



<u>Decision Ref:</u>	2019-0318
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Refusals (banking)
<u>Outcome:</u>	Rejected

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

Background

The Complainants have been living in their family home since 1994 and entered into a mortgage agreement with the Provider, in 2006 to purchase the property.

The Complainants submit that they have been treated unfairly by the Provider and that the decision not to offer an Alternative Repayment Arrangement in June 2016 was wrongful and/or unreasonable on the part of the Provider.

The Complainants' Case

The Complainants submit that they entered into a mortgage agreement with the Provider in 2006 and were paying a very high rate of interest.

The Complainants submit that in 2010 the First Complainant lost his business and the Complainants entered into an arrangement with the Provider to make reduced payments of €600 per month for at least 3 years.

The Complainants submit that in 2015 they were advised by the Provider that a move to interest only repayments would help with arrears but that the Provider required them to

pay €750 for 6 months, in order to demonstrate they were capable of making the repayments.

The Complainants submit that from December 2015 until May 2016 they were making interest only repayments of €750 per month.

The Complainants submit that at the end of May 2016 they received a letter from the Provider, which stated that it was not happy with repayments of €750 and that it required full monthly repayments from the Complainants.

The Complainants submit that it was unfair and/or unreasonable of the Provider to accept repayments of €600 for more than 3 years but to refuse repayments of €750 for 6 months and to not offer any further options on their mortgage account.

The Provider's Case

The Provider submits that the Complainants' mortgage arrears built steadily from mid-2010 due to the loss of the Complainants' business, as a result of the downturn in the economy at that time.

The Provider submits that it provided forbearance in the form of Alternative Repayment Arrangements during the period May 2012 and June 2016, as follows:

- 6 months reduced repayment of €600.00 from 05 May 2012.
- 6 months reduced repayment of €675.00 from 01 January 2014.
- 6 months reduced repayment of €600.00 from 01 September 2014.
- 6 months reduce repayments of €746.57 from 01 April 2015.
- 6 months interest only repayments of €755.47 from 01 January 2016.

The Provider submits that following a review of the Complainants' financial circumstances in June 2016, it determined that the mortgage was unsustainable in the long-term and as a result, it issued a "No Options" letter to the Complainants under Provision 45 of the Code of Conduct on Mortgage Arrears (the CCMA).

The Provider submits that the decision to advise the Complainants of the "No Options" decision was not unfair treatment and it disagrees with this interpretation by the Complainants. The Provider submits that having fully considered the proposal by the Complainants in the course of the CCMA assessment, it is satisfied that the decision made was in accordance with the CCMA and the Provider's credit policy. The Complainants' Appeal against the decision to deal with the case under Provision 45 was considered in full and the Appeal Board upheld the decision of the ASU to issue a "No Options" letter.

The Provider submits that it supported the Complainants in their efforts to recover from the loss of their business, over a 6 year period, from when the mortgage first fell into arrears and that it extended the protections of MARP to the Complainants over a significant period of time.

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The Complaint for Adjudication

The Complainant's complaint is that the decision of the Provider not to offer a further Alternative Repayment Arrangement in 2016 was unfair and unreasonable.

Decision

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

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

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

A Preliminary Decision was issued to the parties on **04 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.

The Complainants entered into a mortgage loan agreement with the Provider by way of Letter of Loan Offer dated **30 October 2006**, in the amount of €292,516 and for a term of 25 years. It was subject to a variable interest rate, which at the time was 6.5%, and monthly repayments amounted to €1,975.18. This agreement was signed and accepted by the Complainants on **06 November 2006**.

The Complainants fell into financial difficulties in **2010** when the First Complainant lost his business and the mortgage account fell into arrears on **01 June 2010**.

On **20 April 2012** the Provider having completed an assessment of the Complainant's financial position, issued a letter agreeing to accept repayments of **€600** per month for a period of 6 months, beginning **05 May 2012**.

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On **29 November 2013** the Provider issued a letter confirming acceptance of **€675** per month from the Complainants for the period **01 January 2014** to **30 June 2014**.

By letter dated **15 August 2014** the Provider confirmed its acceptance of repayments of **€600** per month for 6 months, from **01 September 2014**.

By letter dated **02 March 2015** the Provider confirmed its acceptance of repayments of **€746.57** for a period of 6 months, from **01 April 2015**, with the arrangement to expire on **30 September 2015**.

By letter dated **03 December 2015** the Provider agreed to the Complainants' request for a switch from Capital and Interest repayments to Interest Only repayments, effective from **01 January 2016**, with a revised monthly repayment in place of **€744.47**. The arrangement was stated to expire on **30 June 2016**.

On **05 May 2016** a letter issued from the Provider advising of the expiry of the ARA on 30 June 2016 and that it would conduct a further review of the Complainant's financial circumstances under the CCMA. It requested an SFS from the Complainants to this end.

On **15 June 2016** the Provider advised the Complainants that, following its review it had determined that the SFS showed that they could afford to pay **€806.54** towards their monthly mortgage repayments of **€1,892.94**. It concluded that the amount they could pay was not sufficient to sustain any of the ARAs it had to offer and there was no evidence that their financial circumstances would improve in the short to medium term. As a result, it confirmed that it was not in a position to offer a further ARA. It advised of other options which the Complainants may wish to consider, in the form of voluntary sale, voluntary surrender and mortgage to rent.

By letter dated **25 July 2016** the Complainants' solicitor wrote to the Provider advising that the Complainants wished to appeal the decision made by the Provider; they sought to make interest only repayments in the sum of **€755** for a period of at least three years. The letter pointed out that the Complainants expected their income to improve and that whilst the First Complainant was not available for full time employment at that time, as he was carer to their son, this position was expected to change with the Second Complainant becoming the carer, allowing the First Complainant to take up full time work.

On **05 September the 2016**, the Provider issued its response to the Complainants' appeal. The letter advised that the Provider was not upholding the Complainants' appeal. It stated that its investigation had concluded that the Complainants' mortgage was not sustainable, given the level of arrears and the repayments which were being made. It acknowledged that the First Complainant was seeking employment and that they were looking to enter into a three year Interest Only period, but stated that it did not believe, based on the assessment it had carried out on the SFS, that they would be in a position to return to full contractual repayments in the short to medium term. It confirmed that the mortgage was 32 months in arrears, in the amount of **€62,432.51** and as full repayments were not being met, that the arrears continued to accrue.

Analysis

I note that the Complainants have gone through a very difficult time since losing their business in 2010. The First Complainant has remained at home as a carer to their son who suffers from autism. They have also been unable to repay the debts which they have borrowed from other financial providers. The decision which I must make, however, is as to whether the Provider has acted, fairly and reasonably toward the Complainants, in particular taking into account its obligations as set down in the relevant Central Bank Code, the Code of Conduct of Conduct of Mortgage Arrears.

I note that the Complainants were granted a number of Alternative Repayment Arrangements between the period May 2012 and June 2016, as follows:

- 6 months reduced repayment of €600.00 from 05 May 2012.
- 6 months reduced repayment of €675.00 from 01 January 2014.
- 6 months reduced repayment of €600.00 from 01 September 2014.
- 6 months reduce repayments of €746.57 from 01 April 2015.
- 6 months interest only repayments of €744.47 from 01 January 2016.

I note that the Complainants kept up to date with these repayments. However, arrears continued to accrue because the amount was less than the full amount of repayments due under the mortgage loan agreement. In November 2006 the amount of monies drawn down by the Complainants, was €292,516.00 while the balance at the 31 August 2017 was €285,928.87, with an arrears balance of €82,928.39 (representing 43.81 months of arrears).

The Code of Conduct on Mortgage Arrears sets out the Mortgage Arrears Resolution Process (MARP) which lenders are required to follow when a consumer goes into arrears on their primary residence (the only residential property that the borrower owns). There are a number of steps which a Provider must take in this regard.

The first is that the lender must communicate with borrowers. Secondly it must gather financial information from the borrower in the form of a standard financial statement (SFS). Following this, the lender conducts an Assessment based on a completed SFS and supporting documents. The lender must assess the borrower's situation on the basis of personal circumstances, overall debt, ability to repay and previous payment history.

The last step is, "Resolution" *i.e.*, once the lender has assessed the SFS it may offer, in writing, an alternative repayment arrangement. However, on the basis of its assessment, a lender may also deem the mortgage to be unsustainable and as a result, may not offer any ARA. The MARP process comes to an end if an agreed alternative payment arrangement is no longer possible.

I have had detailed regard to the assessment which the Provider undertook of the Complainant's situation in 2016. I have examined the considerations that were applied by the Provider, which are set out in the Provider's "MARP Review Detail Report".

The document contains an "Assessment Summary, in which the Provider set out the following considerations:

Current Affordability

- *[the First Complainant] and [Second Complainant] are residing in the security property with their [age] year old son. Mr is acting as a carer for their son who is autistic. Mrs is not working. The customer's employment status is not expected to change for the foreseeable future.*
- *The account was originally drawn down in November 2006 for €292, 516. The current arrears balance began in May 2010 and has been steadily increasing since then.*
- *The customers have been on an interest only arrangement from January 2016 which is due to end in June 2016.*
- *The expenditure listed does not look excessive for a household of this size.*
- *The customers are heavily indebted with ten secondary debts listed with a combined total balance outstanding of €175, 774.22. No repayments are currently being made to secondary debts.*
- *The SFS demonstrates affordability of €806.54 versus a current CMS (on Interest Only of €718.18). The account will convert back to Capital and Interest payments from July with an estimated CMS of €1,876.57.*
- *The customer has proposed to continue with interest only payments. There is no proposal as to how to return to full capital payments or to clear the outstanding arrears balance. Mr has advised he cannot return to work as he is carer for their son. Mrs is not currently working.*

Future Affordability

- *The customers have advised that their circumstances are unlikely to change for the foreseeable future.*
- *The property is in negative equity as per the customers' valuation and as per the HPI.*
- *The customers do not have a long term proposal as to how to return to capital payments and/or to address the arrears.*

Customer Cooperation Assessment

The customers have maintained repayments. The customers have completed the SFS and have been contactable by phone. Mr is the main point of contact on this account.

Property Assessment

This is a [description of property]. The customers' estimated valuation is €120,000 (229.92% of LTV) and the HPI valuation is €235, 425 (117.19% LTV). Based on a review of other properties sold on this street, the average price would be approximately €205,000.

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Customer Proposal

The customers are seeking to remain on interest only for the foreseeable future. They do not have a proposal as to how to return to full capital and interest payments and/or reduce the arrears balance. There is no indication that the customers' affordability will increase in the foreseeable future.

I note that the Provider then considered various possible arrangement options, but in each instance identified that it was not affordable or sustainable, in the Complainants' circumstances. It concluded overall that there were no options available.

Code of Conduct on Mortgage Arrears

Under Section 45 of the CCMA:

45. *If a lender does not offer a borrower an alternative repayment arrangement, for example, where it is concluded that the mortgage is not sustainable and an alternative repayment arrangement is unlikely to be appropriate, the lender must provide the reasons, on paper or another durable medium, to the borrower. In these circumstances, the lender must inform the borrower of the following:*

a) other options available to the borrower, such as voluntary surrender, trading down, mortgage to rent or voluntary sale and the implications of each option for the borrower; and his/her mortgage loan account including:

(i) an estimate of associated costs or charges where known and, where not known, a list of the associated costs or charges;

(ii) the requirement to repay outstanding arrears, if this is the case,

(iii) the anticipated impact on the borrower's credit rating, and

(iv) the importance of seeking independent advice in relation to these options;

b) the borrower's right to appeal the decision of the lender not to offer an alternative repayment arrangement to the lender's Appeals Board;

c) that the borrower is now outside the MARP and that the protections of the MARP no longer apply.

I am satisfied that the letter of the **15 June 2016**, outlined above and a letter of **22 September 2016**, which set out that the Complainants were no longer within the MARP process, but which referred to post MARP options such as Assisted Voluntary Sale or Supported Voluntary Surrender which may be suitable, complied with the Provider's obligations under this provision.

Having had regard to all of the evidence before me, I am satisfied that the Provider's conclusion that it was unable to offer a long-term sustainable option to the Complainants in June 2016 was properly assessed, in accordance with the requirements of the CCMA. Whilst I have the greatest of sympathy for the situation which the Complainants have found themselves in, I do not consider that there are any grounds to support a finding that the Provider has acted wrongfully or unreasonably in its course of dealings with the Complainants. Indeed the Provider has, over many years, made reduced repayment

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arrangements available to the Complainants, to provide an opportunity to the Complainants to gain some progress financially, but the arrears on the mortgage over that time have grown in size. Consequently, on this basis of the evidence available, I take the view that this complaint cannot be upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

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.