequent failure to properly investigate the Complainants' complaint in relation to the interest rate charged. The €500 goodwill gesture that was offered by the Provider in this regard is insufficient in my opinion.

Appointment of Receiver and Lack of Engagement

Letters of demand were served on the Complainants dated **27 July 2015**. Those letters demanded repayment of the entire balances due on the loan accounts by 6 August 2015, failing which the Provider would seek to enforce its security, including by the appointment of a receiver. No repayment was made by the appointed date.

By letter dated **24 August 2015**, solicitors on behalf of the Complainants responded to the demand letters expressing the regret of the Complainants that these letters had issued due to the extent of efforts made by them come to an accommodation in relation to the debt. Mediation was requested.

As an alternative, the letter confirmed that the Complainants were prepared to agree to a consensual sale of the properties and requested advice on what steps should be taken in that regard. It should be noted that the parties had at that point been negotiating the consensual sale of the properties for several years and that no further proposals as to the payment of the residual balance of the loans, was made by the solicitors.

Although this letter was not responded to by the Provider, I note that on a call on 14 October 2015, the Provider contacted the first Complainant to explain that it did not have a letter of

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authority to deal with the solicitor. The representative requested that the authority be sent promptly by email and indicated that the solicitor should then call the legal department on a given number. There is no record of any call having been made by the Complainants' solicitor in response to this to follow up, on any further proposals. Thereafter, a receiver was appointed in respect of one of the properties.

The Provider's legal department could perhaps have been a little more proactive between August 2015 and January 2016 in attempting to contact the solicitors after ensuring that the appropriate authorisation had been received, to seek to come to an agreement in relation to the residual debt and the sale of the properties. On the other hand, it appears that the solicitors did not follow up with the relevant department on request. In any event, and as already mentioned, extensive negotiations between the parties on the residual debt had failed and no further proposals in respect of the residual debt were made by the Complainants or their solicitor. Assuming that the relevant securities contain a power to appoint a receiver, I do not believe that the Provider's decision to appoint a receiver at the time was unjust, unreasonable or unfair in light of the fact that the accounts had been in arrears for a number of years and that significant arrears had accumulated on the accounts. In those circumstances, I do not consider it appropriate to uphold this aspect of the Complainants' complaint.

As already noted, this Office is not in a position to investigate the conduct of the receiver, following his appointment by the provider, as the receiver is not a regulated financial service provider.

When the Preliminary Decision was issued to the parties, I Indicated my intention to direct a compensatory payment to the Complainants, and to also direct the Provider to calculate and make the appropriate refund and interest adjustment to the Complainants' mortgage accounts, on the basis of the interest rate of 3.41%, that should have been applied to those accounts in the period from February 2013 to February 2014, per the agreement of the parties. The Provider has since confirmed that this has already been actioned and implemented, and that no further adjustment to the accounts are required, to that end.

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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) & (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 €3,500, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

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

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

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

2 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.