



<b><u>Decision Ref:</u></b>	2019-0321
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Fixed Rate
<b><u>Conduct(s) complained of:</u></b>	Maladministration Dissatisfaction with customer service Failure to process instructions
<b><u>Outcome:</u></b>	Partially upheld

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

**Background**

This complaint concerns the Complainants' mortgage loan accounts held with the Provider.

The complaint is in relation to the Provider's poor handling of the Complainants' mortgage arrears, the Provider's failure to set up a direct debit on numerous occasions, and the Provider's poor customer service. The complaint is also that the Provider inappropriately began charging for an insurance premium in 2014.

**The Complainants' Case**

The First Complainant submits that in 2006, he held a mortgage with the Provider in respect of his private dwelling property. The First Complainant submits that after his marriage, he topped up the mortgage in 2007 and included his wife, the Second Complainant as a party to the 'top up' loan.

The Complainants state that a few years later, they were having difficulty making their mortgage repayments due to the economic crisis. The Complainants state that they wrote to the Provider requesting an interest only repayment arrangement. The Complainants contend that the Provider responded, saying that it was *"not in [a] position to offer any interest only payment"*. The Complainants submit that the Provider refused to look for any real solution to the mortgage arrears.

The Complainants assert that they have been in constant contact with the Provider to try and find a way to alleviate the arrears mounting on the mortgage, but that the Provider “*will hide under the pretence of working under the MARP process while in reality they are not really doing anything to help as all options as proposed by the MARP process was not offered*”. The Complainants submit that the Provider has not complied with its Mortgage Arrears Resolution Process (MARP) and that options were only offered to them “*when it was not possible*”.

The Complainants submit that the Provider “*is deliberately making things difficult in order to have grounds to repossess [his] property and this action of [the Provider] is causing [him] a lot of stress and sickness*”.

The First Complainant submits in his letter to this office dated **18 November 2018**, that he had to inform the Provider to cease telephone communications with him and to communicate in writing. The First Complainant refers to the Provider’s “*deliberate aggressive attitude*” and states that the Provider “*deliberately tried and did make life a living hell for me and my family*”.

The Complainants assert that the Provider, on many occasions, refused to set up a direct debit (for repayment of their mortgage) from the account of the Second Complainant, despite her being one of the mortgage holders. The Complainants state that they complained about this in 2011 and that after “*so many unpleasant phone calls*”, the Provider apologised for this and explained that it had rectified the problem. The Complainants submit that the Provider has repeated this mistake twice since 2011.

The Complainants also contend that the Provider began charging an insurance premium to the First Complainant’s account during 2014, despite the Complainant already having insurance in place.

The Complainants want the Provider to:

1. “*Stop making things difficult and putting [their] health at risk...*”
2. Share some part of the arrears on the mortgage as the refusal to collect money from the Second Complainant’s account contributed to a large extent to the arrears building up.
3. Stop “*threatening*” the Complainants with repossession.

### **The Provider’s Case**

The Provider submits that it has complied with the relevant requirements of the Code of Conduct on Mortgage Arrears 2010 (CCMA 2010) and Code of Conduct on Mortgage Arrears 2013 (CCMA 2013). It states that it has at all times sought to establish suitable arrangements in accordance with CCMA 2010 and CCMA 2013.

The Provider submits that *“each of the Complainants’ proposals were considered in full and were responded to as soon as practicable following the completion of the information gathering phase. Where appropriate, the option to appeal a decision made by the Provider was communicated and where an Appeal was submitted, the Appeal progressed in accordance with the requirements of the CCMA”*.

The Provider submits that it considered the potential for offering Alternative Repayment Arrangements (ARA), on five occasions between 1 January 2011 and 1 January 2016, taking into account the income of both Complainants. These can be summarised as follows:

- August 2011 – the Provider states that as the First Complainant did not wish to avail of any of the options offered, an arrangement was not established on foot of the assessment.
- April 2012 – ARA offered of a Reduced Payment Arrangement of €550 per month for four months.
- January 2013 – ARA offered of a 12 month Interest Only Repayment Arrangement.
- April 2014 – ARA offered of a 12 month Interest Only Repayment Arrangement.
- January 2015 – ARA offered of a Reduced Payment Arrangement of €900 per month for three months.
- October 2015 – the Provider states that it was unable to offer options due to the unsustainable nature of the mortgage.

The Provider states that on 13 April 2011, the First Complainant requested that 70% of the monthly payment be allocated to reducing the mortgage balance, and that the Provider waive the interest or profit. The Provider submits that such a change in the operation of the mortgage would have been contrary to the terms of the accounts and was unacceptable to the Provider. The Provider states that *“whilst a variation of the rate of interest applicable is an option which was offered by the Provider at the time; it is only offered within the context of a restructuring under MARP”*.

The Provider states that on 30 April 2012, the First Complainant requested that the Provider waive the compounding of interest and interest applicable to unpaid monthly payments. The Provider submits that such a change in the operation of the mortgage would have been contrary to the terms of the accounts.

The Provider states that on 4 May 2014, the First Complainant requested that a reduction in the amount owed be negotiated or alternatively that the whole agreement be renegotiated.

The Provider submits that debt write-offs are not offered by the Provider. The Provider also submits that the Provider was and continues to be satisfied that there was no basis for the

proposed renegotiation when more suitable arrangements had been offered to the Complainants and rejected.

The Provider accepted in its letter dated 5 January 2016, that it did not process an instruction from the Second Complainant to establish a Direct Debit when requested to do so in 2011; it states however that the decision to refuse this instruction was made in good faith at the time based on the information available to the staff dealing with the request. The Provider states that the omission was rectified as soon as possible following the identification of the issue. The Provider states that the first loan was granted to the First Complainant only and that the second loan was granted to both Complainants. The Provider submits that *“due to the structure of the Provider’s IT system, it was not possible to add the name of the Second Complainant to the system as she was not party to the original loan granted to the First Complainant”*. The Provider states that it attempted to address the operational difficulty that the structure of the loans created in 2011, and proposed that the Second Complainant should obtain legal advice regarding the proposal from the First Complainant that the Second Complainant be added to the original loan, to allow the loan structure to be changed to show both Complainants on the systems. The Provider states that the Complainants chose not to avail of the Provider’s proposal leaving the position where the systems records did not reflect the involvement of the Second Complainant in the loan on the screens used by the Provider’s staff.

The Provider states that it received a notification from the Complainants’ insurers, which advised that the policy of insurance for the property had been cancelled with effect of **22 February 2014**. It states that on receipt of this notice, the Provider sought details of the replacement policy from the Complainants on **19 March 2014**. The Provider submits that in the absence of such details, it arranged temporary cover and again requested details of the replacement cover on **2 April 2014**. The Provider states that the First Complainant provided details of the replacement insurance which had been established on **26 March 2014** by letter but failed to include a copy of the policy. The Provider submits that it advised the First Complainant on **16 April 2014** that it was not satisfied that the level of cover provided by the policy was adequate. The Provider states that the First Complainant provided details of the revised cover levels, which was received by the Provider on **4 August 2015** and the temporary cover was then cancelled. The Provider states that *“as the First Complainant provided evidence that the cover level had been increased to an appropriate level, the insurance premiums previously charged of €516.22 were refunded in full to the Complainants’ account”*. The Provider further states that the temporary insurance was established pursuant to the Borrowers Covenants (Clause 7.01 (e) of the Mortgage) and that *“the Provider is satisfied that the policy was correctly established and that the costs of this temporary cover were correctly applied to the Complainants’ account in accordance with the terms of the mortgage.”*

The Provider states that it is satisfied that its actions have been measured and appropriate at all times. The Provider denies that its actions have *“made things difficult”* nor put the Complainants’ health at risk by its actions.

/Cont’d...

It “contends that the manner in which the Complainants approached their financial difficulties by ignoring the CCMA and MARP framework has exasperated their situation and resulted in the refusal to accept the Provider’s genuine offers of and support assistance”.

### **The Complaints for Adjudication**

The complaint is that the Provider:

1. Failed to engage with the Complainants in relation to dealing with their mortgage arrears and failed to comply with MARP;
2. Refused, on a number of occasions, to set up a direct debit from the account of the Second Complainant;
3. Wrongfully began charging an insurance premium to the Second Complainant’s account;
4. Gave poor customer service in dealing with all of the above.

### **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 9 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.

/Cont’d...

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

### **Background**

By way of background to this complaint, the First Complainant drew down a re-mortgage loan with the Provider on **11 July 2006** in the sum of €180,000.00. I will refer to this loan as the 'primary account'. On **10 May 2007**, a top-up loan was drawn down in the names of both Complainants in the sum of €40,000.00. I will refer to this loan as the 'top-up account'.

The Provider submits that the Complainants' monthly mortgage payments were maintained through 2010 until February 2011 and that arrears started to accrue from February 2011. The Provider has submitted a copy of the transaction history for the primary account between **11 July 2006** and **30 September 2018**, which shows that the arrears balance as of **31 May 2016**, was €31,384.17. I note that the last three pages of the transaction history (pages 14, 15 and 16) are not included in the evidence submitted to this office.

### **MARP**

The complaint is that the Provider did not comply with MARP and that "*instead it was a tick box exercise*" for the Provider. The First Complainant submits in his letter to this office dated **18 November 2018**, that the options provided by the Provider were not sustainable and that the Provider did not explain all of the options. The First Complainant also submits that the Provider only offered short term options.

As a preliminary issue, it is important to set out the limitations of the jurisdiction of this office in relation to complaints of this kind. In relation to MARP complaints, where issues of sustainability/repayment capacity are in dispute, the Financial Services and Pensions Ombudsman is only in a position to investigate whether the Provider, in handling the mortgage arrears issue, correctly adhered to its obligations pursuant to the Central Bank's Code of Conduct on Mortgage Arrears (CCMA).

This office may investigate the procedures undertaken by the Provider regarding the MARP, but will not investigate the details of any re-negotiation of the commercial terms of a mortgage which is a matter between the Provider and the customer, and does not involve this office, as an impartial adjudicator of complaints. This office will not interfere with the commercial discretion 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**.

The Provider submits that it considered the potential for offering alternative repayment arrangements (ARA) on five occasions between **1 January 2011** and **1 January 2016**, taking into account the income of both Complainants. I note that there were six occasions when the Complainants sought an ARA, rather than five occasions as referred to by the Provider. The issue to be determined is whether the Provider correctly adhered to its obligations

/Cont'd...

pursuant to CCMA in respect of each of these occasions. I will deal with each individual occasion in turn.

**(1) ARA: August 2011**

As I outlined earlier in this decision, the primary account began to accrue arrears in February 2011. The First Complainant wrote to the Provider by way of letter dated **13 April 2011** (which was received by the Provider on **26 April 2011**).

The letter states as follows:

*"I am writing this letter to you to make a request for a change on how the monthly payment I make into the outstanding balance on my mortgage account is being applied to the account.*

*Currently the biggest chunk of my monthly payment goes into profit to you as interest leaving me with little or nothing going into reducing the amount owed. For example in 2010, a total of €13,277.75 was paid by me to you. Out of this amount, more than 60% of it went into profit as interest to you leaving less than €5000 into repayment for the mortgage.*

*I have spoken extensively to your customer services team and have been told the options you have for people struggling with their mortgages. However, I am not writing to request for an interest only payment or anything of that sort. I am writing to request that you change the amount that goes into reducing my mortgage payment every month. At least 70% of my monthly payment should go into reducing my mortgage balance.*

*When I went into mortgage agreement with you, things were different. The economy wasn't in shambles and I had an income. But now things have changed. I have been out of job for nearly 3 years now, though I have struggled to make sure my mortgage is paid. I think it's criminal for you to still apply the old rule to my account considering the current circumstances.*

*In essence, my request is for you to review the way you apply the monthly payment that is being made, instead of large chunk of it going into interest or profit as it is now. I want to be able to see that a large chunk of the money that I struggle every month to pay is going some way at least towards reducing my payment. I don't know what you have to do, but I know that you are well aware of what needs to be done to resolve this issue....."*

The Provider has submitted a document titled 'timeline of events' to this office. The entry on **27 June 2011** states that the "*SFS (Standard Financial Statement) [was] finalised and sent for assessment of options*". The entry for **26 July 2011** states that the "*[First Complainant] advises he will make no further payments until options are offered.*"

/Cont'd...

The Provider has also submitted an audio file which consists of the telephone recordings between the Complainant and the Provider between 2009 and 2015. I note that the Provider has not submitted all of the telephone calls referred to in the 'timeline of events' to this office, and I will refer to this further in my decision below.

The Provider submits that it has complied with the CCMA 2010, which was the prevailing Code at the time of this assessment. This Code sets out the framework that lenders were required to adhere to when dealing with borrowers in arrears or pre-arrears.

The Provider submits that a Standard Financial Statement (SFS) was used to assess the Complainants' financial position during the period April to August 2011.

**Provision 32 of the CCMA 2010** provides that:

*"A lender's ASU must base its assessment of the borrower's case on the full circumstances of the borrower including:*

- a) the personal circumstances of the borrower;*
- b) the overall indebtedness of the borrower;*
- c) the information provided in the standard financial statement;*
- d) the borrower's current repayment capacity; and*
- e) the borrower's previous payment history."*

**Provision 33 of the CCMA 2010** provides that:

*"A lender must explore all options for alternative repayment arrangements, when considering a MARP case, in order to determine which options are viable for each particular case. Such alternative repayment arrangements must include:*

- f) An interest-only arrangement for a specified period;*
- g) An arrangement to pay interest and part of the nominal capital element for a specified period;*
- h) Deferring payment of all or part of the instalment repayment for a period;*
- i) Extending the term of the mortgage;*
- j) Changing the type of the mortgage, except in the case of tracker mortgages;*
- k) Capitalising the arrears and interest; and*
- l) Any voluntary scheme to which the lender has signed up e.g. Deferred Interest Scheme.*

**Provision 34 of the CCMA 2010** provides that *"a lender must document its considerations of each option examined under provision 32 above and also the reason why the option(s) offered to the borrower is appropriate for his/her individual circumstances"*.



The Provider submits that *“as the [First Complainant] did not wish to avail of any of the options offered by the Provider an arrangement was not established on foot of the assessment. (See note of call dated 17 August 2011; in the course of which the [First Complainant] indicated to the Provider that he required a change in the treatment of his payments on the basis that 70% of the payment would be allocated to capital, contrary to the terms of the mortgage (letter dated 13 April 2011). In light of the [First Complainant’s] insistence that this would be the only forbearance arrangement he would consider an arrangement was not offered on foot of this assessment.”*

The Provider has submitted a copy of the ‘system notes’ to this office. I will refer to the relevant entries of the system notes in August 2011 below:

17 August 2011: *“Mr called and advised that he does not want any of the options such as term extension/interest only etc. He wants to have his mortgage interest rates dropped so he can pay more of his capital. He is aware he can’t pay the full mortgage repayments as per his SFS but is not interested in any of the options that may be available to him. Logged to customer service to speak with the customer in relation to interest rates.”*

18 August 2011: *“Case brought to Credit Committee, as discussed with customer. He does not want any options such as term extension, interest rate only etc. He is looking for rate reduction. Have logged complaint with customer service. No further action needed with options as he is not interested and does not want options that may be available, advised customer that we had options to help him as per SFS not showing full affordability, he did not want to know. Approved by credit committee to finalise SFS and customer service deal with interest rate query”.*

In respect of provision 32, whilst there is reference in the system notes to options being given to the First Complainant during the telephone call on **17 August 2011**, there is no reference in the system notes to an assessment being carried out or completed by the ASU around this time. It is unclear from the system notes as to what process took place in relation to the ASU’s assessment. In addition, in the letter from the Provider to the Complainant dated **19 August 2011** (in response to the First Complainant’s complaint in respect of the interest rate), it states that *“we are pleased to note that you are currently working through the Mortgage Arrears Resolution Process with our Arrears Support Unit and would like to assure you of our desire to work with you. The options which we will consider include but are not limited to...”* [my emphasis].

I am of the view that this letter implies that the ARA options will be considered, not that they have already been considered. This letter was written after the telephone call of **17 August 2011** as referred to above.

I note that this may have been confusing for the Complainants as to what was happening with the MARP process. I accept that the Provider has not submitted documentary evidence to show that it has complied with its requirements pursuant to provision 32 of the CCMA at this time.

/Cont’d...

In respect of Provisions 33 and 34, the Provider has not provided documentary evidence of the ASU's consideration of the ARA options available. Whilst the Provider states that options were offered to the First Complainant and that the First Complainant did not wish to avail of any of the options during the telephone call on **17 August 2011**, the Provider has not submitted an audio recording of this telephone call. The Provider has also not submitted audio recordings of the telephone calls on **18 August 2011** and **30 August 2011**. Therefore, the Provider has not submitted documentary evidence to show that options were considered by the ASU and what options were offered to the First Complainant on the telephone call on **17 August 2011** (apart from what is written in the system notes).

Therefore, I am of the view that the Provider has not submitted documentary evidence to show that it has complied with its requirements pursuant to provision 33 and 34 of the CCMA 2010.

I do note that the Provider has recorded in the system notes that the First Complainant did not wish to avail of the options offered or discussed with him during the telephone call on **17 August 2011**.

**Provision 39 of the CCMA 2010** provides as follows:

*"If a lender is not willing to offer a borrower an alternative repayment arrangement, for example, where it is concluded that the mortgage is unsustainable and an alternative repayment arrangement is unlikely to be appropriate, the reasons must be given in writing to the borrower".*

The Provider has not provided this office with a letter to the Complainants outlining the reasons why it was unwilling to offer an ARA. I would have expected the Provider to explain its position in writing to the Complainants, in accordance with Provision 39 of the CCMA 2010. As there is no evidence before me which shows that the Provider wrote to the Complainants to give reasons why it did not offer an ARA, I accept that it has not complied with Provision 39 of the CCMA 2010 at this time.

In relation to the First Complainant's complaint in respect of the interest rate applied to his mortgage accounts and the way the payments are made (referred to in his letter dated **13 April 2011** and referred to above), I note that this is a matter which falls within the commercial discretion of the Provider, and is not a matter in which this office will interfere.

## **(2) ARA: April 2012**

The Provider wrote to the First Complainant by way of letter dated **20 December 2011**, enclosing a SFS for the Complainants' case to be assessed for an ARA.

I note that the First Complainant informed the Provider that he was seeking a 'payment break' in the telephone recordings on **20 December 2011**, **29 December 2011** and **3 January 2012**. The First Complainant was advised on the telephone that the Provider did not offer 'payment breaks'.

/Cont'd...

The entry for **3 January 2012** on the 'timeline of events' document states: "*SFS completed and forwarded to the ASU for assessment*".

The First Complainant wrote to the Provider by way of letter dated **8 March 2012** (received on **9 March 2012**), which states as follows:

*"I completed personal circumstances form with a request seeking for a mortgage break from you since 2 January last.*

*It is now 2 months and nearly one week gone but still not a response from you. I have also rang your office severally seeking for a response from you, but still no response".*

From a review of the 'timeline of events', it appears that telephone calls then took place between the First Complainant and the Provider on **14 March 2012**, **23 March 2012** and **28 March 2012**, to discuss the SFS.

The Provider responded to the First Complainant's letter dated **8 March 2012** by way of letter dated **16 March 2012**. The Provider states that it made attempts to contact the First Complainant on **9 January 2012**, **25 January 2012**, and **10 February 2012** but were unsuccessful. The Provider apologises for not contacting the Complainant on **2 March 2012** to go through the SFS, as agreed with the First Complainant.

This office has not been provided with the telephone call recordings of the telephone calls from the Provider to the Complainant on **9 January 2012**, **25 January 2012**, and **10 February 2012**. This is disappointing. It is also disappointing that the Provider did not write to the First Complainant in the event that it was having difficulty contacting him, so as to progress the MARP process (particularly as the First Complainant had sent in the SFS at the beginning of January 2012). I consider that there was a delay on the part of the Provider as there was a long period of time between the Complainants submitting the SFS and the ARA offer being ultimately made in April.

The Provider submits that the SFS was assessed for the period between January 2012 and April 2012 and "*it was determined that the Provider was in a position to offer a short term ARA for 4 months at a rate of €550 per month*".

The Provider wrote to the First Complainant by way of letter dated **20 April 2012**, outlining this ARA offer. This letter advised the First Complainant of his right to appeal the decision and enclosed the 'request to temporarily accept reduced monthly payments' form.

The Provider submits that the First Complainant "*sought to unilaterally vary the terms of this offer as they related to the charging of interest (letter dated 30 April 2012) and [the Complainants'] consequently did not accept this offer*".

The Provider has submitted documentary evidence of the ASU's consideration of the ARA options available in the form of an internal document named 'MARP Review Detail Report'. This report detailed the ASU's consideration of ARA options including, among others, arrears

/Cont'd...

capitalisation, term extension, term extension and arrears, interest only, interest only and arrears, reduced payment and full deferral. I note that there is no reference in this internal report to the ASU's consideration of the option of "*changing the type of the mortgage*", as required under **Provision 33 (e) of the CCMA 2010**. In this respect, the Provider has not fully complied with Provision 33 of the CCMA 2010. However, I do note that a number of other options were considered in accordance with Provision 33. It is clear from the documentation that the Provider did consider the Complainants' full financial circumstances.

I find no other breaches of the CCMA 2010 in respect of this offer of an ARA. Whilst the Provider failed to fully comply with **Provision 33 of the CCMA 2010**, I note that there is no evidence before me to show that the Provider has acted in a manner in its assessment for forbearance in question, which may be considered unfair or discriminatory in its application to the Complainants.

In respect of the First Complainant's request for a payment break, I note that there is no obligation on the Provider to make an offer of an ARA where it is not considered appropriate.

I note that the First Complainant's letter to the Provider dated **30 April 2012**, states as follows:

*"The outstanding amount shall consist of what I owe to [the Provider]. I will not accept a compound interest on top of it.....We will only deal with the current outstanding amount on this mortgage, not any interest on what has not been paid".*

In response to this letter, the Provider states as follows in a letter dated **8 May 2012**:

*"We confirm that in accordance with your Loan Offer Letter, interest is applied to your account at the beginning of each month and is calculated based on:*

- 1) *The total balance outstanding*
- 2) *The applicable interest rate*
- 3) *The number of days in the month*

*Because interest due is calculated based on the total balance outstanding on your loan, compound interest is charged on instalments in arrears at the same rate applicable to your loan."*

I note that in the Loan Offer Letter in respect of the primary account and the top-up account, it states the following: "*compound interest is charged on arrears of payments at the same rate applying to the loan advanced.*" It is important for the Complainants to be aware that they have a contractual obligation to repay the monies borrowed to the Provider; this was agreed when they entered into the mortgage agreements with the Provider. There is no regulatory requirement for financial institutions to agree to a particular demand from a borrower regarding changes to how interest is applied. The Provider has a commercial discretion in determining any amendments to the mortgage agreement.

### **(3) ARA: January 2013**

I note at the outset that the CCMA 2010 applies in respect of this ARA offer as the CCMA 2013 was not effective until 1 July 2013.

The Provider submits that a further SFS was assessed and it was determined that the Provider was in a position to offer a 12 month Interest Only Repayment Arrangement. The Provider wrote to the First Complainant on **15 January 2013** setting out the ARA offer (in accordance with Provision 37 of the CCMA 2010). This ARA offer was accepted by the Complainants on **13 February 2013**.

The Provider submits documentary evidence of the ASU's consideration of the ARA options in the form of an internal document named 'MARP Review Detail Report'. This report details its consideration of ARA options including, among others, arrears capitalisation, term extension, interest only, reduced payment, full deferral, term restructure, split mortgage, mortgage to rent and repossession. It is clear from the documentation that the Provider did consider the Complainants' full financial circumstances.

Having reviewed the documentation submitted by the Provider, I accept that the Provider did explore all options for ARA in accordance with **Provision 33 of the CCMA 2010**. I also accept that the Provider documented its consideration of each option examined in accordance with **Provision 34 of the CCMA 2010**.

It is clear that the Provider did consider a variety of ARA options as can be seen from the documentation submitted and I find no breaches of the CCMA 2010 on the part of the Provider. Nor is there evidence that the Provider has acted in a manner in its assessment for forbearance in question, which may be considered unfair or discriminatory in its application to the Complainants.

I note from the 'timeline of events' that in the months following the Complainants acceptance of this ARA offer, the First Complainant sought a write-down of the debt or a reduction in the balance, due to the economic climate. The Provider informed the First Complainant that it was not willing to grant a write down of the debt. As I have referred to above, the Complainants should be aware that they have a contractual obligation to repay the monies borrowed to the Provider; this was agreed when they originally entered into the mortgage agreements with the Provider. While the Provider is obliged to comply with the Code of Conduct on Mortgage Arrears and have a "*flexible approach in the handling of these cases*" and to assist "*the borrower as far as possible in his/her particular circumstances*", there is no regulatory requirement for financial institutions to agree to a particular demand from a borrower regarding changes to agreed mortgage repayments.

### **(4) ARA: April 2014**

I note at the outset that the CCMA 2013 was the prevailing Code at the time of this assessment. This Code replaced the CCMA 2010 and was effective from **1 July 2013**.

/Cont'd...

I note that on **18 February 2014**, the First Complainant wrote to the Provider to request that the interest only arrangement be extended for another year as his position of unemployment had not changed.

The Provider submits that another SFS was assessed and it was determined that the Provider was in a position to offer another 12 month Interest Only Repayment Arrangement.

The Provider wrote to the Complainant on **15 April 2014** outlining this offer, in accordance with **Provision 42 of the CCMA 2013**.

The First Complainant responded to the Provider on **4 May 2014**, as follows:

*"....To this end I write today to inform you of the following:*

- Due to the current economic situation, and the situation that prevailed at the time of the loan agreement, I hereby inform you that from this day. The payment to the loan account will be temporarily suspended by me until we are able to renegotiate the term of the loan and the correct outstanding balance.*
- I sincerely believe that it is unfair, unbalanced, and criminal that even though the economic conditions changed, the price at which the property was valued at the time of the agreement is now almost half, the conditions economically is in tatters, still you are happy to let the agreement continue as if everything is still the same, this is unfair and must be treated.*
- Be informed that I am open to negotiate an equitable and fair terms with you which must include **a reduction to the amount currently owed to you by me** or a complete re negotiation of the loan agreement.*
- Be informed that I henceforth do not want to receive any telephone calls from your staff since they are so good in turning whatever was said during phone conversation into something else, the only communication that is acceptable from you at this time until this issue is resolved is by letter or face to face discussion...."*

I appreciate that the Complainants have been in financial difficulties since the economic crisis, however it was agreed that the Complainants have a contractual obligation to repay the monies borrowed to the Provider. This was agreed when they originally entered into the mortgage agreements with the Provider. There is no regulatory requirement for financial institutions to agree to a particular demand from a borrower regarding changes to agreed mortgage repayments. The Provider has a commercial discretion in determining the outcome of any application to amend the mortgage agreement.

/Cont'd...

**Provision 39 of the CCMA 2013** provides that:

*“In order to determine which options for alternative repayment arrangements are viable for each particular case, a lender must explore all of the options for alternative repayment arrangements offered by that lender. Such alternative repayment arrangements may include:*

- a) *interest only repayments on the mortgage for a specified period of time;*
- b) *permanently reducing the interest rate on the mortgage;*
- c) *temporarily reducing the interest rate on the mortgage for a specified period of time;*
- d) *an arrangement to pay interest and part of the normal capital amount for a specified period of time;*
- e) *deferring payment of all or part of the scheduled mortgage repayment for a specified period of time;*
- f) *extending the term of the mortgage;*
- g) *changing the type of the mortgage;*
- h) *adding arrears and interest to the principal amount due;*
- i) *equity participation;*
- j) *warehousing part of the mortgage (including through a split mortgage);*
- k) *reducing the principal sum to a specified amount;”*

It is not a requirement of the CCMA that all of the options listed in Provision 39 be considered by the lender, but rather that all of the options “*offered by that lender*” be considered. The Provider submits documentary evidence of the ASU’s consideration of the ARA options available in the form of an internal document named ‘MARP Review Detail Report’. This report details its consideration of ARA options including, among others, arrears capitalisation, term extension, interest only, reduced payment, full deferral, term restructure, split mortgage, mortgage to rent and repossession. It is clear from the documentation that the Provider did consider the Complainants’ full financial circumstances. Having reviewed the documentary evidence submitted by the Provider, I accept that the Provider did explore all options offered by it and that the ASU did document its considerations of each of the options examined. I find no breaches of CCMA 2013 on the part of the Provider.

I note that when this ARA offer was not accepted by the Complainants, the Provider wrote to the Complainants on **22 May 2014** in accordance with **Provision 47 of the CCMA 2013**.

#### **(5) ARA: February 2015**

From a review of the ‘timeline of events’, it appears that the First Complainant contacted the Provider to discuss the completion of an SFS on **29 September 2014**. I note that until this time, there was correspondence back and forth between the First Complainant and the

/Cont’d...

Provider in respect of similar requests that had been made previously by the First Complainant (for example, debt write-off).

The Provider submits that it determined that the Provider was in a position to offer a short term Reduced Payment Arrangement. The Provider wrote to the First Complainant on **12 February 2015** outlining the ARA offer of reduced monthly payments in the sum of €900 for three months, in accordance with Provision 42 of the CCMA 2013.

It is unclear from the evidence before me as to the reasons for such a delay in the assessment of the SFS by the Provider. The First Complainant states in the telephone recording on **7 October 2014**, that he had sent the SFS to the Provider. I am of the view that there is an unacceptable period of delay between the First Complainant's submission of the SFS and the ARA offer being made. I could understand a period of delay if there was documentation outstanding on the First Complainant's part, however I have not been provided with any evidence that this was the case.

In respect of the Provider's compliance with the CCMA 2013, I can find no breaches on the part of the Provider, nor is there evidence that the Provider has acted in a manner in its assessment which may be considered unfair or discriminatory in its application to the Complainants.

The Provider has submitted an internal document named 'MARP Review Detail Report'. It is clear from the documentation that the Provider did consider the Complainants' full financial circumstances.

It is also clear that the Provider did consider a variety of ARA options, as can be seen from the documentation submitted where the Provider's consideration of ARA options to include among others, arrears capitalisation, term extension, interest only, reduced payment, full deferral, term restructure, split mortgage, mortgage to rent and repossession, are detailed.

The First Complainant wrote to the Provider on **16 February 2015** to state that he would not accept the ARA offer. Part of the letter states as follows:

*"....Based on the above I hereby write to inform you that your proposed solution is not a solution at all and as such is not acceptable. I therefore call on you to act justly and come up with an equitable solution to this problem, to this regards I will take the liberty of suggesting the following solutions to you since it seems like you are aware of the right thing to do but is shying away from it.*

*I propose the following to you as a permanent solution to this problem.*

- 1. A reduction for €50,000.00 from the current balance (this will take care of the arrears that build up due to the downturn)*
- 2. The remaining account to be spread further over 30 years...."*

/Cont'd...



The Provider responded to the First Complainant by way of letter dated **18 March 2015** to state the above proposals could not be taken into consideration. The Provider informed the First Complainant of his right to appeal the decision.

The First Complainant states in his letter dated **23 March 2015** that *“this mortgage was taken out under certain circumstances and economic condition. These circumstances and conditions changed that resulted in my account going into arrears. You seem to be treating the account as if these circumstances never happened. If this was the case I will not even be arguing this case with you, but unfortunately this change of economic conditions impacted all terms of the original mortgage agreement including the price of the asset itself. So all I am asking you is for you to be fair in your dealings and take into consideration these conditions because pretending it never happened is unfairness at the highest level and I will not allow such unfairness to be melted [sic] out to me, for it is inhuman and actually a violation to my right to be treated fairly”*.

As previously set out, it is important to set out the limitations of the jurisdiction of this office in respect of complaints of this kind. In relation to MARP complaints, where issues of sustainability/repayment capacity are in dispute, the Financial Services and Pensions Ombudsman is only in a position to investigate whether the Provider, in handling the mortgage arrears issue, correctly adhered to its obligations pursuant to the CCMA.

I note that the First Complainant did not avail of the opportunity to appeal the decision as he states in his letter to the Provider dated **24 April 2015** that *“you also stated that I should appeal your decision; again I say to you that there is nothing to appeal since you are yet to come up with a decision”*.

#### **(6) ARA: October 2015**

On **21 May 2015**, the Provider wrote to the First Complainant in respect of the First Complainant *“not co-operating’ per the requirements of the Code of Conduct on Mortgage Arrears”*.

On **13 June 2015**, the First Complainant wrote to the Provider to state that he had been making payments of €900 and that the third payment of this amount would be in July. The First Complainant also enclosed a SFS. I note that the First Complainant sent a copy of the SFS again on **30 July 2015** as the Provider stated that it had not received the SFS.

**Provision 37 of the CCMA 2013** sets out the circumstances which must be taken into account by the lender in its assessment of a borrower’s case:

*“A lender’s ASU must base its assessment of the borrower’s case on the full circumstances of the borrower including:*

- a) The personal circumstances of the borrower;*
- b) The overall indebtedness of the borrower;*
- c) The information provided in the standard financial statement;*
- d) The borrower’s current repayment capacity;*

/Cont’d...

e) *The borrower's previous repayment history".*

The Provider has submitted documentary evidence in the form of the 'MARP review detail report'. The assessment notes show its consideration of the personal circumstances and employment details of the Complainants, the repayment history on the account and the level of co-operation demonstrated by the Complainants.

Having considered the First Complainant's proposal for an ARA of a reduced payment of €900 per month, the report records as follows:

*"reduced payment: unsustainable, arrears would continue to grow and there is no definite timeframe or income projection as yet for [the First Complainant's] business".*

The Credit Committee comments in the report are recorded as follows:

*"...approved for No Restructuring Options to issue in this case, this mortgage is long term unsustainable.*

*Borrower is not currently servicing short term debt however there are some areas of expenditure that could be reduced further in an effort to meet CMS payments. No payment received in the last 2 months despite SFS showing affordability to meet €900.67. I note borrower has set up his own business however he has confirmed he will not be in a position to draw an income from this or at least the first 12 months and there is no guarantee that the business will succeed.*

*It is unlikely the borrowers financial situation will improve enough to put him in a position to service the mortgage in the short or medium term.*

*Borrowers have no long term plan in place to address mortgage and affordability is only €900.67 which is 78.68% of CMS however over the last 12 months mortgage has only been serviced at 29.89%. Based on the borrowers financial circumstance as detailed in SFS there are no restructuring options available to this borrower. Borrowers should consider all options including sale or surrender of the property..."*

I accept that, on the basis of the evidence submitted, the Provider did base its assessment on the Complainants' full circumstances, in compliance with the requirements of Provision 37 of the CCMA 2013.

The Provider submits documentary evidence of the ASU's consideration of the ARA options available and their suitability to the Complainants' case, including, among others, arrears capitalisation, term extension, interest only, reduced payment, full deferral, term restructure, split mortgage, rate restructure, mortgage to rent and repossession. Having reviewed this documentary evidence, I accept that the Provider did explore all of the options offered by the lender and that the ASU did document its consideration of each of the options examined under Provision 39, including the reasons why the options considered, but not offered to the Complainants, were not sustainable. I accept that the Provider has complied with Provisions 39 and 40 of the CCMA 2013.

/Cont'd...

On **7 October 2015**, the Provider wrote to the First Complainant, in accordance with **Provision 45 of the CCMA 2013**. The correspondence set out the Complainants' right to appeal.

On **8 November 2015**, the First Complainant lodged an appeal which states as follows:

*"[the Provider] have not shown any genuine interest in helping to find a solution to the mortgage arrears even though the crisis that was not really my making or fault, instead they have pretended to be working within the remits of the MARP while at the same time making it impossible for any genuine resolution to be had.....my mortgage is now being paid as at when due. I therefore ask that [the Provider] again look at the arrears on the account and write part of these arrears off."*

The Provider has submitted the Minutes of the Meeting of the Appeals Board, which record the matters considered by the Board and the outcome of the Appeal. However, I note that I have only been provided with the first page of the minutes. The minutes, dated **5 January 2016**, record that the appeal was rejected.

The decision of the Appeal Management Executive was communicated to the First Complainant on **6 January 2016** in the following terms:

*"In considering your appeal, we have conducted a thorough review of your account and have decided to uphold the decision of the Arrears Support Unit to issue the No Options Letter.*

*Our investigation has found that the mortgage is not sustainable long term given your current level of affordability as per your last Standard Financial Statement (SFS). Your mortgage is currently 29 months in arrears at €33,330.41.*

*We note that in 2015 we received the following payments:*

*January - €300.00*

*February, March and April – No Repayments Made*

*May, June and July - €900.00*

*August, September and October – No Repayments Made*

*For the months of November and December 2015 we note that you have returned to your full contractual monthly repayment of €1,143.91 and we would encourage you to get in touch with your case owner to discuss any changes in your circumstances. If you maintain your full contractual monthly repayment consistently for a period of six months, your case may then be re-assessed with a view to capitalising the arrears on your account. Please note that any future assessments will be based on our criteria at that time and that same is subject to change.*

/Cont'd...

*Your request in your appeal that [the Provider] write down part of the arrears on your mortgage. As already advised, this is not an option that [the Provider] currently have available”.*

At that point the Appeal Management Executive advised the First Complainant of his right to refer the matter to the then Financial Services Ombudsman, and provided the appropriate contact details.

For these reasons, I find that the evidence supports the Provider’s position that its decision not to offer the Complainants an ARA in October 2015, and upon appeal in January 2016, was in compliance with the requirements of the provisions of the CCMA 2013, and I find no breaches of the CCMA 2013 on the part of the Provider. Nor is there evidence that the Provider has acted in a manner in its assessment which may be considered unfair or discriminatory in its application to the Complainants.

### **Other Complaints in relation to MARP**

The First Complainant submits in his letter to this office dated **18 November 2018** that he queried how interest was being applied to his account as it appeared “*dodgy*”.

The Provider submits in its letter to this office dated **7 December 2018** that “*interest accrues based on the rate applied to the mortgage in accordance with the terms of the offer letter*”. I accept that the setting of the interest rate is a matter which falls within the Provider’s commercial discretion.

The First Complainant asserts that the Provider only offered short term options. I accept that the documentary evidence submitted by the Provider displays that short term options together with longer term options were considered by the ASU. However, I do note that the First Complainant was wrongly advised by the Provider’s representative during a telephone call on **9 December 2014** when he was advised that “*any options we give will be short term*” and that the Provider can “*only give short term options on a 12 month to month basis*”.

The First Complainant was correctly advised by a different representative on **28 January 2015** during a telephone call, as the representative informed the First Complainant that the assessment would look for long term options also. It is disappointing that the First Complainant was misadvised in this way and I can understand that this must have been frustrating and confusing for the Complainants.

I note that the Complainants assert in their complaint to this office that they requested an interest only repayment arrangement, but that this was refused by the Provider. I do not accept this submission as the First Complainant states in his letter dated **13 April 2011** that “*I am not writing to request for an interest only payment or anything of that sort*”. In addition, during the telephone call on **23 February 2011**, the Provider’s representative suggested options to the First Complainant such as paying interest only. Also, the record on the Provider’s system notes on **17 August 2011** states that “*Mr called and advised that he does not want any of the options such as term extension/interest only etc. He wants to have his mortgage interest rates dropped so he can pay more of his capital*”. I also note that the

/Cont’d...

Provider offered the ARA option of interest only on two occasions in January 2013 and April 2014. Based on the evidence before me, I do not accept the First Complainant's submissions in this regard.

In summary, due to the breaches of the CCMA 2010 in August 2011 and the minor breach of the CCMA 2010 in April 2012, together with the delay in assessing the SFS on two occasions on the part of the Provider and the wrong advice provided to the First Complainant on **9 December 2014**, I partially uphold this aspect of the complaint. I found no breaches of the CCMA in respect of ARAs considered in January 2013, April 2014, February 2015 and October 2015.

### **Direct debit**

The complaint is also that the Provider, on many occasions, refused to set up a direct debit (for repayment of their mortgage) from the account of the Second Complainant, despite her being one of the mortgage holders on the top-up account. The First Complainant submits that this was done deliberately.

The Direct Debit Mandate form was signed by the Second Complainant on **15 March 2010**. The Provider then sent a letter to the First Complainant on **25 March 2010** stating that the Direct Debit in existence had been cancelled.

On **24 February 2011**, the Provider wrote to the First Complainant, refusing his request to add the Second Complainant to the primary account. The letter states *"your request to add [the Second Complainant's] name to the title would also require that her name be added to the mortgage. Adding her name to the mortgage requires a remortgage process to be initiated. Unfortunately this facility is not currently available."*

The First Complainant lodged a complaint in respect of this response. The Provider then wrote to the First Complainant on **12 April 2011**, stating as follows: *"in reply to your request to add [the Second Complainant] to the original loan we confirm that we are agreeable to same. We are not however in a position to agree to any change in title to the property. You should be aware that adding [the Second Complainant] to the original mortgage will have certain implications and you should seek independent legal advice before proceeding to request the change being considered"*.

I have not been provided with any further correspondence in respect of the Second Complainant being added to the primary account.

I note that during a telephone call between the First Complainant and the Provider on **9 March 2011**, the Provider's representative informed the First Complainant that payment could not be taken as the Second Complainant was not named on the mortgage.

I note that a few years later, the Direct Debit Mandate form was signed by the Second Complainant on **30 August 2013** and sent to the Provider. The Provider then sent a letter to the First Complainant dated **5 September 2013** stating that it was unable to accept *"third*

/Cont'd...

*party direct debit mandates. We require that the direct debit be set up in the mortgage account holder's name".*

The First Complainant was also informed by two Provider's representatives during telephone calls on **30 September 2013** that payment could not be accepted as the card was in the Second Complainant's name. In the first telephone call with the representative the First Complainant states *"my wife rang you to make payment last month and was refused to accepted payment from her. I'm calling to make payment for this month"*.

The First Complainant lodged a complaint and the Provider's response letter to the First Complainant dated **17 October 2013**, states as follows:

*"We sincerely apologise for any inconvenience caused by this delay in setting up a direct debit. As [the Second Complainant] is named on the top up portion of the loan, we can accept a direct debit mandate from her account.....*

*We have added a note to the main mortgage account number listed above to confirm that it is in order for us to accept payments from [the Second Complainant] so that this issue does not arise again".*

Despite this letter of apology and advised next steps, the Provider then wrote to the First Complainant on **23 October 2015**, which states *"unfortunately we can't execute your request as your wife is not a party to your mortgage"*.

The First Complainant lodged another complaint and the Provider's response letter to the First Complainant dated **5 January 2016**, states as follows:

*"Please accept our sincere apologies. Our records confirm that this issue has been raised previously and that we agreed that we can set up a direct debit on [the Second Complainant's] current account as she is named on the top up element of the mortgage. Unfortunately, as [the Second Complainant] is not named on the primary account, our agent neglected to note that she is also our customer and incorrectly advised that we could not accept her bank details as a result."*

It is most disappointing that the Provider made the same mistake on numerous occasions by failing to accept the direct debit using the Second Complainant's bank details. I accept that this was poor customer service, as the Provider did not rectify the issue as it said it would following the response letter dated **17 October 2013**. This was clearly a stressful time for the Complainants generally as they were dealing with arrears on their mortgage account and this clearly added to the Complainants' frustrations. I accept that it must have been particularly frustrating for the Complainants when the same mistake was made on multiple occasions. I accept that the Provider's failure caused annoyance, frustration and inconvenience to the Complainants. Whilst I appreciate that this was frustrating for the Complainants, the Provider did advise them of other payment methods and therefore I do not accept that the Provider's failures meant that the Complainants could not make their mortgage payments. I do appreciate that the Provider made the process of making

/Cont'd...

payments more difficult. I have not been provided with any evidence which suggests that the Provider did this deliberately as the Complainants assert.

### Insurance

The complaint is that the Provider began charging an insurance premium to the First Complainant's account in 2014, despite the Complainant already having insurance in place.

I have set out below a timeline of events in relation to this aspect of the complaint:

Date	Event
14 March 2014	The Provider received advice from the Complainants' insurers that the policy of insurance for the property had been cancelled with effect of 22 February 2014.
19 March 2014	The Provider wrote to the Complainants to seek details of the replacement policy as it had been advised that the buildings policy had lapsed.
2 April 2014	The Provider wrote to the First Complainant to advise that it had arranged temporary insurance cover with effect from 2 April 2014, as the Complainants had not submitted details of the household insurance. The Provider requested an up to date policy from the Complainants.
4 April 2014	The Provider received a letter from the First Complainant dated 26 March 2014 stating that he had switched insurers and provided the policy number.
8 April 2014	The Provider wrote to the First Complainant requesting a copy of the Policy schedule.
16 April 2014	The Provider wrote to the First Complainant stating that it had received the schedule, but that with the level of cover, there was a risk that the property was underinsured.
28 April 2014	A complaint was lodged by the Complainants. This office has not been provided with a copy of the letter of complaint.
2 May 2014	The Provider responded to the First Complainant's complaint and advised that <i>"when we checked your property details against the SCS Rebuild Guide, we calculated an approximate rebuild figure of €227,420.00 suggesting that you may be substantially underinsured"</i> .
4 August 2015	The Complainants provided details of revised cover levels and the temporary insurance cover was cancelled by the Provider.

I note that the letter from the Provider to the First Complainant dated **19 March 2014** stated *"please forward a copy of your up to date insurance schedule within the next 10 working days. Should we fail to hear from you, we will arrange alternative cover with insurers."*

/Cont'd...

The Provider submits that the temporary insurance cover was established pursuant to the Borrowers Covenants (Clause 7.01 (e) of the Mortgage) and that *“the Provider is satisfied that the policy was correctly established and that the costs of this temporary cover were correctly applied to the Complainants’ account in accordance with the terms of the mortgage.”*

I note that Clause 7.01 (e) of the Mortgage Deed states as follows:

*“7.01 The Borrower HEREBY COVENANTS with the Lender during the continuance of this Mortgage:*

*....*

*(e) to insure and keep insured the Mortgaged Property against all such risks and contingencies as are usually insured against under a householder’s comprehensive policy of insurance and such other risks and contingencies as the Lender at its absolute discretion may from time to time direct in the full replacement cost thereof in an insurance office of repute acceptable to the Lender in the joint names of the Borrower and the Lender or at the election of the Lender in the name of the Borrower with the interest of the Lender being noted on the said policy and to punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance when the same shall become due and if requested to lodge with the Lender the policy of such insurance and to forthwith produce the receipt for every or any premium or payment in relation thereof AND if the Borrower shall at any time fail to effect and keep up insurance the Lender may (but without being obliged to do so) at the cost of the Borrower effect and keep up such insurance in such insurance office and in such manner as the Lender shall decide and in that event the Borrower shall not without giving prior notification to the Lender in writing effect or keep up any insurance in respect of the Mortgaged Property or any part thereof...”*

On this basis, I accept that the Provider was entitled to obtain replacement insurance (at the expense of the Complainants) in the circumstances described in the table of events outlined above.

The First Complainant submits in his letter to this office dated **18 November 2018** that Section 5 (a) part 3 (conditions precedent) of the loan offer dated **30 April 2007** was breached when the Provider refused to accept adequate insurance that exceeds the reinstatement value of the property. I am of the view that this section of the mortgage loan is not relevant to this element of the dispute and the Provider acted in the manner it was permitted to under clause 7.01.

I do note that the Provider wrote to the First Complainant on **19 August 2015** (once the temporary insurance had been cancelled) to state that *“...we have refunded the €60 administration fee together with 16 premiums to your mortgage account for the period 02/04/2014 – 10/08/2015 in the amount of €516.22...”*

/Cont’d...



I have not found any wrongdoing on the part of the Provider in relation to the insurance cover matter.

### **Overall Customer Service**

The First Complainant submits in his letter to this office dated **18 November 2018** that the Provider's tactics were *"bullying in nature, very upsetting and caused [the Complainants'] emotional trauma"*. In this letter the First Complainant refers to the Provider's *"deliberate aggressive attitude"* and states that the Provider *"deliberately tried and did make life a living hell for me and my family"*. The First Complainant also submits that he had to inform the Provider to cease telephone communications with him and to communicate in writing.

The Provider submits that it *"is satisfied that it has never threatened to repossess the mortgaged property, nor has the Provider attempted to cause family trauma. In the alternative, where the Provider was referred to the risk of repossession in its dealings with the account, it has done so as required by the specific requirements of the CCMA. In all respects our communications have been measured in tone and appropriate to the circumstances"*.

**Provision 10 of the CCMA 2010** provides that *"all information relating to a lender's handling of arrears and pre-arrears cases must be presented to the borrower in a clear and consumer friendly way"*.

**Provision 22 (b) of the CCMA 2013** provides that *"a lender must ensure that: communications with borrowers are not aggressive, intimidating or harassing"*.

I am of the view that the written correspondence to the Complainants is compliant with the requirements of the CCMA 2010 and 2013.

I accept that communications with the First Complainant during the telephone calls complied in the whole with the requirements under the CCMA 2010 and 2013. I note that in a number of telephone calls, the First Complainant became agitated towards the representatives and that on numerous occasions it was very difficult for the representatives to have any input during the telephone calls. It is evident that the First Complainant was very frustrated in the majority of the telephone calls, which made it difficult for the representatives to deal with his requests, queries or complaints. Whilst most of the representatives dealt with the phone calls appropriately, I note that there were a few instances when the representatives were less than polite to the First Complainant and their tone could be construed as sharp.

I note that because the First Complainant spoke with different representatives during most of the telephone calls, this added to the First Complainant's frustrations. For example, there were numerous phone calls when the First Complainant was asked whether he wished to complete an SFS when he had already sent one in. For these reasons, I partially uphold this aspect of the complaint.

/Cont'd...

For the reasons outlined above, and in particular because the Provider did not always comply with the CCMA and provided poor customer service on a number of occasions, I partially uphold this complaint and direct the Provider to pay a sum of €500 in compensation to the Complainants.

### **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)(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 €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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

4 October 2019

/Cont'd...

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.

