



<u>Decision Ref:</u>	2019-0363
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process
<u>Outcome:</u>	Rejected

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

Background

The complaint concerns a dispute that the Complainant received unfair treatment in the course of her dealings with the Provider and that the Provider failed to follow the requirements of the Code of Conduct of Mortgage Arrears in general and in particular in considering her application for forbearance in June of 2016. The Complainant's case has been conducted on her behalf, with her consent, by a Third Party representative.

The Complainant's Case

The Complainant was originally assessed under the Mortgage Arrears Resolution Process (MARP) for an Alternative Payment Arrangement (ARA) as she had encountered difficulties in making repayments on her mortgage. The Provider removed the Complainant from the Mortgage Arrears Resolution Process. The complaint relates to the handling of this process and the handling of the subsequent appeal.

The Complainant's case is set out clearly in letter received by this office on **15 May 2018** from her representative, which states;

1. The Provider did not consider possible short term options when assessing their client's Standard Financial Statement (SFS).

2. The Provider did not consider an interest rate restructure in assessing the Complainant's SFS and in turn did not consider all of the options set out in the MARP booklet, contrary to Section 39 of the Code of Conduct on Mortgage Arrears (CCMA).
3. The Provider failed to comply with the requirements of Section 37 of the CCMA, in that the Provider's decision stated (the Complainant asserts incorrectly) that there was no evidence that the Complainant's circumstances would improve in the short to medium term, despite the Complainant's representative advising that the Complainant was applying for Family Income Supplement (FIS) and seeking an increase in working hours. The Complainant's representative states this was incorrect. The Complainant's representative accepts that the Complainant was taken ill and the anticipated improvement failed to materialise.
4. That the Provider failed to comply with requirements of Section 42 and 62 of the CCMA.

The Complainant in resolution of the issues requests that;

1. the decision to remove the Complainant from the Mortgage Arrears Resolution Process be reversed and that the Complainant be re-admitted to the protections of the MARP.
2. the decision not to grant the Complainant forbearance arrangement be reversed, and that consideration be given to granting the Complainant a temporary forbearance arrangement.

The Provider's Case

The Provider's case is set out clearly in letter received by this office on **8 May 2018**, in summary it states:

1. The Provider states that it is satisfied that when the SFS assessment was conducted on **21 June 2016**, it was based upon the proposal from the Complainant's representative. The Provider further states that it considered a short term arrangement based on the declared affordability, notwithstanding that the Provider had been advised that the Complainant had recently taken up new employment.
2. The Complainant's representative indicated that the Complainant had applied for FIS and expected additional working hours being available by letter dated **8 June 2016**, however, no evidence was furnished to the Provider to assess the potential level of affordability would represent a clear path to the mortgage becoming sustainable and that providing a short-term arrangement in the circumstances would be inappropriate.

/Cont'd...

3. The Provider states it indicated to the Complainant's representative that the Provider would revisit its position should the suggested change in the Complainant's circumstances occur and become certain.
4. The Provider asserts it considered all available options and the position at the time of the assessment, inclusive of short term and long term options.
5. With regards to the Complainant's complaint that the Provider did not consider all of the options set out in the MARP booklet, the Provider states that the MARP booklet sets out that interest reductions may be considered. It also states that the rates must be acceptable to the Provider. The Provider states the current rate of 1.25% falls below the minimum interest rate that the Provider can consider for further reduction.
6. The Provider contends that it has complied with its CCMA obligations to maintain records of the assessment and the subsequent appeal.

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.

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 13 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, I set out below my final determination.

/Cont'd...

It is important to note that this Office has investigated, in circumstances where the Office is of the understanding that no legal proceedings have been initiated by either of the parties in relation to the dispute. This is because if such legal proceedings were in place, this Office would not have jurisdiction to deal with the complaint unless a stay under **Section 49 of the Financial Services and Pensions Ombudsman Act 2017** was granted by the Court.

Recordings of telephone calls have been furnished in evidence. I have considered the content of these calls. From the content of those calls, it is clear that an agent of the Provider indicated that it was unlikely that short term options would be considered at that time. However, it was communicated that if the Complainant's circumstances changed there could be a possibility of restructuring options. This was in circumstances where the arrears were around €15,000 and payments had not been met.

The Complainant sought further forbearance on the mortgage in June 2016. At that stage the full contractual monthly mortgage repayment was €638.06. According to the Standard Financial Statement completed by the Complainant on **8 June 2016**, she had a disposable monthly income of €223. According to evidence furnished by the Provider, the property itself appears to have been in arrears of €15,139.15. The value of the property was estimated to be €162,199 and the total outstanding balance of the mortgage was €164,485.27.

The agent of the Provider did indicate that the decision was not up to him in any event and that the decision ultimately rested with the Credit Committee of the Provider. With reference to the MARP review detail report furnished to this Office, completed on **29 June 2016**, it is clear on pages 22 and 23, that a wide variety of options were considered by the Provider but rejected as unsuitable by the Provider.

The interest rate applicable to the loan was 1.25% and the Provider states that this fell below the minimum interest rate for further reduction. It was indicated to the Complainant's representative that this was a "low" interest rate from the Provider's perspective, therefore, it is reasonable to conclude that it was considered as an option by the Provider, but it was not deemed acceptable.

In terms of the Complainant's claim that the Provider did not act in accordance with section 39 of the CCMA, the evidence provided demonstrates that the Provider explored the options available and deemed that they were not appropriate in the circumstances including CMS Plus, CMS Only, Capitalisation, Term Extension, Temporary Interest Only, RPA and Full Deferral.

The Complainant contends that the Provider failed to comply with the requirements of Section 37 of the CCMA, in that the Provider's decision stated that there was no evidence that the Complainant's circumstances would improve in the short to medium term, despite the Complainant's representative advising that the Complainant was applying for Family Income Supplement (FIS) and seeking an increase in working hours. The Complainant accepts that this change of circumstances did not occur.

/Cont'd...

The Complainant had hoped that her circumstances would improve, although this did not turn out to be the case and no firm evidence of this improvement in circumstances was furnished to the Provider when it was assessing the application for forbearance.

Section 42 of the CCMA is not applicable as the Provider issued a “no options” letter in accordance with section 45 of the CCMA, thus section 42 does not apply as an Alternative Repayment Arrangement was not offered by the Provider. It is worth noting that section 62 of the CCMA states that the Provider must keep records and must produce all such records to the Central Bank of Ireland upon request, it is not a matter for the Provider to make those records available to the Complainant under this section. I do not accept that sections 42 and 62 were not complied with by the Provider.

The Provider extended the protections of MARP to the Complainant for an extended period of time and communicated with the Complainant throughout the process as evidenced by the series of calls furnished to this Office along with the document exchange.

It is important to note that in relation to complaints of this nature, where issues of sustainability/repayment capacity are in dispute, this Office is only in a position to investigate a complaint as to whether the Provider, in the handling of the complaint correctly, adhered to its obligations pursuant to the CCMA and MARP. This Office cannot investigate the details of any re-negotiation of the commercial terms of the mortgage. This is because this Office will not interfere with the commercial discretion of the Provider, unless the conduct is deemed to be unreasonable, unjust, oppressive or improperly discriminatory.

While the Complainant was in a difficult position financially and had availed of the protections of the MARP through preceding Alternative Repayment Arrangements, I accept that the decision making by the Provider was based on a thorough assessment of the SFS completed by the Complainant. The MARP Review Detail Report is comprehensive and sets out all of the options considered including short term alternatives and sets out why certain avenues were not acceptable. The same document also considers the possibility of the Complainant improving her circumstances, “*Borrower is seeking more full time employment*”.

However, section F on page 10 states, “... *has put forward a proposal on behalf of the borrower seeking a RPA of €223.27 pm until the borrower finds full time employment and her financial circumstances improve. However, how long this will take the borrower is unknown and therefore it was communicated to [the Complainant’s representative] that having assessed all re-structure options available, there may be no re-structure options available at this point in time. This is based on the fact that the borrower’s current affordability levels and also that she has not made any contribution to the mortgage since 15 April 2016*”. I accept that while the submission on the Complainant's behalf raised the possibility of an improvement, there was no evidence before the Provider at the time of its decision that it would actually happen.

/Cont’d...

The Provider appears to have engaged in a transparent manner with the Complainant and complied with the Consumer Protection Code 2012 and the requirements of the Code of Conduct on Mortgage Arrears.

Therefore, while I understand the very difficult circumstances the Complainant finds herself in, I have not been provided with evidence that would justify upholding this complaint.

Therefore, for the reasons outlined above, I do not uphold this complaint.

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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

9 October 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.