



<u>Decision Ref:</u>	2019-0305
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Incorrect information sent to credit reference agency
<u>Outcome:</u>	Partially upheld

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

Background

The complaint concerns the Complainant's mortgage loan accounts held with the Provider.

The complaint is that the Provider failed to capitalise the arrears on the Complainant's interest only mortgage (as agreed), and incorrectly reported to the Irish Credit Bureau (ICB) in respect of the Complainant's mortgage loan accounts.

The Complainant's Case

The Complainant submits that she entered into a mortgage agreement with the Provider in **2004** (in respect of her Private Dwelling Home). The Complainant submits that the mortgage agreement was for a 23 year tracker mortgage which was split between a repayment/annuity mortgage (€200,000) and an interest only mortgage (€300,000).

The Complainant submits that on **12 April 2006**, she signed a revised agreement with the Provider, changing the balance of the two parts of the mortgage, so that the amount of credit advanced was €393,392.73 for the repayment/annuity mortgage and €101,618.10 for the interest only mortgage. The Complainant submits that all repayments since then reflected the revised balance.

The Complainant states in a letter to this office dated 30 December 2016, that *“when I was recently declined a credit card I checked my credit rating with the Irish Credit Bureau (ICB) and found there were two errors in the information provided by [the Provider]”*.

Firstly, the Complainant submits that the figures sent to the ICB by the Provider referred to the original mortgage agreement in 2004 and not the revised agreement of 2006 (i.e. the figure in respect of the repayment/annuity mortgage was referred to as €200,000 rather than €393,392.73 and the figure in respect of the interest only mortgage was referred to as €300,000 rather than €101,618.10). In this respect, the Complainant states that there is a

“serious error in [the Provider’s] records concerning the balance between the two parts of the mortgage on my home: annuity (interest and capital – a/c xxxx508) and interest only (A/c xxxx606)”.

The Complainant submits that the correct figures should have been reflected on the ICB and that this has affected her credit rating.

Secondly, the Complainant submits that there were two months (during the financial crisis) during which she did not make her mortgage payments. She submits that it was agreed with the Provider that these two months would be capitalised and added on both parts of her mortgage. She submits that the capitalisation was implemented on the repayment/annuity mortgage, but not the interest only mortgage. The Complainant submits that she returned the acceptance forms for both mortgages. The Complainant states that she is readily able to pay the outstanding arrears on the interest only mortgage, but that she has not done so as a matter of principle and because she is

“concerned that covering this particular mistake in [the Provider’s] record keeping could conceal other, more serious problems”.

The Complainant further submits that she has concerns about the whereabouts of documents concerning her home and that there has been an unreasonable unwillingness to supply her with copies of legal documents held with respect to her home. The Complainant states that she enquired with the Provider about obtaining copies of the relevant documents about her home and was informed that there was a charge of €25. The Complainant states that she issued a cheque for this, but that the cheque was returned with a letter from the Provider confirming that it was unable to send a copy of the title deeds to her.

The Complainant states that she is seeking the following in resolution of her complaint:

1. Correction of the actual figures for the two parts of the mortgage (based on the 2006 agreement) to the actual amounts outstanding.
2. Correction of ‘arrears’ record on interest only mortgage on receipt of a cheque from her and recognition that this is lieu of the agreed capitalisation of two months.
3. Correction of the figures supplied to ICB and backdated on ICB records.
4. Supply of copies of all legal documents relating to purchase of her home.

/Cont’d...

5. Financial compensation for stress, time and reputational damage.

The Provider's Case

The Provider submits that *“based on the Complainant's payment history on both mortgages and the method used by [the Provider] to calculate a borrower's payment profile, the payment profiles recorded....are correct”*.

The Provider submits that a record of the opening loan amounts of €200,000 and €300,000, and the opening loan date of **2 December 2004** were sent to the ICB following the set-up of the mortgages. The Provider states that in 2006, it was agreed between the parties to increase the capital balance on the capital and interest mortgage (repayment/annuity) and to reduce the capital balance on the interest only mortgage. The Provider submits that it is satisfied that the original loan amounts recorded on the Complainant's ICB as at 2 December 2004, were a true reflection of the loan funds advanced to the Complainant at that time and that the transfer of part of the Complainant's capital from one mortgage to the other in 2006 did not constitute an amendment to the opening amounts recorded on the Complainant's ICB. The Provider further submits that the amounts recorded on the Complainant's ICB would not have had a negative impact on the Complainant's credit rating.

The Provider submits that the Complainant entered into arrears on both mortgages on **8 October 2012** as the Complainant's September 2012 direct debit was returned as unpaid by the Complainant's bank. It further submits that the Complainant's direct debit was cancelled by the Complainant and the Provider did not receive payment in October 2012.

The Provider refers to its policy for capitalising arrears which in 2012/2013 states:

“if a customer meets six monthly instalments of their contractual monthly repayments and therefore demonstrates that they are able to afford this on an ongoing basis then the arrears may be capitalised over the existing term of the mortgage to return the account to an 'in order' status”.

The Provider submits that the Complainant reactivated her direct debit and maintained all monthly instalments between November 2012 and July 2013. The Provider states that a letter was issued to the Complainant in respect of the repayment/annuity mortgage which offered the Complainant the option to capitalise the arrears. The letter stated that *“in order to avail of this alternative payment arrangement, please complete this acceptance form and return it within 31 days from the date of this letter”*. The Provider states that the signed acceptance form was received on 12 August 2013 and that the capitalisation was implemented on 13 August 2013 on the repayment/annuity mortgage.

The Provider submits that it issued a capitalisation of arrears offer letter to the Complainant on 15 August 2013 for the arrears of €249.98 that were outstanding on the interest only mortgage. The Provider submits that it has conducted an extensive search of all documentation on file and that it holds no record of receiving a signed acceptance of the

capitalisation offered to the Complainant on the interest only mortgage and consequently, the capitalisation could not be implemented and the arrears remained outstanding.

The Provider states that as the Complainant has been in arrears since 2012, this is reflected in both the Complainant's ICB and Central Credit Register (CCR) profiles in accordance with its reporting requirements. It states that letters issued to the Complainant outlined the consequences of missed repayments on the mortgage account, which included a possible impact to the Complainant's credit rating. The Provider submits that it is the "*Complainant's responsibility to maintain her mortgage repayments regardless of any dispute ongoing*".

The Provider submits that upon receipt of the Complainant's letter dated 10 September 2010 requesting her title deeds and enclosing a cheque in the sum of €25, that it wrote to the Complainant on 21 September 2010 to confirm that it was unable to send a full copy of the Title Deeds, however it informed the Complainant that it could send specific documents if requested. The cheque was returned with the letter. The Provider submits that it is not withholding the deeds from the Complainant. The Provider submits that the title deeds contain 18 documents and that given the size of a title deed pack, it believes that the provision of a copy of the title deeds would constitute a disproportionate effort and that the Provider is not obliged to do so under the Data Protection Acts.

The Provider states that it is always willing to accommodate borrowers for specific documents and it has asked the Complainant to set out which specific documents she wished to obtain a copy of. The Provider submits that the Complainant could also appoint a solicitor to request the title deeds on Accountable Trust Receipt. The Provider states that it has not received any requests from the Complainant about a specific document and has not received a request from the Complainant's solicitor.

The Complaints for Adjudication

The first complaint is that the Provider failed to capitalise the arrears on the interest only portion of the Complainant's mortgage as agreed and inaccurately reported to the ICB in respect of the balances for both mortgage accounts.

The second complaint is that the Provider has not supplied the Complainant with copies of the title deeds in respect of her home.

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 Complainant was 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.

/Cont'd...

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 5 September 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

I will deal with each individual element to this complaint in turn.

(1) The first issue to be determined is whether the Provider inaccurately reported indicators to the ICB in respect of the balances on the Complainant's mortgage loan accounts.

The Provider has submitted a copy of the 'Offer of Mortgage Loan' to the Complainant in respect of the Annuity/Repayment mortgage (account number: XXXX508), which states the following:

"...
(1) Amount of credit advanced: €200,000.00..."

The Complainant accepted the offer in respect of the Annuity/Repayment mortgage and she signed the '*Borrowers signed acceptance of the offer of the mortgage loan*' form on 23 November 2004.

The Provider has also submitted a copy of the 'Offer of Mortgage Loan' to the Complainant in respect of the interest only mortgage (account number: XXXX606), which states the following:

"...
(1) Amount of credit advanced: €300,000.00..."

The Complainant accepted the offer in respect of the interest only mortgage and she signed the *'Borrowers signed acceptance of the offer of the mortgage loan'* form on 23 November 2004.

The Provider submits that on 11 April 2006, the Complainant spoke to the Provider regarding the interest rate applicable to her mortgages. It states that during a call with the Complainant, she stated that she wished to transfer a portion of the capital balance due on the interest only mortgage to the annuity/repayment mortgage. The Provider states that on review of both mortgage accounts, it agreed to this.

The Provider has submitted a copy of the revised offer of mortgage loan in respect of the Annuity/Repayment mortgage (account number: XXXX508), which states the following:

"...

IMPORTANT INFORMATION AS AT 12 APRIL 2006

1. *Amount of Loan: €393,392.73...*"

The Complainant accepted the revised offer in respect of the Annuity/Repayment mortgage and she signed the *'borrowers signed acceptance of the discounted period of interest'* form on 5 May 2006.

The Provider has also submitted a copy of the revised offer of mortgage loan in respect of the interest only mortgage (account number: XXXX606), which states the following:

"...

IMPORTANT INFORMATION AS AT (DATE OFFER PREPARED – 12 APRIL 2006)

(1) *Amount of Credit Advanced: €101,618.10...*"

The Complainant accepted the revised offer in respect of the interest only mortgage and she signed the *'Borrowers signed acceptance of the offer of mortgage loan'* form on 5 May 2006.

I note that paragraph 1 of the Special Conditions attached to the revised offer in respect of the interest only mortgage provides as follows:

"This offer supersedes all previous Offers of Mortgage Loan from the Bank addressed to you and accepted by you (the "Previous Offers")."

I have not been furnished with a copy of the Special Conditions attached to the revised offer in respect of the Annuity/Repayment mortgage, however it would appear to me that in circumstances where the new loan was signed and accepted on 5 May 2006, that the old loan agreement had been superseded. In any event this is not in dispute between the parties.

The Complainant submits in a letter to this office dated 30 December 2016, that when she was recently declined a credit card, she checked her credit rating with ICB. She submits that

/Cont'd...

the figures provided to the ICB by the Provider referred to the original mortgage agreement in 2004 and not the revised agreement of 2006.

The Provider has submitted an audio file consisting of a number of telephone calls between the Complainant and the Provider.

I note that the Complainant raised this issue (amongst other issues which I will deal with below) with the Provider during telephone calls on 9 April 2014, 23 May 2014, 3 March 2016, 25 May 2016 and 8 July 2016. In the telephone call on 8 July 2016, a complaint was filed.

The Provider investigated this complaint and issued a response letter to the Complainant dated 11 August 2016. The letter states that the Provider is “*satisfied that the opening amounts reported to the ICB are correct*” and that

“[the Provider] has sent a correct report of the amount advanced to you on 2 December 2004 on accounts..... to the ICB as per your signed letters of offer”.

The Provider did not uphold the complaint.

The Provider carried out another investigation in respect of complaints made about this issue (and others which I will deal with below). The Provider issued a response letter to the Complainant dated **3 March 2017**, which again confirmed that the complaints were not upheld. The Provider investigated whether the amounts advanced to the Complainant on both mortgage accounts were incorrectly reflected in the Complainant’s payment profile recorded with the ICB. The letter states that the Provider sends a monthly report to the ICB. It also states the following:

“Along with reporting your repayment history, the monthly report details the outstanding balance at the end of each month. Once the balances of your mortgages were adjusted, the [Provider] sent an update to the ICB with your revised outstanding balances in May 2006. Furthermore, every month since May 2006 the Bank has recorded your revised balances to the ICB. For example, on 30 June 2016 the outstanding balance on account XXXX508 was €234,867.12 and on account XXXX606 was €100,131.90. Both of these balances were reported to the ICB at that time.

Whilst [the Provider] acknowledges that there was a sum transferred from account XXXX606 to XXXX508 in May 2006, [the Provider] is obliged to report a true reflection to the ICB of the advance amount borrowed on the date you first entered into these mortgages and therefore [the Provider] is satisfied that the advance amount recorded with the ICB on 2 December 2004 is correct. However, as outlined above, the outstanding balances reported to the ICB at the end of each month is reflective of the revised outstanding balances and takes into account both the increase and decrease to the balances on both your mortgages since 16 May 2006”.

It is understood that as of 24 September 2018, the Complainant’s ICB showed the following:

*“Account XXXX508
Opening Balance: €200,000.00*

/Cont’d...

Opening Date: Thu, 02 Dec 2004
Latest Balance: €192,232.25
Latest Balance Date: Fri, 31 Aug 2018
Payment Profile: 000000000000000000000000

Account XXXX606
Opening Balance: €300,000.00
Opening Date: Thu, 02 Dec 2004
Latest Balance: €100,132.02
Latest Balance Date: Fri, 31 Aug 2018
Payment Profile: 222222333333332222222222”

The Provider is obliged to provide an accurate report to the ICB, of payments on foot of credit agreements entered into between the Provider and its customers. In the circumstances, I am of the view that the information, as outlined above, which was recorded on the Complainant’s ICB does not accurately reflect the true credit position in respect of the “opening balance” on both mortgage accounts in 2006.

I do not accept the Provider’s submission that the original figures of 2004 are correct because they reflect the ‘*opening balance*’, as that position had materially changed in 2006, when the new mortgage loans were taken out. I am of the view that the revised figures (from 2006) superseded the original figures (from 2004), and that the revised figures from 2006 constituted a new ‘*opening balance*’. As the original figures from 2004 remained as the opening balance for both accounts on the ICB, from 2006 on that was not an accurate reflection of the amount of credit advanced to the Complainant, under each agreement, as of that time. I am of the view that the Provider did not provide an accurate report to the ICB in respect of the balances of both mortgage accounts in 2006. Consequently, I accept that the Provider failed to update the ICB in 2006 in respect of the change to the ‘*amount of credit advanced*’ figures in respect of both mortgage accounts.

The Complainant submits that this affected her credit rating. I have not been furnished with any evidence to support this. However, I note that the Provider (in an attempt to resolve matters) has now amended the opening balance on the Complainant’s ICB to reflect the balance amounts quoted on the offer letters issued to the Complainant on 12 April 2006. The Provider has stated that it will also amend the Complainant’s Central Credit Register (CCR).

(2) The second issue to be determined is whether the Provider should have capitalised the arrears on the Complainant’s interest only account.

The Provider has submitted the audio file of the telephone call between the Complainant and the Provider’s representative, which took place on 24 September 2012. In this telephone call, the Complainant informed the Provider’s representative that she had additional expenses to pay and that the direct debit for September 2012 had been returned. The Complainant enquired whether the mortgage payments could be deferred for two months as she would not be able to make the payments in September and October 2012. The Complainant stated that she would be able to make the payments thereafter. The

/Cont’d...

Provider's representative confirmed that the payments could not be cancelled from its end and that the Complainant would have to contact her bank. The Provider liaised with the Complainant as to whether any payments could be made on either account and asked the Complainant to send a completed Standard Financial Statement (SFS) form.

The Provider has submitted copies of letters sent to the Complainant in respect of the capitalisation of arrears, which I will refer to below.

- On **22 November 2012**, the Provider wrote to the Complainant in respect of the repayment/annuity mortgage, which states as follows:

"We refer to your recent request to [the Provider] for an alternative repayment arrangement in respect of your Mortgage Account. The Bank has explored a number of alternative repayment arrangements as part of its full financial review. Following this review the Bank has decided to monitor your repayments for a six (6) month period with a view to capitalising the arrears at the end of that period.

In order to be eligible for a capitalisation, six (6) consecutive monthly repayment instalments must be made in full to your Mortgage Account. After this period of six (6) months your Mortgage Account will be reviewed by the Bank for a possible capitalisation of arrears and reinstatement of a monthly repayment arrangement.

Should a capitalisation of arrears be offered to you at the end of the six (6) month period, your arrears will be eliminated and you will continue to pay the outstanding balance on your Mortgage Account which includes the arrears".

This office has not been furnished with a copy of this letter in respect of the interest only mortgage, however it is not disputed that this alternative repayment arrangement was offered on the interest only mortgage also. It is understood that the Complainant reactivated her direct debit at this time and maintained all monthly payments on both mortgage loans between November 2012 and July 2013, in accordance with the alternative repayment arrangement.

- On **15 August 2013**, the Provider wrote to the Complainant in respect of the interest only mortgage, stating as follows:

"We refer to your Mortgage Account and note that the full contractual monthly repayments on your Mortgage Account have been maintained for the past 6 months.

In line with the Central Bank of Ireland's Code of Conduct on Mortgage Arrears, [the Provider] is pleased to offer you the option of capitalising the arrears on your Mortgage Account. Capitalisation means that all outstanding mortgage arrears can be added to the remaining principal balance and repaid over the mortgage term.

If you accept [the Provider's] offer of capitalising your Arrears, your original loan terms will be varied as follows:

/Cont'd...

- 1) *Your Arrears will be cleared and added to the outstanding balance on your Mortgage Account.*
- 2) *Interest will continue to be applied to your Mortgage Account in line with your original loan terms and conditions.*

The mortgage term will remain unchanged.

This offer is open for a period of 31 days from the date of this letter. If this offer is acceptable to you, please arrange to have the enclosed acceptance form signed by All Account Holders and returned....

The adjustment cannot be made to your loan terms and your Mortgage Account until you return the signed acceptance form.....

Please note that if you do not meet any alternative repayment arrangement as agreed with the Bank, any arrears on your Mortgage Account will continue to accumulate and this may be reported to the Irish Credit Bureau which may adversely affect your credit rating”.

I have not been furnished with the offer letter with respect to the repayment/annuity mortgage but it is understood that this letter issued to the Complainant in late July 2013. I have been furnished with a copy of the signed acceptance form for the alternative repayment arrangement dated 8 August 2013 (and received by the Provider on 12 August 2013), in respect of the repayment/annuity mortgage. I note that the capitalisation of the arrears on the repayment/annuity mortgage was implemented at that time.

I note that the offer letters and acceptance forms for the two mortgages were sent by the Provider to the Complainant for her consideration some three weeks apart. The offer letter for the repayment/annuity mortgage was sent to the Complainant in late July 2013 and the offer letter for the interest only mortgage was sent to the Complainant on 15 August 2013. I note that the offer letter in respect of the interest only mortgage was sent, after the acceptance form for the repayment/annuity mortgage was received by the Provider.

The Provider has submitted a copy of its account notes. I will refer to a number of entries in the account notes during the relevant period as follows:

- The Complainant had a meeting with the Provider on 7 February 2013 in respect of a number of matters, including the arrears. The entry dated 7 February 2013 states as follows:

“Wants to engage with [the Provider] to discuss plan for ultimate clearance of o/s Mtg Bals.? Continue with revised payt plan and apply for Recapitalisation after 6 mths for current arrears.?”

/Cont'd...

- The entry dated 21 February 2013, states as follows:

*“CTC on dialler left vm,
 PAST – customer sent in letter on the 19/02 for DSAR request and ICB amendment, STCL met with client on the 07/02 customer is going to maintain NMI for 6 months and apply for capping & lt;br>> PRESENT – left vm, monitor for monthly payment to be maintained as customer is working towards capping, Do not call unless customer misses NMI....FUTURE- Monitor for NMI to be maintained as this is what customer is working towards as per STCL note on the 07/02”.*

- The entry dated 27 June 2013, states as follows:

“Cap offer recommendation as per cap list. Please note no docs received from customer”.

- The entry dated 4 July 2013, states as follows:

“CAP APPROVED”.

- The entry dated 8 August 2013, states as follows:

“Cap offer as per cap list. Please note no docs received from customer”.

- The entry dated 12 August 2013, states as follows:

“CAP RECOMMENDED BY SID”.

- The entry dated 13 August 2013, states as follows:

“Cap acceptance received – capped arrears as per acceptance letter.”

- The entry dated 19 August 2013, states as follows:

*“**IBSU APPROVED CAPP OFFER SENT LETTER OVER TO BE ISSUED**”.*

There are no further entries in the account notes until 17 December 2013, 8 January 2014, 24 January 2014 and 10 February 2014 when voicemails were left by the Provider for the Complainant.

The Provider submits that the acceptance form for the repayment/annuity mortgage was returned, but that the acceptance form for the interest only mortgage was not returned and therefore the capitalisation of arrears on the interest only mortgage was not implemented. I note that the letter from the Provider to the Complainant (dated 15 August 2013) does make it clear that the acceptance form should be returned within 31 days and that the adjustment would not be made until the signed acceptance form was returned.

/Cont’d...

I have been furnished with an audio file of the telephone call between the Complainant and the Provider on 9 April 2014. During this telephone call it appears that the Complainant was not aware until then, that the arrears had not been capitalised on the interest only account. The Complainant states that she had completed all of the documentation in respect of the capitalisation of both mortgage accounts.

A meeting took place between the Complainant and the Provider on 21 May 2014. The Provider has submitted a copy of the notes of this meeting. The Complainant raised the issue of the capitalisation of arrears in this meeting. The Provider confirmed that these queries would be referred to Customer Service.

I have been furnished with an audio file of the telephone call between the Complainant and the Provider on 23 May 2014. In this call, the Complainant stated that her recollection was that she sent both acceptance forms to the Provider as she was used to dealing with correspondence in respect of each mortgage account separately. The Provider stated that it would check whether it is possible to get the letter re-issued to the Complainant in respect of the capitalisation of the interest only account.

The Provider investigated this complaint and it has submitted its response letter to the Complainant dated 3 July 2014 to this office. The letter states as follows:

"As you are aware, [the Provider] agreed to capitalise the arrears on both mortgage accounts in August 2013. Having reviewed all documents on your file, the Bank holds no record of receiving your acceptance to capitalising the arrears on mortgage account XXXX606. In view of this, the historical arrears have continued to remain due. However, as you have missed the scheduled April 2014 you are no longer eligible for capitalisation of arrears".

It appears that the missed payment in April 2014 was because of new direct debit details that were not processed in time. This issue is not the subject of this complaint.

The next telephone recording between the Complainant and the Provider that I have been furnished with, is one for a call on 9 November 2015. During the course of this call the Complainant stated that there was no reason why she would return one form and not the other. The Provider outlined that it had been trying to contact the Complainant. The Complainant stated that she had been travelling a lot with work. The Complainant logged a complaint about this issue with the Provider during the telephone call.

The Provider investigated this (amongst other issues) and has submitted a copy of its response letter dated 25 November 2014. This letter reiterated that a signed acceptance form was not received for the interest only account and outlined as follows:

*"...
Should you wish to have the current arrears capitalised, a minimum of six consecutive monthly repayments must be met in full (which I can confirm you have done). Additionally, you would be required to submit a written proposal including a completed Standard Financial Statement and consent form, together with a copy of*

/Cont'd...

your last three months bank statements and documentation verifying your current income. Once completed, these documents should be sent to [the Provider's agents] at the address mentioned above. Please be advised that until the Bank has concluded its review, you must continue to pay the monthly contractual mortgage payments..."

As referred to above, there is no dispute that the capitalisation of arrears was offered on both mortgage accounts. There is a dispute as to whether the signed acceptance form in respect of the interest only mortgage was returned. The issue to be determined is whether or not the signed acceptance form in respect of the interest only mortgage was returned to the Provider by the Complainant, but was not actioned.

The Complainant submits that she returned the acceptance forms for both mortgage accounts. I note that she has not submitted any evidence to support this (for example a delivery receipt or a copy of the letter sent to the Provider). I also note that in the telephone calls with the Provider, the Complainant repeatedly maintained that she returned both acceptance forms. The Complainant made reference to the fact that the amount of outstanding arrears on the interest only account were very small and she queried why she would return the form for one account and not the other. She stated that this "*defies logic*". I note that when the Complainant made these comments, she was referring to what she would have done and does not refer specifically to what she did. In addition, the Complainant states in her complaint to this office that "*as common sense would show that, while a minor matter, it defies logic that I would have returned one (for the annuity part) and not the other (for the interest only part)*". Having regard to the above, it appears to me that whilst the Complainant holds the firm belief that both forms must have been returned, she has not made available any substantive evidence to support this.

In the circumstances it is difficult to determine whether or not this acceptance form was returned by the Complainant. On the one hand, as the Complainant returned the first acceptance form, and I can see no reason why she would not return the second acceptance form (particularly as this was for a nominal amount of arrears). I note that the Complainant made efforts for the arrears to be capitalised in the first instance and contacted the Provider in April 2014, when she first became aware that the arrears had not been capitalised. It was clear from this telephone call on 9 April 2014 that she was under the impression that the arrears had been capitalised and that the arrears had thus been sorted. However, on the other hand, the Complainant states in the telephone call on 9 April 2014 that "*when I agreed and asked for the whole things to be capped and that was agreed, naturally I assumed that applied to both accounts*". She does not say in this initial telephone call that she returned two forms.

As I have noted above, the offer letters and acceptance forms with respect to both accounts were sent some three weeks apart. The acceptance form for the interest only mortgage was sent to the Complainant after the acceptance form for the repayment/annuity mortgage was received.

In the circumstances, it appears to me that this may have contributed to some confusion and it is plausible for the Complainant to hold the belief that the two accounts had been dealt with at the time the form was returned in early August 2013.

In addition, I note that the Complainant stated in the telephone call with the Provider on 9 November 2015 that she travels a lot with work. In this call, the Provider stated that it had been trying to contact her. I note that there is no evidence to suggest that the Complainant was travelling in August 2013 when the acceptance form was sent to her. The Complainant has maintained her position that both forms were sent. In the absence of supporting evidence to confirm that the acceptance form was returned, it is difficult to determine whether or not this happened.

The Provider did not write to the Complainant after August 2013 to specifically confirm that the acceptance form was not received and that the arrears were not capitalised on the interest only mortgage. It is disappointing that the Provider did not do this after the 31 day period had passed, as this may have served to resolve the confusion with this situation.

That said, I note that the Provider issued the Complainant with numerous letters in respect of the arrears in **November 2013, February 2014** and **May 2014** and that the Provider did attempt to contact the Complainant from December 2013 onwards by way of telephone. Such correspondence did not however prompt the Complainant to make contact regarding this issue.

I note that following the telephone call on 23 May 2014 when this issue was discussed, it was not until 9 November 2015 that the Complainant reverted to the Provider in respect of this issue. It is clear from the account notes that the Provider had attempted to make contact with the Complainant during this time. It is important for the Complainant to be aware that the obligation to make mortgage repayments continues, irrespective of any ongoing engagement between the borrower and the Provider in respect of an alternative repayment arrangement. It appears to me that the Complainant should have made efforts earlier to address this issue in respect of the arrears. The Complainant should have been on notice certainly by **November 2013**, that an arrears balance was arising on the account, such that this should have alerted her to contact the Provider to ascertain the position with respect to whether the capitalisation agreement had taken effect. The Complainant however did not do so until April 2014.

In my opinion however, this issue could have been resolved much sooner when the Complainant telephoned in April 2014. I believe that it would have been reasonable for the form to have been re-issued to the Complainant as she had completed the six month repayment period prior to August 2013. The Provider submits that this was not re-issued due to an issue with the Complainant's direct debit in April 2014. I am of the view however that, whatever that more recent direct debit issue, it was unfair not to re-issue the capitalisation option to the Complainant in April 2014, given all of the circumstances.

I note however that in an attempt to resolve this matter, the Provider has offered to waive the outstanding arrears of €240.70 (as of September 2018) on the interest only mortgage and to amend the Complainant's payment profile held with the ICB.

/Cont'd...

(3) The third issue to be determined is whether the Provider withheld the title deeds from the Complainant (as requested).

The Complainant submits that as the Provider was withdrawing from operations in Ireland in 2010, that she became concerned about the Provider's holding of legal documents concerning her home. The Complainant submits that she enquired about obtaining copies of relevant documents and was informed that there was a charge of €25 for copies. It is understood that this exchange happened by telephone, but this office has not been furnished with a recording of this call. Consequently, it is unclear as to what 'relevant documents' were requested by the Complainant.

By letter dated 5 October 2010 (which it seems was incorrectly dated, as it was received by the Provider on 10 September 2010) the Complainant wrote to the Provider requesting a copy of the title deeds for her home. She also enclosed a cheque for €25.

On 21 September 2010, the Provider responded by way of letter, which stated the following:

"We are unable to send out a copy of your Title Deeds. We can only send out specific documents. Therefore, if you know which documents you require we will forward them to you".

The Provider states that the Complainant contacted the Provider on 28 October 2010 to express her dissatisfaction that the Provider could not issue a full copy of the Title Deeds and a complaint was filed in this respect. The Provider submits that upon investigation, it established that the Complainant's solicitor had not in fact returned the Title Deeds following the set-up of the mortgages. The Provider states that the Complainant was contacted on 3 November 2010 to advise that it would investigate the matter, however the Provider did not revert to the Complainant in this respect. The Provider apologises for this. The Provider notes that the Complainant did not follow up on this again until the complaint letter to this office.

I note that Section 2.1, 'Pre-Drawdown Requirements' of the offer of the mortgage loans in 2004, states the following:

"From your Solicitor

- *Your Solicitors Undertaking in the format provided by [the Provider] to comply with [the Provider's] Security requirements and to lodge the Title Deeds to the property and the Certificate of Title within a reasonable time".*

I also note that paragraph (F) of the 'borrowers signed acceptance of the offer of the mortgage loan' dated 23 November 2004, states the following:

"I/We irrevocably authorise the Bank to issue on Accountable Trust Receipt for inspection purposes, the title documents to the property to the Solicitor acting for either of us".

/Cont'd...

I note that it was on the Complainant's authority when she entered into the mortgage loan accounts in 2004, that the title documents issued to her solicitors upon Accountable Trust Receipt. I assume that the Complainant's solicitors will have signed an Undertaking to return the Title Deeds to the Provider, though I have not been furnished with a copy of any Undertaking. In any event, when this issue was raised, the Provider carried out an investigation in respect of the location of the Title Deeds and retrieved these from the Complainant's solicitors.

I accept that it was poor customer service on the part of the Provider that it did not respond to the Complainant in respect of this complaint, particularly as the complaint was outstanding for a number of years. It is disappointing that the Provider did not revert to the Complainant following its investigations in respect of the location of the Title Deeds. I accept that this will have added to the Complainant's overall frustrations.

However, I am of the view that there was no expectation on the Provider to release the full Title Deeds to the Complainant at this stage of the mortgage process (either in original or copy form). Title Deeds are generally held by a provider until the mortgage is discharged or the house is sold which was not the case in this instance. I accept that the Provider has offered the Complainant a number of reasonable options in respect of obtaining the Title Deeds, but the Complainant has not availed. The Provider has informed the Complainant that she may request specific documents and indeed that her solicitor may request the Title Deeds on Accountable Trust Receipt. I note that the Complainant has not pursued either of these options. On this basis, I do not accept that the Provider is withholding the supply of the Title Deeds from the Complainant. It is open to the Complainant to avail of these options, if she wishes to do so.

For the reasons outlined above, I accept that there were failures in aspects of the Provider's conduct and accordingly the complaint is partially upheld. Be that as it may, I note that the Provider has made endeavours to rectify the conduct complained of, in that the Complainant's ICB record has been updated, to reflect the true position of the opening balance on the mortgage loan accounts from 2006 and, in addition, the Provider has offered to waive the outstanding arrears (which stood at €240.70 in September 2018) on the interest only mortgage, and to amend the Complainant's payment profile held with the ICB.

Conclusion

- My Preliminary Decision is that this complaint is partially upheld, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2) (b) 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 rectify the conduct complained of by carrying out the actions referred to in its letter to this office dated 24 September 2018 (if it has not already done so) by waiving the arrears on the interest only mortgage and correcting the Complainant's ICB and CCR record in respect of those arrears. I also direct the Provider to make a compensatory payment to the Complainant in the sum of €500.00 to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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**

27 September 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.