An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0388
Sector:	Banking
Product / Service:	Mortgage
Conduct(s) complained of:	Wrongful consideration of forbearance request Arrears handling - Mortgage Arears Resolution Process Dissatisfaction with customer service
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to the Complainants' mortgage loan held with the Provider.

The Complainants entered into the mortgage loan with the Provider pursuant to a Letter of Approval – Particulars of Mortgage Loan dated **31 January 2008**. The mortgage loan was for the sum of €302,000 for a period of 25 years. The loan is secured on the Complainants' principal primary residence. The mortgage loan was drawn down in April 2008 on a 1 year discounted tracker interest rate of ECB + 0.7%. On the expiry of the one year discounted period the loan converted to a tracker interest rate of ECB + 2.25%. The loan account remains on a tracker interest rate of ECB + 2.25%.

The Complainants' mortgage loan account was sold by the Provider in 2018.

The Complainants' Case

The Complainants submit that they have had *"ongoing issues"* with the Provider with respect to arrears arising on their mortgage loan account and that the Provider has failed to engage with them in *"any meaningful way".*

The Complainants submit that between **2012 and 2015**, the Provider gave them temporary arrangements, however, the Provider refused to offer them a long term arrangement to restructure their mortgage loan. The Complainants submit that Second Complainant can no longer work *"due to illness"*.

The Complainants submit that they offered the Provider a lump sum payment (from the Second Complainant's redundancy and financial assistance from family) which they were happy to put to the mortgage to reduce it and agree a long-term arrangement. The Complainants submit that in the absence of a long term arrangement they were *"afraid*" they would still lose their house.

The Complainants submit that in **March 2015,** they were advised by the Provider that it had assessed their most recent Standard Financial Statement ("SFS") and it would not offer the Complainants a long term solution and that they could afford the full mortgage repayments. The Complainants submit that they requested an explanation for the Provider's calculations which concluded that they were in a position to make full payments and that they did not receive a response from the Provider.

The Complainants submit that in a conversation with the Provider on **23 March 2015** they were advised that if they did not make a lump sum payment to the Provider, then the Provider would not offer a long term solution. The Complainants appealed this decision to the Appeals Board on 08 April 2015. The Complainants submit that "*under duress*" they lodged the Second Complainant's redundancy payment into the mortgage over a series of payments in **April 2015**. The Complainants submit that when they didn't receive any response to their appeal, they rang the Provider on 07 May 2015 and were advised that the appeal had been unsuccessful.

The Complainants state that they submitted a new SFS to the Provider in **April 2015**, and at the time of their complaint to the then Financial Services Ombudsman (the "FSO") (now Financial Services and Pensions Ombudsman) in August 2015, they *"have had no response to the SFS and have fallen back into arrears as a result of this delay and lack of communication."* The Complainants submit that the Provider's lack of engagement is costing them *"considerably; financially and emotionally."*

At the time of the complaint to the FSO (now FSPO), the Complainants were seeking a *"split mortgage with payments appropriate"* to their current situation. The Complainants submit that since their complaint to the FSO (now FSPO), the Provider has sent them a restructure arrangement which they signed in April 2016 under "*duress, following an extensive period of requesting clarification on decisions taken by the bank (requesting confirmation and explanations in writing – both denied – and oppressive, communication...)".*

The Complainants submit that the Provider has acted in breach of the ***Code of Conduct of Mortgage Arrears 2013*** ("***CCMA***") and the ***Mortgage Arrears Resolution Process*** ("***MARP***"). The Complainants submit that on a "*basic level*" they have experienced the following;

- *"Consistent failure to provide written explanation of decisions several times, ignoring same requests from our branch manager (Section 45 of CCMA)*

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- *Refusal to meet with us, despite several requests and attempts by the Branch Manager to arrange a meeting (Section 3 of the CCMA)*

- *Failure to examine and process our April SFS appropriately which led to further financial difficulty (Section 32, 35, 36, and 39 of CCMA)*

- *Offering and then withdrawing an offer*

- *Excessive/aggressively communication*

- *Failure to consider all options or explain (verbally or in writing) why we weren't suitable for an alternative arrangement and how they arose at the decisions they made. (Sections 39, 40 and 45 of CCMA)"*

The Complainants submit that the Provider's "*consistent delay in engaging with us properly, transparently and fairly has cost us significantly; financially, emotionally and physically. Their behaviour went beyond unprofessional and became reckless and careless. This includes ignoring genuine concerns, not responding to requests for information, even to frustrating attempts to have boundary issues with our property resolved; using it as a force to have arrears paid regardless of our situation or our attempts to engage."*

The Complainants submit that they continue to seek a sustainable arrangement and that the Provider "*refuses*" to consider the fact that the First Complainant must retire at 60, at which point they will have a significant balance outstanding and there has also been no consideration of the Second Complainant's *"long term ill health and its implications later in life and at retirement age"*. The Complainants are seeking compensation from the Provider for the manner in which the Provider dealt with the Complainants.

The Provider's Case

The Provider submits that the Complainants' mortgage loan account has been treated under the MARP process and the Provider has complied with the ***CCMA 2013***. The Provider outlines that it has been in regular contact with the Complainants (via telephone, letter and branch) regarding the Complainants' mortgage loan account and the level of communication was *"proportionate and not excessive"*.

The Provider submits that it's records detail a number of Alternative Repayment Arrangements have been applied to the Complainants' mortgage loan, as follows;

- *"April 2010 to June 2010 – Interest Only repayments of €757.13 per month*

- *July 2011 – Full Moratorium, repayment set at zero*

- *August 2011 to September 2011 – Reduced repayments set at €864.31 per month*

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- *October 2011 to November 2011 – Reduced repayments set at €857.62 per month*
- *January 2012 to March 2012 – Reduced repayments set at €682.59 per month*
- *June 2012 to November 2012 – Reduced repayments set at €676.64 per month*
- *December 2012 to April 2013 – Reduced repayments set at €625.69 per month*
- *May 2013 to October 2013 – Reduced repayments set at €500.00 per month*
- *May 2014 to August 2014 – Reduced repayment set at €581.16 per month*
- *September 2014 to October 2014 - Reduced repayments set at €557.92 per month"*

The Provider states that it was noted from the information submitted by the Complainants that they were awaiting the *"outcome of an Equality Hearing regarding redundancy payment from a previous employer and also a decision from [an insurance company] regarding income continuance. It was also noted that the Complainants held circa €16,000 in Bonds, site valued at approximately €5,000 and an unencumbered holiday home in Spain valued at approximately €38,000. As per the Bank policy liquid assets must be used to pay down a mortgage prior to offering a Long Term solution. Short Term Treatments were offered to the Complainants pending the outcome of these issues."*

The Provider submits that it could not assess the Complainants' request for a long term treatment, inclusive of the lump sum funds, until the funds were received by the Complainants and the funds were applied to the mortgage account in permanent reduction of the secured debt. The Provider submits that the Complainants were advised of this during a telephone call on **19 November 2014** and during several subsequent telephone calls, namely **3, 12, 20 and 29 January 2015 and 23 March 2015**.

The Provider submits that it *"refutes"* the Complainants' submission that they felt under duress to lodge their available funds to clear the arrears. The Provider submits that the recommendation regarding the lodgement of additional funds was explained to the Complainants during the call of **23 March 2015**. The Provider submits that it also advised the Complainants during that call that it was the Provider's policy, that once a customer has liquid assets in excess of €5,000 the Provider will request that those funds be lodged to the mortgage loan account.

With respect to the Complainants' submission that they advised the Provider that they were willing to offer a lump sum, including financial assistance from the family, the Provider submits that the Provider *"assesses Standard Financial Statements based on a customer's current financial circumstances. The Bank would not be in a position to assess SFS based on funds being received at a future date resulting in a change of circumstance*".

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With respect to the SFS submitted by the Complainants in **April 2015**, the Provider submits that an SFS was submitted by email directly to a representative in the Provider's branch on 21 April 2015 and that the representative, reverted to the Complainants on 11 May 2015. The Provider submits that the SFS had not been processed in the intervening period as the Provider's representative had been on annual leave for the previous 2 weeks. The Provider submits that the Complainants were advised of this by email on 11 May 2015.

The Provider submits that the Complainants lodged available funds to clear the arrears outstanding in **April 2015** and submitted a further SFS for assessment on 25 May 2015. The Provide submits that *"a pre-trial period of 6 months to be followed by a Long Term Treatment was offered and accepted in August 2015."* The Provider submits that *"following successful completion of the pre-trial period a long Term Treatment was applied to the Complainants' Mortgage Account".*

The Provider submits that on **01 April 2016**, a Long Term Restructure Agreement of part capital and part interest was put in place on the Complainants' mortgage loan account.

The Provider acknowledges that there were "*shortcomings in the service*" raised in this complaint, as follows;

- *"On 31st July 2014 due to human error an agent incorrectly informed the Complainants that the Bank would issue documentation to them in relation to a Long Term Part Capital and Interest Agreement. The Complainants had appealed this decision the Appeals Board had offered them the option of a Moratorium for a period of four months with repayments set at €581.16. This offer did not contain an option for a Long Term Treatment therefore the documentation was not due to issue. This was clarified during a telephone call on 11th August 2014."*

- *"On 5th August 2014 correspondence was issued in error to the Complainants requesting they contact the Bank in order to complete an SFS. The Complainants were advised the correspondence was issued in error during a telephone call on the 14th August 2014.*

- *"The Bank is also aware we are unable to clarify the Complainants' comments regarding their dealings with [named official] did not revert to the Complainants as requested."*

The Provider has offered the Complainants €1,000. The Provider has submitted that this offer remains open should the Complainants wish to accept the offer at a later date.

<u>The Complaints for Adjudication</u>

The complaint for adjudication is that, the Provider acted inappropriately and in breach of the CCMA with respect to the management of the Complainants' mortgage loan account, by continually giving the Complainants temporary arrangements and refusing to offer the

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Complainants a long term arrangement to restructure their mortgage loan between **2012 and 2015** and not communicating or engaging appropriately with the Complainants, including in relation to their financial circumstances and ability to pay.

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 23 October 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.

As a preliminary issue, it is important to set out the limitations of the jurisdiction of this office with respect to this complaint. In relation to ***Mortgage Arrears Resolution Process*** (the "***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*** (the "***CCMA***").

The Financial Services and Pensions Ombudsman may investigate the procedures undertaken by the Provider regarding the MARP process, 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. The ***Financial Services and Pensions Ombudsman*** will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is

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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.***

Between **July 2011 and February 2016**, a number of short term repayment arrangements were entered into between the Complainants and the Provider. These repayment arrangements are summarised as follows;

	Date range	**Repayment Arrangement**
1	August 2011	Full Moratorium
2	September 2011 to October 2011	Reduced repayments set at €864.31 per month
3	October 2011 to November 2011	Reduced repayments set at €857.62 per month
4	January 2012 to March 2012	Reduced repayments set at €682.59 per month
5	June 2012 to November 2012	Reduced repayments set at €676.64 per month
6	December 2012 to April 2013	Reduced repayments set at €625.69 per month
7	May 2013 to October 2013	Reduced repayments set at €500.00 per month
8	May 2014 to August 2014	Reduced repayment set at €581.16 per month
9	September 2014 to October 2014	Reduced repayments set at €557.92 per month
10	September 2015 to February 2016	Reduced repayments set at €889.17 per month

The Complainants' communicated with the Provider in **July 2011** and completed an application form seeking a payment holiday. The Complainants outlined that the reason the payment holiday was sought was because the Second Complainant was on sick leave from her job since July 2010 "*following a bullying incident at work*" and that she had a case pending before the Equality Tribunal.

The Complainants outlined that the Second Complainant's sick pay had ceased and that a decision was awaited on an income continuance policy that she held. The Complainants' indicated that in the meantime the Second Complainant's pay had been reduced to half and that social welfare payments had been deducted from her. The Complainants requested a two month moratorium.

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A number of ***Standard Financial Statements*** ("*SFS*") were completed between **March 2012 and April 2013**. From a review of the evidence, I note that the SFS's completed throughout this period recorded a number of changes in circumstances which had an impact on the Complainants' ability to service their mortgage loan, as follows:

- **March 2012 -** The SFS indicated that the Second Complainant's Equality hearing had taken place in February 2012 and that the Complainants were awaiting the outcome. It was noted by the Complainants that there may be subsequent appeals against any decision.

- **October 2012 –** The SFS indicated that the outcome of the Equality Hearing was still awaited and the Second Complainant had not received an outcome on the income continuance application. The Second Complainant had applied for a medical card. The Second Complainant's illness benefit would be ceased in November 2012.

- **April 2013 –** The SFS indicated that an application for an invalidity pension had been declined, but that this was being appealed by the Social Welfare. The Equality case was ongoing. Further, there were safety issues with respect to the property that had surfaced and the Complainants were seeking a possible resolution through a claim on the supervising engineer's professional indemnity insurance.

The Complainants were advised by letter dated **04 October 2013** that the reduced repayment arrangement which was in place between **May and October 2013**, was due to expire on 28 October 2013.

Telephone calls took place between the Complainants and the Provider on **01, 12 and 28 November 2013**. I note that during the course of each of these calls the Second Complainant was advised of the arrears on the account and asked for payment. The Second Complainant advised the Provider that the payments could be met for November and December and that an appointment would be made with the Provider's branch representative to complete a further SFS.

The Complainants take issue with the fact that they emailed a named representative of the Provider after the telephone call on **01 November 2013** and this email was not responded to. The Provider submits that this email was not received as the representative's name was not spelled correctly in the email address. A copy of that email has been furnished in evidence by the Complainants. This email provides an outline of the Complainants' up to date position with respect to her treatment for her health condition, that she had now been awarded invalidity benefit from the social welfare on a short term basis, that her case with her employer would be heard before the Labour Court on 14 and 15 November.

The Complainants then outline that they *"need to come to some permanent arrangement"* with regard to the mortgage.

The Complainants take issue with the Provider's submission that this email was not received. Whilst it was unfortunate that the Complainants' email was not received by the Provider at

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the time, I accept that it was not received at the time owing to an error with the spelling of the relevant representative's name. I can find no fault with the Provider in this respect. In any event the fact that no action was taken on foot of the email, is not material, as the Complainants had indicated that they could meet the mortgage repayments for November and were informed on the subsequent calls on **12 and 28 November 2013,** that if they could not do so that the appropriate course of action to agree an alternative repayment arrangement was to complete and submit an SFS.

The Provider again wrote to the Complainants on **13 December 2013** and outlined that there was an arrears balance of €6,862.66 on the Complainants' mortgage loan account. This letter outlined as follows;

> *"It is essential that the arrears balance is paid within the next 10 days. In the event of you being unable to meet this commitment, you should contact the undersigned immediately.*
>
> *We propose to review your account again in 10 days' time. If we have not heard from you in the interim, we will then make a formal demand for payment. This is the first stage in legal action for repayment of your loan. We are sure that you will wish to avoid the substantial expense (see below), and inconvenience that such a course of action entails.*
>
> *Please note where a property is repossessed and in the event the Company sells the property at a loss, ALL parties to the mortgage will be liable for the shortfall due and owing to the Company after sale proceeds have been lodged to the Mortgage account and all costs in respect of the sale are paid"*

A further call was placed to the Complainants on **18 December 2013**, to assess whether the Complainants were in a position to address the arrears and a follow up letter was issued to the Complainants on **23 December 2013**, with respect to the arrears.

It appears that the Complainants completed an SFS on **22 December 2013**, which was submitted to the Provider's Branch representative by email on 22 December 2013. Further documentation was submitted to the Provider's Branch on **02 January 2014**. It is noted that the Branch Manager did not submit the SFS to the Arrears Department for consideration until **22 January 2014**. In the interim it appears from the timeline submitted by the Provider that on 14 January 2014, the Provider issued a letter to the Complainants advising them of the arrears and that an SFS should be completed. This office has not been furnished with a copy of this letter in evidence, either by the Provider or the Complainants.

I note that the Provider's internal log on that date notes that *"no appointment in place as per ……..sfs required. ccma28 sent".* On the basis of the reference in the internal log to the letter as a "ccma28", it appears to me that this letter was a letter outlining the details, as required by provision 28 of the CCMA 2013.

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Provision 28 of the CCMA provides as follows;

> *Prior to classifying a borrower as not co-operating, a lender must write to the borrower and:*
>
> *a) inform the borrower that he/she will be classified as not co-operating if he/she does not undertake specific actions within at least 20 business days of the date of the letter to enable the lender to complete an assessment of the borrower's circumstances;*
>
> *b) outline the specific actions that a borrower must take within the period allowed in accordance with Provision 28 a), to avoid being classified as not co-operating;*
>
> *c) outline the ongoing actions that a borrower must take to avoid being classified as not co-operating, including a statement that if any of these ongoing actions are not undertaken at any point in the future, the lender may classify the borrower as not co-operating without further warning;*
>
> *d) outline to the borrower the implications of not co-operating, including:*
>
> *(i) that the borrower will be outside of the MARP and the protections of the MARP will no longer apply;*
>
> *(ii) that a lender may commence legal proceedings for repossession of the property immediately after classifying the borrower as not cooperating; and*
>
> *(iii) a warning of the impact it may have on the borrower's eligibility for a Personal Insolvency Arrangement;*
>
> *e) include a statement that the borrower may wish to seek appropriate legal and/or financial advice, for example from MABS; and*
>
> *f) with regard to the potential for legal proceedings, include a statement that, irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.*

The Second Complainant then placed a telephone call to the Provider on **20 January 2014**.

The Second Complainant outlined that she was *"upset"* to receive the letter of 14 January 2014 and found the tone of the letter to be "*aggressive*" as in her view she had been co-operating with the Provider. The Second Complainant explained that the Complainants had submitted an SFS to the Provider's Branch before Christmas and that further documents were delivered in January. I note that during the course of the telephone call, the Provider's representative advises the Second Complainant that this interaction with the Branch is not recorded on the internal system. The Provider's representative advised the Second

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Complainant that she should request the Provider's Branch Representative to place notes on the system going forward.

The Provider's internal log on that date records *"as [system] has not been updated with any of this emailed [Name of Branch Manager] and [Location] BR to confirm SFS received and reason for delay in submission?"*

It appears to me that the Provider issued the letter of **14 January 2014,** as there was no indication on the Complainants' file that an SFS had been received by the Branch at that time. It is most disappointing that the log was not correctly updated to reflect the accurate position with respect to the Complainants' engagements with the Provider. I accept that it would be upsetting for the complainant to receive such a communication from the Provider in circumstances where the Complainants had in fact submitted an SFS, some three weeks earlier to the Branch for assessment. Furthermore, I do not think that it is appropriate for an agent of the Provider to advise a customer that they should request the representative of the Provider that they are dealing with to put notes on a file. It is incumbent on the Provider to ensure that all representatives of the Provider follow the correct operating procedure and place notes of interactions with a customer on the file, in accordance with any such procedure. It appears that the effect of a note not being placed on the Complainants' file at this time, was that the Complainants were issued with a letter that was not in fact appropriate to their circumstances. I find this to be a significant failing on the part of the Provider and accept that in the Complainants' circumstances that this was perceived to be an "aggressive" communication, at that time.

I note that the Complainants' SFS was submitted to the Arrears Department for consideration on **22 January 2014**. The relevant information section of that SFS noted that the Equality Hearing had been heard and a provisional award of over €30,000 was granted as a redundancy settlement, the Second Complainant was in receipt of illness benefit from the Department of Social Welfare, the Second Complainant had been awarded a medical card and this was up for renewal. The SFS outlined that the Complainants were looking for *"some sort of long term forbearance"*.

The Provider wrote to the Complainants on **23 January 2014** and outlined that the Provider had identified a *"Part Capital and Interest Arrangement as the appropriate restructure option"* for the Complainants. The letter outlined that the Provider would set this up for a *"trial period of six months"* and once the Complainants "*successfully made the six consecutive monthly repayments"* that the Provider would offer them that arrangement for the longer term, provided the Complainants' circumstances hadn't changed.

The Complainants take issue with the fact that this letter does not outline the Complainants' right to appeal this offer.

Provision 42 of the CCMA provides as follows;

> *"Where an alternative repayment arrangement is offered by a lender, the lender must advise the borrower to take appropriate independent legal and/or financial advice and*

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provide the borrower with a clear explanation, on paper or another durable medium, of how the alternative repayment arrangement works, including:

(a) the reasons why the alternative repayment arrangement(s) offered is considered to be appropriate and sustainable for the borrower as documented by the lender in compliance with Provision 40, including demonstrating, by reference to the borrower's individual circumstances, the advantages of the offer for the borrower and explaining any disadvantages;

(b) the new mortgage repayment amount;

(c) the term of the alternative repayment arrangement;

(d) the implications arising from the alternative repayment arrangement for the existing mortgage including the impact on:

(i) the mortgage term,

(ii) the balance outstanding on the mortgage loan account, and

(iii) the existing arrears on the account, if any;

(e) a statement that the alternative repayment arrangement may impact on the borrower's mortgage protection cover;

(f) the frequency with which the alternative repayment arrangement will be reviewed in line with Provision 43, the reason(s) for the reviews and the potential outcome of the reviews, where:

(i) circumstances improve,
(ii) circumstances disimprove, and
(iii) circumstances remain the same;

(g) details of any residual mortgage debt remaining at the end of an alternative repayment arrangement and owed by the borrower;

(h) how interest will be applied to the mortgage loan account as a result of the alternative repayment arrangement;

(i) how the alternative repayment arrangement will be reported by the lender to the Irish Credit Bureau or any other credit reference agency or credit register and the anticipated impact of this on the borrower's credit rating; and

(j) the timeframe within which the borrower must accept or decline the offer."

I note that there is no obligation on a Provider to set out the right to appeal this offer in this letter under Provision 42 of the CCMA.

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Nonetheless it appears that the Complainants were aware of the right of appeal and the Complainants appealed the offer by letter dated **31 January 2014** to the Provider's ***Arrears Support Unit*** ("***ASU***"). In this appeal letter the Complainants outlined that the Second Complainant was due to lose her medical card and as such her medical expenses were due to rise significantly. The Complainants outlined *"several times we have requested a more permanent solution but that has not been forthcoming. We will continue to pay 500 per month into our mortgage account and will supplement this when possible".* As the information with respect to the loss of the medical card was not disclosed in the SFS of 22 January 2014, a letter then issued from the ASU on that date informing the Complainants that as there was a change in circumstances they should make an appointment with the Branch and complete an SFS.

A letter then issued to the Complainants on **13 February 2014** advising them that that they had 10 days to accept the restructure arrangement. The Complainants replied by letter dated **17 February 2014** and outlined that the Provider's letter had added to the *"confusion, stress and frustration*" of their situation, in circumstances where, they were advised in the intervening period that they should submit an updated SFS. I accept that this might have led to some confusion of the Complainants' part at this time, given the intervening exchange. However, I am of the view that the letter of 13 February 2014, set out information that it was important that the Complainants were made aware of, namely the consequences of not accepting the offer. The letter outlined as follows;

> *"If you do not accept our restructure offer you will be asked to pay all your outstanding arrears and return to your original contractual monthly repayments. If you do not make these scheduled payments then we will have no option but to protect the Bank's security and will be forced to consider legal action which may result in forced repossession of the property."*

I note that the Complainants had outlined that they would pay €500 per month in their letter of 31 January 2014. It is important for the Complainants to be aware that the mortgage loan that they had entered into 2008 remained legally binding on them. Although I note that the Complainants had found themselves in difficult circumstances which meant they were not in a position to make full repayments since 2012 and had completed a number of SFS's under the CCMA framework which makes provisions for agreeing solutions with borrowers in these circumstances.

It is important for the Complainants to understand that this process involves completing the required documentation in order for an assessment to be conducted by the Provider under the CCMA. An assessment had been conducted by the Provider at this time in **January 2014** and a solution had been offered in accordance with provision 39 of the CCMA. Although an appeal had been lodged under provision 49 of the CCMA, the Provider was correct to advise the Complainants of the consequences of not accepting the ARA on offer within the period outlined. I note that the Provider then issued a letter under provision 47 of the CCMA on 24 February 2014 and they were entitled and obliged to do so.

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I note that the ASU subsequently offered the Complainants a reduced repayment arrangement for four months by letter dated **17 April 2014**, which was accepted by the Complainants on **29 April 2014**.

I note that there were further communications between the Complainant and the Provider between **July and August 2014**. On **02 July and 30 July** letters issued with respect to an unpaid direct debit and telephone calls were made to seek these payments. I note throughout July letters also issued with respect to the arrears, which at that point, stood at €11,592.82. I note from the Provider's internal notes that telephone calls were attempted on 17 and 21 July 2014. A call then took place on **31 July 2014**, I note that during this call the Provider's representative misadvised the Complainants that a long term treatment would be offered once the missed payments of the trial period were received and that documentation was due to issue to this effect. The Provider accepts that the Complainants were misadvised by the customer service representative on this occasion. I note that a call between the Complainant and the Provider's representative took place on **11 August 2014**, where the representative clarified the position with respect to the long-term treatment. I accept that there was an admitted customer service failing on the part of the Provider at this time and can appreciate the Complainants' frustrations with receiving mis- information from the Provider. However, I do not accept that the Provider offered and withdrew an offer of a long term arrangement at this time. The letter of 23 January 2014 was clear that the offer of a part capital and interest arrangement for the longer term was contingent on the Complainants successfully meeting the six consecutive repayments under the short term six month arrangement. The Complainants in the first instance did not accept the offer of the short term arrangement so the longer term arrangement could not be put in place by the Provider at this time.

The Provider wrote to the Complainants by letter dated **01 August 2014**, and outlined that the temporary arrangement that was in place was due to expire on 28 August 2014. It appears that correspondence issued to the Complainants on 11 August 2014, enclosing an SFS to be completed by the Complainants. The Provider accepts that this correspondence should not have issued as the Complainants were in an Alternative Repayment Arrangement at the time and this was clarified in a telephone call with the Complainants on **11 August 2014**. Nonetheless, the Complainants completed and submitted an SFS dated **14 August 2014.**

This SFS recorded that the Complainants' family were prepared to help the Complainants with making a lump sum payment, along with the Complainants' redundancy payment, towards the mortgage but only if there is a *"long term settlement of the debt*". I note from the Provider's internal notes that the SFS was sent for review by an Assistant Manager in the ASU Department on **29 August 2014**. The internal notes for assessment record as follows;

> *"[The Complainants] have confirmed they intend on clearing the arrears and making a capital reduction. They will have €30k (redundancy/employment tribunal payment). The borrowers also have a bond with an encashment value of circa €13k and her parents have indicated that they will also make a contribution.*

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They may have up to €70k available for capital reduction. Recommending STT for 2 months at Interest Only to be reviewed once the borrowers have cleared the arrears and confirmed the amount for capital reduction."

The ASU Department Assistant Manager approved an interest only moratorium for 2 months. The email from the ASU Assistant Manager to the Provider's assessor recorded as follows;

"We cannot assess the account for a long term option as we have no clear indication of what the balance remaining will be. The redundancy payment and the lodgement from the borrowers' parents should significantly reduce down the balance owed and we can then review the account at that point for affordability.

The borrowers should submit a new proposal when the capital reduction has taken place."

The Provider issued a letter to the Complainants on **29 August 2014** which outlined that the Provider was willing to offer the Complainants a 2 month moratorium, with repayments of €557.92. The Complainants signed the restructure agreement for the moratorium on **05 September 2014**. The Provider confirmed that the monthly repayments had been amended per the agreement by letter dated **09 September 2014**. The Provider wrote to the Complainants by letter dated **03 October 2014** and outlined that the temporary arrangement was to end on 28 October 2014.

I note that it was not until the Complainants call to the Provider on **10 October 2014** that the Provider informed the Complainants that they had to make any lump sum payment that they proposed to make, to include the redundancy payment in advance of the Provider considering a long term treatment. I note that the Second Complainant expressed dissatisfaction with this to the Provider, and indicated that her parents would not give the Complainants additional money to form part of the lump sum, until a long-term treatment was offered. The Complainants were advised to make the lump sum payment and complete a further SFS.

It is disappointing to note that the Complainants were not advised by the Provider on or around **29 August 2014,** that the appropriate course of action for the Complainants to take was to make whatever lump sum payment that they proposed to make and that thereafter the Complainants could be assessed for the appropriate long term restructure. It was not until some 6 weeks later that the Complainants were advised of this. It is clear that the purpose of the 2 month restructure that was put in place for September and October 2014, was for this to be carried out. However it was not until the Complainants contacted the Provider, with some 2 weeks remaining on the restructure agreement that they were informed of this key piece of information. Up until this time, the status of the redundancy payment was unclear and I accept that the appropriate course of action was to put in place short term arrangements, as there were continual changes in the Complainants' financial positon, to include, issues with respect to the income continuance, illness benefit and entitlement to the medical card.

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Further I note that it was not until the SFS completed in August 2014, that there was an indication that funds might be forthcoming from the Complainants' parents to assist to reduce the arrears and that there were other liquid assets that the Complainants proposed to dispose of to make a lump sum payment. In the circumstances I am of the view that the Provider's failure to inform the Complainants that they had to make any lump sum payment in advance of a long term restructure being agreed for some 6 weeks to be a further customer service failing on the part of the Provider.

The Complainants submitted an SFS on **30 October 2014** for consideration. It is noted from the Internal Notes that an account review took place and that the Arrears Department advised the representatives in the Provider's Branch on **11 November 2014** that an ARA had been declined as the *"customers have 45k in liquid assets which they talk of using to reduce arrears/mortgage. We cannot assess for Long Term Treatment until funds are applied in permanent reduction of secured debt. We will readily assess for treatment once this has taken place."* I note that the Complainants placed a call to the Provider on **19 November 2014**, to seek an update with respect to the SFS. It appears that the Complainants had not been advised by this time that the Provider had taken the decision to decline to offer an ARA, by the Provider, even though the decision had been taken some 8 days earlier.

Provision 45 of the CCMA provides as follows

> *"If a lender does not offer a borrower an alternative repayment arrangement……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;*

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(d) that legal proceedings may commence three months from the date the letter is issued or eight months from the date the arrears arose, whichever date is later, and that, irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case;

(e) that the borrower should notify the lender if his/her circumstances improve;

(f) the importance of seeking independent legal and/or financial advice;

(g) the borrower's right to consult with a Personal Insolvency Practitioner;

(h) the address of any website operated by the Insolvency Service of Ireland which provides information to borrowers on the processes under the Personal Insolvency Act 2012; and

(i) that a copy of the most recent standard financial statement completed by the borrower is available on request"

It appears that the Provider did not issue any correspondence to this effect to the Complainants at this time, such as to comply with ***Provision 45 of the CCMA***. It is disappointing to note that this resulted in the Complainants having to make contact with the Provider some 8 days after the decision was taken and the Complainants were only then informed verbally of the decision by the Provider. I consider this to be a further failing on the part of the Provider.

The Complainants then submitted an appeal by letter dated **19 November 2014.** This letter of appeal outlines as follows;

"My wife is devastated this morning to be told by a staff member in the arrears support unit that we were being denied access to any arrangement under MARP unless we paid over my wife's redundancy payment and our long term investment.

The details of both of these sums of money has been available to [the Provider] in numerous SFS's and never prevented us from taking part in the mortgage arrears process. It would appear that since the conversation my wife had with underwriter [named] on 29th August, wherein she offered both sums of money, as well as a further sum of money from our family to assist us, the [the Provider] appear to be using this against us.

Given the nature of my wife's illness (currently in remission) her family offered to help financially but on the understanding that there would be a final arrangement made with [the Provider] with regard to the debt and ongoing payments. In addition to this, I had personally been advised by the arrears support unit in July 2014 that a final arrangement was forthcoming – this subsequently never materialised.

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My wife was not aware that the recent SFS had been returned to the branch on 11th November citing the availability of funds as a reason for not engaging with us. She asked for this request by [the Provider] for these funds in writing but was advised that his would not be forthcoming. She was also advised of the policy of [the Provider] to request any funds in excess of €5k held by a customer to be made payable towards arrears – again this is not available in print to us.

Personally, I feel this approach is despicable and lacks moral judgment, especially given our situation, our openness and honesty and the time of year.

There is a mutually suitable long terms solution for both parties which would see a substantial lump sum paid against the debt and affordability to continue payments towards a mortgage for a period of approximately 14 years. Unfortunately, this is not being considered as a viable option by yourselves.

We are investigating our other options; insolvency options or trade down using the available (and gifted) funds which would allow us return the keys to yourselves. In the meantime, we cannot meet the full repayment of €1,416.48 as requested but will continue to make payments as per your previous assessment of our affordability."

I note that the Complainants were advised by letter dated **02 December 2014**, that the direct debit was returned unpaid. The Complainants were advised by letter dated **19 December 2014**, that the Appeals Board had declined the appeal and upheld the decision of the Arrears Support Unit. The Appeals Board, outlined that based on the information provided it was concluded that there was "*affordability for the level of repayment*" offered. I note the internal notes from the Appeal Board's consideration of the appeal record, as follows;

"The Appeals Board reviewed the borrowers appeal.

Based on the information to hand, the Board agreed to uphold the decision of the ASU and declined the borrowers appeal.

The Board is of the view that there is affordability for the proposed treatment.

The Board requested that the ASU contact the customer and seek to put a treatment in place to include lump sum reduction from the liquid assets available."

The Provider wrote to the Complainants on **22 December 2014**, to advise that the arrears balance stood at €12,428.14 at that time. I note that the Complainants returned a call to the Provider on **23 December 2014,** during this call the Complainants were advised that the Complainants assets should be used to clear the arrears and that the mortgage should be prioritised over short term debt. This was in accordance with the instruction of the Appeals Board.

The Provider wrote to the Complainants by letter dated **02 January 2015**, and advised that the direct debit had been returned unpaid and that arrears stood at €13,797.55 at the time.

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The Complainants wrote to the Provider's representative in the branch by email on **02 January 2015**, and outlined *"Will you see if you can get a meeting with a mortgage manager to see if we can get something sorted."*

The Provider called the Complainants on **12 January 2015**, in relation to the arrears. I note that the Complainants indicated during this call that a proposal had been submitted to the Branch. It is noted from the internal notes that the Branch Representative had been in contact with the ASU setting out the Complainants' position. There is no evidence on the file that the ASU had responded to the Branch with respect to the proposal at this time. I note that the Provider again placed a call to the Complainants with respect to the arrears on **20 January 2015**.

The Complainants sent a further email on **21 January 2015**, querying as follows;

> *"has there been any response to our proposal? We need to make a decision on what we are going to do. We have been offering a solution to them since the end of August so I'd be hopeful that they could at least let us know if they will consider it……If you have heard anything from them at all, favourable or not, let me know."*

I note that the ASU was in contact with the Provider's Branch Representative on **26 January 2015**. During this call, I note that the Branch Representative outlined that the Complainants were seeking a "*writedown*" of the mortgage loan. The ASU representative advised the Branch Representative that the Provider was not offering those treatments and that the Complainants had affordability on the basis of the last SFS completed. The Branch Representative advised the ASU that the Complainants may have to consider other options.

A call was made by the Provider's Collections Department to the Complainants on 29 January 2015 wherein the Complainants advised the Provider that they had been in contact with the branch and they were awaiting an update.

It appears that the Branch representative made contact with a Senior Manager in the Provider's ASU Department and another representative of the Provider by emails between **02 and 06 February 2015**. In this regard, the following is noted;

- **02 February 2015:** It is noted that the Senior Manager in the ASU communicated with the Branch Manager and outlined that the ASU was awaiting confirmation of the "*realistic lump sum*" that the Complainants were prepared to lodge.

- **02 February 2015:** The Branch Manager communicated with the ASU Senior Manager and outlined that the process was "*going round in circles*" and that the *"solution*" was for someone to sit down with the Complainants and "*work out exactly what the bank is willing to accept so that the applicants can go back to their respective families & arrange this sum if it is feasible."*

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He further outlined that *"all the applicants want…is to have a sit down me[e]t with a Mortgage manager or someone who is in a positon to talk them thru their alternatives & make a decision."*

- **02 February 2015:** The ASU Senior Manager responded and outlined that the Complainants had to use all cash resources over 3k to pay down their mortgage before the Provider would consider other options.

- **05 February 2015:** The Branch Manager emailed another representative of the Provider, whose positon is unclear from the exchange, seeking "options" with respect to the Complainants' position on their mortgage loan and a long term solution.

- **06 February 2015:** The Provider's representative responded by email seeking further particulars of information.

Between **06 February and 12 February 2015**, the Provider's log records the following calls;

Date	**Time**	**Description**
06/02/2015	*11:04*	*Outbound call on 06/02/2015 at 11:01*
06/02/2015	*23:00*	*Failed Outbound [Number] (No Answer)*
07/02/2015	*10:04*	*Outbound call on 07/02/2015 at 10:04*
09/02/2015	*11:03*	*Outbound call on 09/02/2015 at 11:03*
10/02/2015	*14:35*	*Outbound call on 10/02/2015 at 14:34*
10/02/2015	*14:36*	*Outbound call on 10/02/2015 at 14:36*
10/02/2015	*17:45*	*Outbound call on 10/02/2015 at 17:44*
10/02/2015	*18:47*	*Outbound call on 10/02/2015 at 18:46*
11/02/2015	*23:01*	*Failed Outbound [Number] (No Answer)*
11/02/2015	*23:01*	*Failed Outbound [Number] (Busy)*
12/02/2015	*9:35*	*Outbound call on 12/02/2015 at 9:29*

The Complainants wrote to the Provider's branch representative on **11 February 2015** and outlined as follows;

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> *"myself and [first named Complainant] got a total of 5 calls from [the Provider] and I've had 2 today (so far). I've told them that it's excessive and will be writing to customer care to express my concerns."*

The Provider's representative in the branch emailed the Complainants on **11 February 2015** and outlined, as follows;

> *"I've rang & ate t[h]em there…if u receive any more Nuisance calls, call me [first Complainant]"*

The Complainants wrote to the Provider on **12 February 2015** and outlined as follows;

> *"You should've have to do that. [The Provider] should know from the records that we are cooperating.*
>
> *After I had emailed you, [the first Complainant] told me he got two calls to work yesterday (after him asking not to be called at work) and I just got another this morning".*

The copies of the e-mails above were provided by the Complainants. It is most disappointing to note that they were not included with the Provider's submissions and evidence.

I note that during the call on **12 February 2015**, the Second Complainant outlines her dissatisfaction with the level of contact from the Provider.

Provision 22 of the CCMA outlines as follows;

> *"A lender must ensure that:*
>
> *(a) the level of communications from the lender, or any third party acting on its behalf, is proportionate and not excessive, taking into account the circumstances of the borrowers, including that unnecessarily frequent communications are not made;*
>
> *(b) communications with borrowers are not aggressive, intimidating or harassing;*
>
> *(c) borrowers are given sufficient time to complete an action they have committed to before follow up communication is attempted. In deciding what constitutes sufficient time, consideration must be given to the action that a borrower has committed to carry out, including whether he/she may require assistance from a third party in carrying out the action; and*
>
> *(d) steps are taken to agree future communication with borrowers."*

In the circumstances and having regard to the fact that the Complainants were engaging with the Branch representative, who it appears was making representations to the Provider's ASU department at the time, that this level of contact over such a short period of

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time was indeed excessive and disproportionate. I accept that the Provider was entitled to call the Complainants to discuss the arrears arising on the account, however any contact that is made, should be made against the backdrop of having full knowledge of interactions that were taking place with other departments of the Provider. Indeed I note that in the email of **11 February 2015**, the Provider's representative describes these communications as "*nuisance calls*". In these circumstances I am of the view that the Provider acted in breach of ***provision 22 of the CCMA***, at this time.

A further SFS was submitted by the Complainants to the Provider on **04 March 2015.** I note that this SFS included copies of the internal email exchanges between 02 and 06 February 2015. In this regard the Branch Manager outlined *"See Additional Explanatory Notes to [Provider Representative] ASU Imaged…"*

The Provider wrote to the Complainants on **23 March 2015** and outlined that the arrears balance at that time was €15,881.03. The Provider also wrote to the Complainants under separate cover on **23 March 2015,** and outlined that the Provider was unable to offer the Complainants an ARA for the mortgage. The letter outlined that the reason for this was the SFS "*indicates affordability to repay the full contractual monthly bill without the need"* for an ARA. This letter also outlines other details, as required, in accordance with ***provision 45 of the CCMA***, as quoted above.

I note that a member of the ASU placed a lengthy call to the Second Complainant on **23 March 2015,** who outlined in detail that on the basis of the assets held by the Complainants that the Provider was not in a positon to offer any ARA to the Complainants. The Provider's representative outlined in detail that the appropriate course of action was for the Complainants to make any lump sum payment that they proposed to make and thereafter the mortgage loan could be assessed for a long-term solution.

I note that the Complainants wrote to the Provider's representative in the Branch on **23 March 2015** and outlined;

> *"Spoke to underwriter [Name], [the Provider] won't give us an arrangement until we pay over my redundancy and even with the family helping, they would not be writing anything off and would expect us to pay over 1,000 per month."*

The Complainants wrote to the Provider's representative in the Branch on **27 March 2015** and outlined;

> *"got the decline letter today. It just says that they have assessed the SFS and they calculate that we have the ability to meet the repayments in full. It makes no reference to the offer that we made.*
>
> *I don't understand how they calculated our ability to pay a few months ago at between 500 and 600 per month, and we were on alternative arrangements and now they say we can afford to repay it all? They seem to be putting us on the insolvency income guidelines for the next 12 years when a PIA would only be for 5.*

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> *How do I get a better explanation for their decision – they make no reference to declining us because of my redundancy; they only say that verbally which is a different reason to what they give in writing. Do I write back to them and ask or do I go through the appeals process."*

I note the Complainants appealed the decision of **23 March 2015** to the Appeals Board by letter dated **08 April 2015**. The letter of appeal outlined that the Complainants did not understand how it was calculated that the Complainants had the ability to pay. The Complainants outlined that they felt they were being denied an ARA "*without explanation*" and that this is contrary to the CCMA. I note that the branch representative wrote to the ASU on **08 April 2015** and outlined that the Complainants did not understand the decision as to why an ARA was not offered.

I note that the Complainants submit that the Provider failed to consider all options or explain why the Complainants weren't suitable for an alternative repayment arrangement in **March 2015.** I am of the view that this is not the case, the letter and telephone call on 23 March 2015, clearly outlined the Provider's position. At this point in time, the Complainants' had been advised repeatedly by the Provider in telephone calls that in order for a long term solution to be assessed that the Complainants had to make the proposed lump sum capital reduction.

In this regard, I note that the Complainants submit;

> "*we presented a genuine proposal supported by family members which they refused to consider or discuss in any meaningful way and then later used that proposal as a means to determine we had full affordability, despite us never receiving funds from our family and having used the redundancy payment to clear the arrears."*

I note that the SFS that was submitted for assessment recorded that the Redundancy Payment held at that time totalled €23,000 and that the Complainants held €25,000 in bonds. The SFS outlined that the lump sum payment proposed was 90k. It is clear from the audio of the telephone calls which took place between the Complainant and the Provider on 23 March 2015, that the Complainant considered this lump sum proposal as a form of leverage and did not want to make a lump sum payment until a long term solution was proposed and agreed to correlate with the lump sum. It appears that the long term solution envisaged by the Complainants was a debt write down. It is unclear how the Complainants came to the view that this was an option that might be considered by the Provider at this time.

Whilst it appears that the branch representative was making certain representations to the Provider's ASU on behalf of the Complainants in February 2015, which led to the SFS being submitted in March 2015, there is no evidence that the Provider through the branch representative or otherwise gave the Complainants any expectation that a debt write down might be forthcoming. It is important for the Complainants to be aware that the mortgage loan that they signed up to at the outset in 2008, remained due and owing by the

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Complainants, on the terms as initially agreed. When an SFS is submitted it is a matter for the Provider to assess affordability and in circumstances where the Complainants had non-property assets available to them, it was a matter for the Provider to decide whether they wished to offer an ARA to the Complainants. I am of the view that there were no shortcomings under the CCMA on the part of the Provider at this time. There was no obligation on the Provider to offer the Complainants a long-term solution of any kind. At this point in time, the Provider had entered into a number of short term solutions between 2011 and August 2014, when the position with respect to the redundancy repayment became clear.

Lump sum payments were made to the Complainants' mortgage loan account throughout **April 2015**, as follows;

- 07 April of €5,000
- 08 April of €7,000
- 10 April of €5,000
- 16 April of €300

The Provider submits that the arrears were cleared on **16 April 2015**. The Complainants submit that "*under duress*" they lodged the Second Complainant's redundancy payment into the mortgage over a series of payments in April 2015.

As outlined above, the Complainants' liability with respect to the mortgage loan remained in being at this time. The Complainants had sought an ARA and were refused by the Provider. It appears that the Complainants then made the above payments to clear the arrears on the mortgage loan. There is no evidence to suggest that the Provider forced the Complainants to do so.

The Complainants submitted an SFS to the branch representative on **21 April 2015**. The Complainants submit that the Provider failed to examine and process the SFS submitted to the Provider in **April 2015**. I note from the email evidence submitted that the Complainants followed up with the Branch representative by emails on 27 April 2015 and 07 May 2015. The branch representative responded by email on **11 May 2015**, and outlined that he was on leave for 2 weeks until that date and asked was there anything that the Complainants needed the branch representative to do at that time. The Provider submits that as the branch representative was on leave at the time that this was the reason that the SFS was not processed.

The Provider submits that the Complainants advised the Provider during the month of May, that their circumstances had changed as their Social Welfare Appeal had been unsuccessful and as such an updated SFS was submitted on **25 May 2015**. From a review of the Collections Log, there is no record of the SFS completed in April 2015 and received by the branch representative being uploaded onto the internal collections system for review by the ASU. Even though the Complainants' circumstances may have changed in the meantime, I am of the view that the branch representative should nonetheless have uploaded the SFS onto the system, so that a proper record was maintained and have a recorded communication on the

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file to the effect that it was appropriate to complete a further SFS because the Complainants' position had changed in the intervening period. I am of the view that this is a further short coming on the part of the Provider and breach of the CCMA. In this regard, ***provision 32 of the CCMA*** provides as follows;

> *"The lender must pass the completed standard financial statement to its ASU immediately on receipt and provide a copy of the standard financial statement to the borrower"*

I note that the Appeals Board rejected the Complainants' appeal by letter dated **06 May 2015**, as the Appeals Board was of the view there was *"affordability*".

I note that the Complainants have taken issue with the length of time that it took for the appeal to be dealt with by the Provider. ***Provision 51(e) of the CCMA*** outlines as follows;

> *"The lender must consider and adjudicate on an appeal within 40 business days of having received the appeal;"*

I am of the view that this appeal was dealt with by the Provider within the required time frame under the CCMA.

I note that the letter of **06 May 2015** also outlined as follows:

> *"I also note from your correspondence you refer to a meeting with an officer from the Bank. If you wish to proceed with this, I would be happy to arrange a meeting between you/your representative and a Portfolio Manager from [the Provider] at a date and time of your choosing."*

I note that by this time, either the Complainants directly or the branch representative on behalf of the Complainants, had requested a meeting with the ASU on many occasions from January 2015. The Complainants take issue with the fact that the Provider did not meet them. The Provider submits that "*when customers request meetings to discuss financial difficulties. It is Bank practice to refer customers to their local branch to complete the necessary documentation and discuss the options available to them*. The Provider submits that a representative of the Provider in the Complainants' local branch was in regular contact with the Complainants.

Whilst it is the case and the above evidence supports the fact that the Branch representative was in continuous contact with the Complainants, it is clear, that the Complainants wished to have a meeting with a member of staff other than the branch manager. Indeed the evidence supports the fact that the branch manager was of the view that a meeting should take place between a member of staff in the ASU and the Complainants. It was not until **May 2015** that this request was acceded to by the Provider.

The Complainants also complain that the Provider failed to return a call to the Complainants in May 2015, when a representative of the Provider had committed to do so. The Provider does not have a recording of the telephone call which took place in or around **07 May 2015.**

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In this regard the Provider outlined that *"The Bank is also aware we are unable to clarify the Complainants' comments regarding their dealings with [named official] did not revert to the Complainants as requested."* This was a matter that the Provider took into account when making its offer of €1,000 for shortcomings on its behalf.

I note that the Complainants submitted an SFS on **25 May 2015.** It appears that the ASU engaged with the branch with respect to this SFS between 27 July 2015 and 10 August 2015, to seek clarification with respect to the application. The Provider then wrote to the Complainants' by letter dated **11 August 2015,** offering the Complainants a "Part Capital and Interest Arrangement". This letter outlined that this would be set up as a six months trial and once the six payments were successfully made, the Provider would then offer the *Complainants this as a long term arrangement, as long as the Complainants' "circumstances hadn't changed."* The Complainants accepted this offer on **24 August 2015**.

The Provider then offered a long term "Part Capital and Interest Arrangement" on **19 February 2016**, which was accepted by the Complainants on **28 March 2016**. With respect to this arrangement the Complainants submit that the Provider has not taken into account the fact that the First Complainant must retire at 60, at which point they will have a significant balance outstanding. As outlined at the outset this office 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. There is no evidence to suggest any short-comings or breaches of the CCMA on the part of the Provider in offering the 6 month restructure in May 2015 and the long term restructure in March 2016.

Given that the Complainants had an unencumbered holiday home and sufficient cash to pay the arrears, I feel it was misguided of them not clear the arrears on the mortgage. That said, I believe the Provider should have communicated in far clearer terms with the Complainants. It is clear that one official of the Provider seemed to indicate that some long-term solution may be forthcoming, this was not the case. I believe this led the Complainants to adopt the approach they did.

To conclude and as outlined in this Decision, there have been various shortcomings on the part of the Provider in its dealings with the Complainants. I note that the Provider has offered a sum of €1,000 in compensation, however, given the length of time the matter persisted and for the inconvenience caused, I believe a sum of €3,000 is more appropriate.

In these circumstances I partially uphold this complaint and direct the Provider to pay a sum of compensation of €3,000 to the Complainants. I also direct that this payment is to be paid off the capital balance of the loan.

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Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2)(g).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €3,000 and I further direct that this payment is to be paid off the capital balance of the loan.

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

15 November 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.