Decision Ref:	2020-0026
Sector:	Banking
Product / Service:	Mortgage
Conduct(s) complained of:	Arrears handling - Mortgage Arears Resolution Process Incorrect information sent to credit reference agency Maladministration
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants entered into a mortgage loan agreement in respect of their PDH, with the Provider, by way of Letter of Loan Offer dated **18 August 2010**, in the amount of €640,000 repayable over 20 years and subject to a variable rate of interest.

In **2013** the Complainants experienced financial difficulties and contacted the Provider to advise it of their circumstances. The Complainants submit that since that time, whilst they were granted alternative repayment arrangements by the Provider, it has not assisted them with a sustainable solution in respect of their mortgage. Further, the Complainants submit that despite making payments in accordance with the agreed arrangements, the Provider has wrongfully reported the status of their mortgage account to the ICB over a number of years, which has had a severely detrimental impact upon their ability to secure credit and a consequent effect on their respective businesses.

The Complainants' Case

The Complainants submit that in 2013, their financial situation deteriorated due to changes in their respective work circumstances. The Complainants submit that, as a result of these financial difficulties they wrote to the Provider on **15 July 2013**, prior to their mortgage going into arrears, to confirm that they would not be in a position to make the

mortgage repayment when it fell due in **August 2013** and advised the Provider that they required assistance.

The Complainants submit that they proposed at that time to make a payment of **€800** each month toward their mortgage loan, in lieu of the **€2,760** monthly payment which was due, until the Provider reverted to them with its advices.

On **26 July 2013**, the Complainants sent a Standard Financial Statement and supporting documentation to the Provider and requested an alternative repayment arrangement. The Complainants submit that they received a letter dated **28 August 2013** from the Provider advising them that their request for an alternative repayment arrangement had been rejected. The Complainants submit that they "*were given no reasonable options at that time as to how we could or should deal with our mortgage difficulties*." The Complainants submit that this was "*totally unsatisfactory*" on the part of the Provider.

The Complainants appealed this decision to the Provider, on **11 September 2013** and received confirmation on **01 October 2013**, their appeal would be reviewed by the Provider's appeals board.

The Complainants submit that they contacted the Provider by telephone on **04 October 2013** to try and arrange a meeting to discuss their situation but were advised by the Provider that no meetings would be arranged until the appeal process was finalised.

The Complainants submit that they received a letter from the Provider dated **29 October 2013** advising that it would accept fixed payments of **€1,132** for a period of **6 months**, effective from **November 2013**.

The Complainants submit that as they had made a payment of **€800** on **13 August 2013**, of **€1,000** on **05 September 2013**, of **€800** on **04 October 2013** and a further payment of **€800** toward the end of October, they had therefore also paid an average of **€1,132** toward the mortgage for each of the three preceding months that they had been in arrears.

The Complainants submit that they received notification from the Provider in **January 2014**, requesting an updated SFS from them, despite their being only three months into the agreed Alternative Repayment Arrangement period, of 6 months. When they queried this with the Provider they were told that the Provider was experiencing a backlog of 6-8 weeks in its looking at SFS forms. The Complainants submit that they submitted a request for a further arrangement to the Provider, on **25 February 2014.**

The Complainants submit that it was on or about this time that they became aware of the Provider having incorrectly reported their loan repayments to the ICB and they queried this with the Provider. They submit that they were advised by the Provider on **30 January 2014** that the ICB reporting "*was not set up right"* and that it would attend to rectifying same.

The Complainants submit that they received a letter dated **06 March 2014** from the Provider advising that the amendments to the ICB report in question had been made and

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backdated to **November 2013**, to reflect the date of commencement of the Alternative Repayment Arrangement.

The Complainants submit that while the Provider amended the record with the ICB in respect of **November, December 2013** and **January 2014,** it did not correctly report the remainder of the ARA period to the ICB. The Complainants submit that *"it can be seen that [the Provider] correctly reported us as compliant up to February 2014. It is from this time on when they suddenly deemed us non-compliant even though we had an alternative repayment arrangement of €1,132 per month in place and these repayments were being met in full*."

The Complainants submit that further to this, and whilst still querying the ICB, they contacted the Provider to see if their application for an ARA of **25 February 2014,** had been assessed by the Provider. On **12 May 2014** they were told that it was still reviewing their request which had only been received by it on **25 March 2014**. The Complainants submit that this was a totally unreasonable delay on the part of the Provider.

The Complainants submit that in **May 2014**, a person acting on behalf of the Provider attended at their premises to photograph the property, without their permission.

The Complainants submit that the Provider reverted with its decision on their ARA application by letter dated **19 June 2014**. It would accept interest only repayments of **€1,132.00** per month, from **01 July 2014**. The Complainants contacted the Provider to advise it that this arrangement was not acceptable to them. They were advised to submit a letter of appeal but told that it would take approximately 8 weeks to be reviewed. The Complainants submit that they again requested a meeting with the Provider and wrote a letter dated **14 July 2014** seeking a long term solution to their mortgage issues.

The Complainants submit that they received a letter from the Provider dated **25 July 2014** which made reference to their selling an unencumbered Buy to Let property which they owned. They responded to the Provider on **29 September 2014** refuting the suggestion that they intended to sell, as they relied on rental income from that property.

The Complainants submit that they continued to make mortgage repayments of **€1,132** each month, whilst waiting for the Provider to further revert.

The Complainants submit that after repeated requests for a meeting with the Provider, they first met with Agents of the Provider at a regional centre in **October 2014**.

At a subsequent meeting at the regional centre on Friday **28 November 2014**, they discussed making repayments on their PDH mortgage loan at a reduced interest rate of 0.5% for a period of 6 years. The Complainants submit that they were asked by an Agent of the Provider to formally confirm if they wanted this proposal to be "*ratified*" by the Provider, which the Complainants say they did. The Complainants submit that it was also agreed that one of their Buy to Let properties would be sold and the shortfall compromised and that the Provider would not request a charge on another of their BTL properties.

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The Complainants submit that at this meeting, they also raised the issue of their credit rating being affected. They submit that they were told at meetings with the Provider to continue paying the **€1,132**, per month, which the Complainants submit they have done since **August 2013** and continue to do so.

The Complainants submit that, *"then to our absolute shock and not in line with discussions with the [regional centre] we received a verbal instruction from [the Provider] to sell all our properties and that then [the Provider] would see what they could offer us. We were never given any reason nor is there any information in the attached schedule of evidence why [the Provider] did not accept their own… recommendations of a 0.5% reduced interest rate and why there was no further mention on the reduced interest option".*

The Complainants attended a meeting with the Provider on **03 March 2015** and they submit that they could demonstrate that the economics associated with the Provider's decision that they should sell their BTL properties, was not beneficial to either party.

The Complainants submit that on **30 March 2015** they were advised by way of phone call that the Provider was willing to accept €425,000 in full and final settlement of their debt. They submit that they put a lot of work into securing funding for this amount from a third party lender and had secured confirmation that it would furnish them with a loan. However, "*without warning*", in **August 2015** the Provider changed its mind about accepting such a settlement, which was "*devastating*" to them.

The Complainants submit that on **27 November 2015** a Settlement Agreement letter issued to them in which the Provider again agreed to accept the sum of €425,000 in full and final settlement of the debt, which at that time was €647,180. The Provider's letter advised the Complainants that the lump sum was to be lodged to the mortgage account on or before **26 February 2016.** This was not ultimately done however, as they were unable to obtain finance from another financial institution on the basis of their credit rating. This, they submit, was caused by the Provider's misreporting of their loan to the ICB.

The Complainants submit that they again sent a detailed SFS to the Provider on **15 May 2016** which was acknowledged by the Provider on **25 May 2016**. The Provider requested further information from them by letter dated **23 June 2016** which was only received by the Complainants on **06 July 2016**. The Complainants sent the requested information back to the Provider, on the same date.

The Complainants submit that on **15 July 2016** they got a call from the Provider saying that it had reassessed their file and would grant them 3 months to get their affairs in order during which time they could make 'interest only' payments, but that following that, they should then return to full payments of principal and interest. The Complainants submit that *"we were totally flabbergasted as to how they could have come up with this finding as it was totally not the case."*

The Complainants called the Arrears Support Unit on **08 August 2016** and sent an email containing their own proposals regarding a solution and requested that these be put to the Credit Team before it made any further decisions on their situation.

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They submit that despite this, they received a letter dated **16 August 2016** from the Provider, offering "*yet again*" a 6 month solution comprising reduced payments of **€1,742** from **01 August 2016** and on expiry of the 6 month period, a reversion to full capital and interest repayments.

The Complainants submit that they wrote to the Provider on **25 August 2016**, "*setting out yet again that this was not a sustainable long term solution and that we were therefore not comfortable with yet another 6 month stop-gap solution".* The Complainants requested the Provider to offer them full Capital and Interest repayments at a reduced interest rate of 0.5% for 6 years and that after this 6 years, one of their buy to let properties would be clear of its mortgage and the rental income could then be used towards the PDH mortgage repayments at full capital and interest rates.

The Complainants submit that a meeting took place on **30 August 2016** with the Provider but that "*No workings were produced to show us how the bank was making their decisions and the parties at the meeting did not seem to care that their continued 6 month arrangements were not helping. We were advised that the decision had to be appealed by us yet again. The best that could be offered, according to the Provider was that they would look at their situation and see what the bank would offer, by way of a long term sustainable solution."*

They wrote to the Provider by email on **31 August 2016**, a day after the meeting and furnished it with workings as regards "*the various scenarios and their affects*" (which they subsequently re-sent on **25 October 2016** as they were advised it had not been received by the Provider).

They submit that "*Scenario No. 1*" was based on the Provider's instruction to sell their BTL properties and to use the net proceeds to reduce their PDH mortgage whilst "*Scenario No 2*" was their own proposal based on their not selling their BTL properties but instead to commence payments on the full capital at a reduced interest rate. They submit that "*It could be clearly seen from our calculations that Scenario No 2 was much more beneficial to the bank and to us."*

The Complainants submit that the Provider wrote to them by letter dated **09 November 2016** with its proposals for a long term solution, based on their firstly selling their BTL properties. It requested that they revert within 14 days to confirm that they would sell their BTL properties, however, the Complainants did not do so as they "*did not trust that [the Provider] would help us find a long term sustainable solution if we progressed with the sale without further details*".

The Complainants were unhappy with the Provider's instructions to sell their BTL properties, on the following basis:

> *"we were not advised what would occur if we did proceed and manage to sell our BTL property. We were seriously concerned, and we still are concerned that we could be left in a position where we would dispose of the BTL property and then be asked to still make full payments towards our home mortgage with no income stream to discharge*

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same, whereas if the bank considered the proposals put to them many times over, it is evident that it makes more economic sense to retain the BTL property and for the bank to consider one of the options as put to them."

They therefore wrote back to the Provider on **22 November 2016** declining the proposal of 09 November, on the basis that "*there was little detail given in their letter to allow us to proceed with their hypothetical non-binding proposal*".

The Complainants received a letter from the Provider dated **20 December 2016** in which it advised that it could no longer consider the €425,000 in settlement as had previously been offered, as it had been based on '*a different set of financial circumstances, the offer is no longer valid based on an improvement in your financial circumstances*'. The Complainants wrote to the Provider on **17 January 2017** refuting the suggestion that their circumstances had apparently improved.

They furnished an updated SFS to the Provider by email on **20 January 2017** which, they say, showed them to be in no better position than when the offer of settlement in the amount of €425,000 was made.

The Complainants submit that they were advised in **March 2017** that the Provider wanted updated valuations carried out on our properties and the Complainants state that they did not object to this.

The Complainants were advised on **26 April 2017** that the Provider was still waiting on the valuations. The Complainants submit that they called the Provider again on **24 May 2017** and that they were advised that the valuations had been received at that stage but that the Provider's Credit Department was not accepting the Complainant's proposal.

They received a reply from the Provider on **06 June 2017** and they advised that they were not in a position to offer an alternative repayment and would be commencing legal proceedings.

The Complainants submit that they were advised to appeal the decision to the Provider's Mortgage Appeal Board which they did on **16 June 2017**. The Complainants submit that their appeal was unsuccessful, as communicated by letter from the Provider of **10 July 2017**.

The Complainants submit that the actions and inactions by the Provider in relation to their mortgage have been totally unreasonable, resulting in their loan being incorrectly reported to the ICB over an extended period of time which has had a negative effect on their credit rating.

They wish for the Provider to honour the agreement whereby they pay it a sum of €425,000.00 in full and final settlement of all debts and liabilities and that in turn the Provider would fully redeem the mortgage over their house and compromise fully on any remaining balance that might remain, without any personal liability for the compromised amount.

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The Provider's Case

The Provider submits that on **06 August 2013** its Arrears Support Unit (ASU) received a completed Standard Financial Statement (SFS) and supporting documentation from the Complainants. The Complainants' financial circumstances were assessed and correspondence issued to them on **28 August 2013**, advising them that the Provider was not in a position to offer them a revised payment arrangement, on the basis that it deemed the mortgage to be sustainable.

The Provider submits that a telephone call was made by the case assessor to the First Complainant on **28 August 2013** to advise her of its decision and the fact that the Complainants needed to prioritise their PDH mortgage over their other debts. The Provider submits that as the Complainants were meeting full capital and interest repayments on their Buy to Let (BTL) mortgage accounts, they were advised that they should restructure these accounts. The Provider's position was that if the BTL accounts were restructured and the monthly repayments were reduced, the surplus from their rental income could then be put towards their PDH mortgage account.

The Provider submits that it issued a letter to the Complainants on **28 August 2013** in line with Provision 45 of the CCMA which states that this correspondence must advise that "*the borrower is now outside MARP and that the protections of MARP no longer apply*".

On **13 September 2013**, its Mortgage Appeals Office received a letter from the Complainants dated **11 September 2013** which requested an Appeal of the original Arrears Support Unit (ASU) decision. The letter of appeal referenced:

- That the Complainants had written to other Banks with which they held mortgage loans, for restructure proposals and were awaiting their response;
- That the income for the First Complainant had reduced by €188 per week;
- That the fixed interest rate with the Provider had expired resulting in an increase in the monthly payment of €400;
- The Complainants could only afford repayments of €800 per month.

The Provider submits that an acknowledgement letter issued to the Complainants on the **01 October 2013** and the Complainants' Appeal was independently reviewed on **24 October 2013** by a Mortgage Appeals Board, made up of 3 senior personnel who were not involved in the Complainants' case previously. The Provider submits that the Appeals Board "Partially Upheld" the appeal and agreed to sanction fixed repayments of **€1,132** per month for 6 months, effective from the next repayment. The Provider submits that the Appeals Board noted that after this period the Complainants should return to full Principal and Interest payments. The Provider submits that the Appeals Board also noted that the Complainants should engage in an asset disposal strategy, to be completed in the following 6 months.

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The Provider says that it acknowledges that there was a delay in issuing the acknowledgement letter to the Complainants but it notes that the appeal was heard within 40 business days of receiving the appeal, in line with provision 51 (e) of CCMA 2013.

The Provider acknowledges that correspondence which issued to the Complainants on **29 October 2013** did not fully comply with Provision 42 of CCMA and has offered a payment of €500 to the Complainants in respect of this.

The Alternative Repayment Arrangement was applied to the Complainants' account from **November 2013**.

With regard to the Complainants' submission that they, *"were advised by [the Provider] on the 30th January, that the ICB reporting was not 'set up right' and that they would attend to rectifying same. … they advised that the report would be amended from November 2013 onwards as there was a payment rearrangement in place"* - the Provider submits that on **30 January 2014** the First Complainant called the ASU and on this call a staff member advised the First Complainant that it did not have the ability to set up a short term payment arrangement on its system for an amount of less than the interest only repayment and that at the end of the arrangement period the arrears which had accumulated could be capitalised and that the ICB, if affected, could be amended.

The Provider submits that it was explained to the First Complainant that the account had first gone into arrears in **August 2013** and that arrears had accumulated over the months of **August**, **September** and **October 2013** before the reduced repayment arrangement was put in place from **November 2013**. The staff member advised that the Complainants' ICB record could be amended for the period from **November 2013** when the reduced repayment arrangement was in place.

The Provider submits that the staff member told the First Complainant that he would arrange for their ICB to be amended **from November 2013** when the arrangement came into effect, but that the Complainants would need to revert to their branch in relation to the incorrect information they appeared to have been given.

The Provider submits that the same staff member of management called the First Complainant on **04 February 2014** and advised that he would get their ICB record amended for the months of **October 2013** to **January 2014** inclusive, to reflect that repayments were kept up to date for these months but that she would need to contact her branch in relation to getting the ICB amended for the months of **August 2013** and **September 2013**.

With regard to the Complainants' submission that "*While [the Provider] did seem to amend the record with the ICB for November, December 2013 and January 2014, they did not report correctly for the remainder of the alternative repayment arrangement term as we were reported as not performing for February 2014 by missing 4 payments*" - the Provider submits that the arrears on the Complainants' account originated in **August 2013** and that at this time full capital and interest repayments were due to be paid to the Complainants' mortgage account. The Provider submits that the repayment due for the month of **August**

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2013 was **€2,760.41** whilst the Complainants paid **€800**. For **September 2013** the amount due was **€3,040.62** whilst the Complainants paid **€1,000**. For **October 2013** the amount due was **€3,081.27** whilst the Complainants paid **€1,160**. The Provider submits that this meant that at the end of **October 2013** there were total arrears outstanding on the Complainants' mortgage account of **€5,522.95** and that although it did agree to amend the Complainants' ICB profile for the period from **October 2013 to January 2014** there were still arrears outstanding in relation to the period **August 2013** to **October 2013**.

Regarding the Complainants' ARA application of **25 February 2014**, it submits that it was not received by the ASU until **25 March 2014** and that it is unclear as to the reason for this delay. The Provider submits that not all of the required supporting documentation was received by the ASU until **09 April 2014** and that due to large volumes of applications being received, the average turnaround time for cases to be assessed, was eight weeks.

The Provider acknowledges that on the **12 May 2014** a staff member incorrectly stated that the Complainants should be contacted within the following two weeks regarding the outcome of their application.

The Provider submits that in **May 2014** it had arranged to have a valuation of the Complainants' property carried out, "*in order to obtain an indicative value*" of the property. It says that "*the auctioneer acting on its behalf was instructed to carry out a 'drive by valuation' which would not involve any contact with or disturbance to the occupants."* The Provider submits that the auctioneer "*has acknowledged that the employee may have been standing on the Complainants' driveway whilst taking a photograph of the property and would like to apologise if this was the case*". It has offered the Complainants a goodwill gesture in the amount of €1,000 in recognition of this.

The Provider submits that when the Complainants' case was assessed in **June 2014**, less than interest only repayments of **€1,132** were approved for **6 months**, from **July 2014**. The Provider submits that the assessor called the First Complainant on **17 June 2014** to inform her of the decision and that correspondence issued to the Complainants on **19 June 2014** to confirm the arrangement.

The Provider submits that at that time the processing time for applications to be assessed was eight weeks. The Provider submits that this was due to the large volume of applications being received. The Provider acknowledges that the assessment of the Complainants' case took slightly longer and it apologises for the delay and has offered the Complainants the amount of €500 in respect of this delay.

The Provider submits that the delay did not however have a material overall negative effect on the Complainants as when the arrangement was approved and advised to them on **17 June 2014**, they chose to decline the offer.

The Provider submits that when the case assessor called the First Complainant on **17 June 2014** it was explained that the Provider could not consider putting a long term solution in place unless the Complainants disposed of BTL property assets. In this regard, the Provider

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noted that the Complainants had a BTL properties with equity, the proceeds of which would help reduce the PDH mortgage to a more sustainable level.

The Provider submits that repayments of €1,132 per month were put in place for six months to allow the Complainants progress the sale of the property. The Provider submits that as the Complainants' financial circumstances had been assessed and the Complainants had been made aware of the Provider's position, it did not deem it necessary to hold a meeting with the Complainants at that time.

The Provider submits that it has however facilitated several meetings with the Complainants. It submits that the first meeting was held on **10 October 2014** and that subsequent meetings were held with the Complainants on **02 December 2014**, **03 March 2015** and **30 August 2016**. The Provider submits that despite these meetings being held it has been unable to reach an agreement with the Complainants.

The Provider submits that the Complainants had their case reassessed in **January/February 2015** and that following the assessment, the following actions were recommended:

(i) the Complainants sell a BTL property financed by [associated provider] with a mortgage balance outstanding of circa.€113,000 and valued at c.€50,000
(ii) Complainants sell another, unencumbered, property with an estimated value of €50,000.
(iii) Complainants sell a further BTL property, financed by a third party provider, valued at c. €250,000, with a mortgage balance outstanding of €113,000.
(iv) Complainants make repayments of €1,132 per month to their PDH mortgage account from **March 2015** to **July 2015** to allow the Complainants time to progress the sale of their properties.

The Provider submits that the sale of the Complainants' BTL properties would generate an overall profit surplus of approximately €125,000, which could be used to reduce the balance on the Complainants' PDH mortgage account. The Provider submits that once the BTL properties were sold and the net sale proceeds had been lodged to the Complainants' PDH mortgage account, the Provider would then review the Complainants' financial position with regards to repayments on their PDH mortgage account.

The Provider submits that the Complainants' case manager called the Second Complainant on **23 February 2015** to advise him of the above decision. It submits that a letter issued to the Complainants on **10 March 2015** to advise them of the repayment arrangement of €1,132 per month from **01 March 2015** to **31 July 2015.**

The Provider submits that at a meeting with the Complainants on **03 March 2015,** the Complainants put forward a number of proposals in relation to their loans/properties and that on **06 March 2015** the Second Complainant called the case manager and stated that they would not be selling a BTL property. The Provider submits that a further telephone call between the case manager and the Second Complainant took place on **12 March 2015** and the case manager advised the Second Complainant that out of the proposals put

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forward by him, the option for the Provider to accept the amount of €425,000 in full and final settlement of the Complainants' debt, was deemed to be the most appropriate option and that the case manager would progress an application to try and get this approved.

The Provider submits that on **06 May 2015** the case manager called the Second Complainant and left a voicemail for him stating that before the Provider could make a decision on his proposal, it would need to see evidence of a Sanction in Principle from the financial institution which was providing finance to the Complainants. The Provider submits that it was in regular contact with the Complainants in the following months. The Provider submits that on **29 October 2015** the case manager contacted the Second Complainant and advised him that approval had been given to accept the amount of **€425,000** in full and final settlement of the Complainants' debt of approximately **€646,000** and **€60,000** in full and final settlement of a debt of approximately **€109,000**.

The Provider submits that on **27 November 2015** a Settlement Agreement letter issued to the Complainants in relation to their mortgage account, in which the Provider agreed to accept the sum of **€425,000** in full and final settlement of the debt which at that time was €647,180. The Provider submits that the letter advised the Complainants that the lump sum was to be lodged to the mortgage account on or before the **26 February 2016** but that as this was not done, the offer expired. The Provider acknowledges that the Complainants were unable to obtain finance from another financial institution. It says that at this time the arrears outstanding on the Complainants' mortgage account was approximately €45,000.

With regard to the Complainants' complaint that they had an agreed repayment agreement of **€1,132** per month with the Provider from **November 2013** and that they "*have honoured that agreement with payment in full since that date and indeed beforehand...*" the Provider disagrees and says that the Complainants are incorrect in stating that they had an agreed repayment arrangement of **€1,132** per month in place from **November 2013** onwards. Rather, since the arrears on the Complainants' mortgage account originated in **August 2013**, it has approved the following periods of forbearance on the Complainants' mortgage account:

- **6 months** from **November 2013** to **April 2014** (inclusive) - an arrangement of less than interest only repayments (interest only minus repayments) of €1,132 per month was applied to the Complainants' mortgage account.

- **6 months** from **July 2014** to **December 2014** (inclusive) - an arrangement of less than interest only repayments (interest only minus repayments) of €1,132 per month was offered to the Complainants. The Provider submits that this was "*not applied*" to the Complainants' mortgage account, however, as this offer was declined by the Complainants in correspondence dated **14 July 2014.**

- **5 months** from **March 2015** to **July 2015** (inclusive) - less than interest only repayments (interest only minus repayments) of €1,132 per month. The Provider submits that this was applied to the Complainants' mortgage account.

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The Provider submits that the Complainants are also incorrect in stating that they have honoured the agreement with payment in full since that date. The Provider submits that it has only approved reduced repayment arrangements on the Complainants' mortgage account for a total period of **11 months** since the arrears on the account originated in **August 2013**.

The Provider submits it is of the opinion that it acted in line with its policies and procedures and reported the Complainants' account correctly to the ICB.

The Provider acknowledges certain breaches of the provisions of the CCMA 2013. Following receipt of the Complainants' letter of appeal on **13 September 2013**, there was a delay in issuing an acknowledgement letter to the Complainants (in breach of provision 51 (b) of CCMA 2013). The Provider submits that notwithstanding this, there was no financial or ICB impact on the customer as a result of this delay. Furthermore, the Provider recognises that there was misinformation given on the call of **12 May 2014**, regarding the timeline for contacting the Complainants. The Provider has offered a goodwill gesture of €500 in recognition of the above. It further acknowledges that correspondence which issued to the Complainants on **29 October 2013**, which advised then of the ARA decision did not fully comply with Provision 42 of CCMA and has offered a goodwill gesture of €500 to the Complainants in respect of this. The Provider has offered a further €1000 in relation to a valuation that was carried out on the Complainants' property, in **May 2014**.

<u>The Complaints for Adjudication</u>

The Complainants' complaint is that:

(i) the Provider incorrectly reported their loan repayments to the ICB notwithstanding that they had an agreed repayment arrangement in place of **€1,132** per month, since **November 2013** which they have honoured at all times; and

(ii) the Provider failed to put in place a sustainable solution to their mortgage issues.

<u>Decision</u>

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

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satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 12 December 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

The Complainants' contend that they had an agreed repayment arrangement in place of **€1,132** per month with the Provider from **November 2013** which they have honoured. The Complainants have submitted that the Provider has incorrectly reported the performance of their mortgage loan to the ICB, and has wrongfully and/or unreasonably refused to amend such reports which they submit has had a very detrimental impact upon them.

They also submit that the Provider has failed to put in place a sustainable solution to their mortgage issues.

I would note firstly, that in relation to complaints where issues of sustainability/repayment capacity of a mortgage loan are in dispute, the Financial Services and Pensions Ombudsman is in a position to investigate a complaint only as to whether the Provider has correctly adhered to its obligations pursuant to the CCMA and MARP. The decision as to whether or not to grant an alternative repayment arrangement and the terms that are applied to same, are matters which fall within the commercial discretion of a financial service provider. The details of any re-negotiation of the commercial terms of a mortgage loan, is a matter between the provider and the customer and this Office will not interfere unless the conduct complained of is found to be unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant.

I have set out below the timeline of events which occurred in respect of the Complainants' loan, including details of the assessments carried out by the Provider and the course of dealings between the parties.

Timeline of Events

A Standard Financial Statement (SFS) and supporting documentation was sent by the Complainants on **26 July 2013** and received by the Provider on **06 August 2013.**

The Provider first completed an assessment of the Complainants' financial circumstances on **27 August 2013**.

The assessment document records the following "*Assessor recommendation and rationale*":

/Cont'd…

DST completed as per customer. Borrowers are married with 2 dependants [ages]. Borrowers have not had any previous forbearance and are requesting to restructure options and have stated in SFS that they can only afford €800pm.
Income €4477 – expenditure (CSO plus childcare €650) €3262 =€1215 NDI. Repayment capacity not evident to service full NMR. Bwrs have 3BTLs, 2 of which have mortgages, both are rented out and rental income is covering same – have not included this income as part of bwrs overall income. Recommend tolerance payment of €1132 for 6 months to allow bwrs time to review expenditure as currently overspending on same by €1096 and also propensity for ms bwrs situation to improve as her self employed business will grow. LTV 103%

The "*Approver Recommendation and Rationale"* was:

Have bwrs looked at reducing repayments on BTLs
Need to look at this and prioritise PDH
Decline less than IO request

The Complainants were advised by way of phone call and letter on **28 August 2013** that their application to make payments of €800 per month had been assessed and declined by the Provider and that the Provider was not offering them a revised repayment arrangement. The Agent advised on the phone that the two BTL mortgages which the Complainants were making full capital and interest repayments towards, would have to be restructured and the PDH mortgage prioritised, before it would grant an arrangement.

A further telephone conversation took place between the Provider and Second Complainant on **07 September 2013.** The Complainant disagreed with the Provider's decision that that they could afford the full capital and interest repayments and wanted a written analysis of how the Provider had determined this.

The Agent advised him that if he disagreed, he could appeal that decision within 20 business days of the decision. The Complainant stated that this information was not included in the letter which they received.

Having had regard to the letter I note that this information was in fact contained within the letter and highlighted within a text box, in the following terms:

You have the right to appeal this decision to our Mortgage Appeals Board. If you wish to appeal you must write to us within 20 business days of the date on which you receive this letter setting out the reason for the appeal … [address details].

During this call of **07 September 2013** the Complainant indicated he had made a mortgage payment of €1,000 for September and €800 for the previous month. The Agent advised him:

"I'll note that that is what you are paying for the month of September, that figure. And whilst all this is ongoing, again, I know the, hopefully, the letter explained, obviously the

/Cont'd…

full payments are falling due on the account. ***And the difference between what falls due and what you pay will obviously accumulate as arrears on the account, so just to formally advise you of that.*** *And again just to advise you to keep paying what you can pay. So I know you paid €1,000 this month but just keep paying what you can pay into the account it's really important because it's a loan on your family home, so albeit that you can't afford the full payment, obviously it does show your commitment that you're lodging that amount into the account on a monthly basis."*

[emphasis added]

The Complainant emphasised that he wanted a written analysis of how the Provider believed they could make full payments. The Agent asked him whether they were making full payments on the other mortgages and the First Complainant confirmed that he was at the moment and was waiting on the other Providers to revert regarding an alternative arrangement.

Agent advised "*That could be part of the rationale*." He explained that *"the whole ethos of the MARP process is that you prioritise the debt on your family home"* to the detriment of other debt and stressed the importance of prioritising the debt on the family home.

The ASU's decision was appealed by the Complainants on **11 September 2013** and acknowledged by the Provider on **01 October 2013**. It was reviewed/assessed on **24 October 2013** and the outcome communicated to the Complainants by letter dated **29 October 2013.**

The Complainants' appeal was partially upheld by the MARP Appeals Board which determined that:

"*Following this review we confirm that the Bank is prepared to sanction the following alternative repayment arrangement so that you can consider your next steps: fixed repayments of €1,132 per month for 6 months effective from next repayment.*"

An arrangement to pay less than interest only repayments in the amount of €1,132 was in place from **November 2013** to **April 2014**.

<u>Second ARA Assessment</u>

The Complainants submitted their SFS on **25 Feb 2014**. It was not received by the ASU until **25 March 2014**, although it is not clear why this was the case.

A letter issued on **27 March 2014** requiring further information from the Complainants. This was received by the ASU **09 April 2014**. The Provider says that the assessment timeline at this time, was approximately 8 weeks.

During a phone call of **12 May 2014** the Agent confirmed to the First Complainant that the "*full amount*" of mortgage repayments had been charged on the account that month. The Complainant advised that a Standing Order had been set up in the amount of €1132 and was going to the mortgage account. The Agent noted that €3,103 was due that month.

/Cont'd…

The Agent also incorrectly told the First Complainant that they would be in contact in 2 weeks with the outcome.

On **21 May 2014 the** First Complainant spoke with an Agent and told him that they were "*waiting on a restructure*" with the documentation having been sent in since the previous February and that this was "*well over timelines*".

The Assessment was completed on **12 June 2014** and I note the following outcome:

> "*ASU Conclusion. Assessor Recommendation*".
>
> *Borrowers are married with 2 dependants [ages].*
>
> *Mr Bwr works as a [profession] and Mrs Bwr is a self employed [profession]. Both borrowers have been in their current roles for less than 18 months. Borrowers have had previous forbearance of fixed repayments of €1132 for 6 months. Bwrs have adhered to this repayment schedule. This has been their only forbearance to date. This repayment equates to interest only -53%. There is propensity to improve as both bwrs become more established in their current roles and childcare costs decrease over the coming years. Bwrs have quite high lifestyle costs which they have been advised at previous review to look at reducing. Bwrs have 3 btl properties. One is mortgage to [associated provider]. It is an interest only facility but the mortgage is performing. The second btl is mortgaged to [third party provider name] and this appears to be under some financial strain. The third property is unencumbered but it is not generating enough income to supplement the borrowers income as it mainly appears to be covering rental maintenance and supplementing BTL mortgages.*
>
> *Recommendation: Long term proposal: DST recommends a split v3 with tranche A=€231573.67 Tranche B = €46314.73 & Tranche C = €347922.59. Recent valuation does show a drastic drop in value of property and LTV currently stands at 395%. Borrowers do have an unencumbered BTL property**, recommended 6 months fixed repayments at €1132 per month to give borrowers time to sell the property to reduce the balance of the PDH mortgage.***
>
> [emphasis added]

The final sign off is a handwritten note signed and dated **13 June 2014** which approved *"€1132 for 6 months to allow sale of unencumbered property and reduction of loan. No advanced solution without sale of this property and reduction of debt."*

The outcome was communicated by phone on **17 June** and by letter of **19 June 2014** confirming a term of 6 months Interest Only Minus repayments of €1,132 had been granted from **01 July 2014.** During the phone call of **17 June 2014** the case assessor explained that the Provider would not consider putting a long term solution in place until the Complainants sold the unencumbered property which they held.

The Provider submits that no audio recording is available in respect of this call and has instead submitted a call note of the conversation:

/Cont'd…

Date 17/06/14 time 150712
Call made to Ms Bwr by [reference] on my behalf to advise of outcome of assessment. 6 months further fixed repayments at €1,132 has been approved. Borrowers have unencumbered property which is to be sold and the balance to reduce [Provider] mortgage.
Ms advised of the position. Not happy to have further short term forbearance – wants long term treatment – advised that with unencumbered assets present we cannot look at long term treatment. Bwr wants a meeting with someone in Dublin. Not happy with field team or branch. Escalating issue of meeting with management.

Regarding the letter dated **19 June 2014,** whilst it communicated approval of repayments of €1,132 for 6 months, I note that none of the considerations/recommendations regarding the sale of the other properties which had been set out within the assessment document were communicated to the Complainants.

I agree with the Complainants' observation that "*there was no mention in this letter by the bank instructing or suggesting to us to dispose of other properties…This information was not communicated to us…We received a letter from the bank dated the 25th of July this is the first mention of us being asked to sell any property. We note… that this is handwritten on their notes many times however this information was never communicated to us until that letter of the 25th July 2014*".

In circumstances where the ARA was approved *"to allow sale of unencumbered property and reduction of loan. No advanced solution without sale of this property and reduction of debt"* it is clear to me that this information should have been set out clearly in writing and drawn to the attention of the Complainants, at the time when that ARA approval was confirmed.

I do accept, however, that the Providers' requirement for disposal of the Complainants' property had been communicated to them verbally, on a number of occasions, and the Complainants were therefore on notice of the approach and position being taken by the Provider in this regard.

The ARA was not, in any event, applied to the Complainants' account as they declined to accept it, per their letter of **14 July 2014.**

The Provider wrote to the Complainants on **25 July 2014**, noting the Complainants' dissatisfaction with the further period of short term forbearance offered and that they were rejecting same. It also stated that:

"I can see from our records that you are in the process of selling an unencumbered property and that you would be using some of the proceeds to reduce the balance on the mortgage at [Complainant's PDH]. [The Provider] would not be in a position to consider a long term solution when such an option is currently a distinct possibility. In relation to the interest rate charged on this mortgage I note that you believe it is neither suitable nor sustainable. I would suggest that this is raised at any meeting you hold with the [regional centre]. Alternatively you can write in to the ASU formally requesting a rate reduction.

/Cont'd…

I am sorry that the experience in recent times with [the Provider] to resolve this matter has not been a pleasant one for you. ***Can I assure you we are trying to work with you to come up with a sustainable solution but based on the information to hand we are only in a position to provide a short term solution pending the sale of your other property****.*
[emphasis added]

The Complainants responded by letter dated **29 September 2014**, rejecting the idea that they were selling a property, and to *"formally confirm that we are not selling an unencumbered property to reduce the balance on the mortgage at [PDH] and that this information is misinformed and incorrect."* Their letter went on to re-iterate their request for an interest rate reduction and requested a parking of a portion of the mortgage to be paid off at a later date. They also requested a meeting to finalise a new payment plan and a long term strategy to resolve the matter.

Following a meeting between the Provider and Complainants on **28 November 2014**, the Agent with whom they met wrote an internal note dated **02 December 2014** arising from the discussions which took place, which stated:

*"rental income from [third party provider] property will be available at this time to service [Provider] loan, or property can be sold to reduce PDH Loan. Unencumbered property will also be sold once value increase. Meeting concluded with Bwrs requesting time to think about everything discussed at meeting. Bwrs advised that they will revert back with in a week****. No Gtee on alt arr reiterated to bwrs***
D/F to 10/12/14 to make contact with Bwrs if they have not reverted back to reg ASU after meeting."
[emphasis added]

The Complainants submit that it was agreed at this meeting that the [associated provider's] mortgaged property would be sold and the shortfall compromised and that the bank would not request a charge on another BTL house. They submit that they were offered, at this meeting, the opportunity to pay interest at a rate of 0.5% over a period of 5 years, which they in turn accepted and they contend that the fact that the Provider did not ultimately grant this arrangement was unfair.

The above Note, however, indicates that it had been re-iterated to the Complainants that there was no guarantee of the proposals discussed and that the proposals discussed were requests, which required approval. This is supported by the wording of an email from the Agent a few days later, on **05 December 2014** which confirmed that she was going to:

"complete request to get an application completed for reassessment of your account on Monday 8/12/14. As part of the application I will also deal with [associated provider] mortgage, requesting that property be sold and compromise on residual debt. As stated during our meeting this will all be subject to Head Office Credit Team approval.

…
I have also sent an email requesting clarification as to whether the offer of the low fixed rate product, if available impinges on Irish Credit Bureau rating…..

/Cont'd…

> *Once a request for the application has been submitted it can take up to 4 weeks for outcome of application. I will be in contact as soon as I get a decision."*

I am satisfied that whilst proposals were discussed with Agents in the regional centre, these did not comprise nor were they intended to comprise a binding offer or agreement with the Complainants.

<u>Assessment - February 2015</u>

A further assessment of the Complainants' situation was completed by the Provider on **19 Feb 2015**.

I note the following *"Assessor Recommendation"*:

Recommending 6 months interest minus repayments are applied to this PDH account of €1132pm.
Repayments of €1132 is 51% below Interest Only.
This arrangement is applied to the Borrowers PDH account to allow the Borrowers market all 3 BTL properties for sale.
Sale proceeds from BTLs to be directed toward the borrowers' PDH account
The implications of interest minus must be clearly outlined to the borrowers.
This case must be reassessed in 6 months time seeking a long term sustainable solution on the Borrowers' PDH
I have also recommended VSFL on the Borrowers [associated provider] BTL mortgage incorporating a full compromise of any residual balance remaining post sale.

[emphasis added]

A handwritten note underneath provides, *"Approve 6 months IO @ €1,132pm in order to progress the sale of BTL a/cs pending sale of assets PDH debt to be reviewed in [line?] with same.*

A call was made to the Complainants on **23 February 2015** to advise them of the decision.

A call note of this conversation has been furnished by the Provider:

> *Rang Mr Bwr. DPA ok. Advised Mr Bwr that outcome of application is that all BTLs to be sold, interim repyts of €1132 for 6 months in order to progress sale of BTLs and pending sale of assets. PDH to be reviewed in line with same. Mr very angry and not accepting the outcome. Mr demanding meeting with the head of credit. Mr said he will give undertaking not to remortgage unencumbered asset. M also wanting decision to be communicated in writing by 1pm tomorrow as hes going to be getting legal advice with a view to taking legal action against [the Provider]. Email sent to Ms and will discuss same with Ms tomorrow as not available this afternoon. D/F to 24/2/15*

Although repayments of €1,132pm had been approved, in order to progress the sale of the BTL properties, I note that the letter which issued to the Complainants on **10 March 2015** however, simply referred to the repayments of €1,132:

/Cont'd…

We wish to confirm the following interim repayment arrangement has been put in place as set out in our previous communications.

- *Fixed repayments*
- *Revised repayment €1132.00*
- *Effective date 01/03/2015*
- *Expiry date of Fixed repayments 31/07/2015*

The arrears balance of €34,845.92, included in the above balance, will continue to be outstanding on your account.

Please note that following the expiry of the interim repayment arrangement your account will revert to full capital and interest repayments unless otherwise agreed by us.

As with the previous ARA letter, this one also omitted important information contained within the assessment recommendations. The Provider's communications are unsatisfactory it this regard. I accept however that the Complainants had been verbally advised by phone call of **23 February 2015** that repayments of €1,132 had been approved for 6 months in order to progress the sale of the BTL properties and that their PDH mortgage loan would then be reviewed in line with same. I am mindful however of the potential confusion which can be caused when a financial services provider makes certain information available in writing, which omits other information which has been confirmed verbally. Such potential confusion creates a situation which is less than ideal.

I also note that no specific mention is made within the letter of "*the implications of interest minus having been clearly outlined to the borrowers*" as had been directed by the assessment notes however.

The letter does set out certain standardised "*important information*", including:

Alternative repayment arrangements may be affordable to you in the short term but could be more expensive over the life of the loan.

For an "Interest Only/Fixed repayment" arrangement the monthly repayment(s) will reduce in comparison to the full capital and interest repayment(s) however the expiry date of the mortgage will remain the same. This will result in larger monthly repayments after the "Interest Only/Fixed Repayment" period to ensure full repayment of the mortgage over the remaining term. This may result in an increase in the overall cost of the loan (total cost of credit) …

Any arrangements of modifications to your mortgage loan accounts as a result of this alternative repayment arrangement may be reported to the Irish Credit Bureau and any other credit reference agency or credit register which will appear on your credit report. The impact of this may affect your ability to borrow future funds.

<u>Settlement Proposal in the Amount of €425,000</u>

/Cont'd…

The Complainants submit that they received a call from an Agent on **30 March 2015** confirming that the Provider would agree to settlement in the amount of €425,000 if they could secure funding/evidence in writing of a "Sanction in Principle" from an alternative financial institution.

No call recording has been made available of this call and the Provider has submitted that it does not have a record of such a call. The Complainants strongly submit that they were told on this call that this settlement had been formally approved by the Provider.

The Complainants say that they proceeded to secure the necessary letter of comfort from a third party lending institution on **03 July 2015**.

I have had regard to this email from the lending institution which states as follows:

> *Further to our telephone conversation today I wish to advise that while the Bank would look favourably on your mortgage switcher application we cannot give you a final decision until we receive written confirmation from your current lender that the sum of €425,000 is a full and final settlement in relation to the [Provider] Mortgage at [PDH location] and the [associated provider] Mortgage on [address]. Included in this charge we also require confirmation that full legal Charge will be lifted from the title deeds of [PDH] on payment of €425,000."*

The First Complainant then emailed the Provider and said:

> *"[Third party lender] have now advised they are willing to provide us with the necessary finance. They do however require a letter from [the Provider / associated provider] as set out below in [name]'s email."*

I note from the above that the third party provider stated that it would "look favourably" on their application however it does not go so far as to confirm it was committed to providing the necessary finance.

The Complainants submit that on **17 August 2015** without reason, they were told that the Provider was no longer prepared to accept €425,000 in full and final settlement. There is no call recording available of this call. Each party has however submitted a note of the call in question.

A Call Note of the Provider **dated 17 August 2015**, states as follows:

> *Call made to Mr Bwr on evening of 14/8/2015 as agreed to advise of the bank's decision. Dpa Ok*
> *Advised Bwr that the Bank were not agreeable to (i) taking 425k settlement in full and final settlement of this debt and (ii) taking gross sale 60k for the btl prop (associated acc ref).*
> *Bwr became very irate on the phone over the decision saying the Bank were dishonourable. He became upset and passed the phone to his wife. DPA ok. He [sic] wife was also very angry and upset over the Bank's decision. I explained that the Bank were*

/Cont'd…

not in a position to agree on the level of compromise sought. I also advised that on receipt of further financial info (Mr Bwrs company accounts) that it has changed the landscape and we are looking at putting in place an affordable/sustainable type solution and not compromise debt at this stage. Bwr still not satisfied and looking to speak to senior management but I advised that there were none available at such a late hour on a Friday. Call ended and bwrs were still not satisfied.

A Note completed by the Complainants regarding this telephone call of **14 August 2015** states the following*:*

At 5.15 [Agent] rang [Second Complainant] to advise that he had a verbal reply from Credit to advise that they were rejecting the offer of €425k for full and final settlement. They assessed the information received including the information that has come to hand (co accounts presumably) and that they have deemed it unacceptable to accept the level of compromise involved. They will now look at a 'sustainable solution' for an arrangement going forward.

[Second Complainant] advised [Agent] of the total dissatisfaction (yet again) which we have had with the way [Provider] and [associated provider] deal with their affairs, it is totally unacceptable to lead us along for the last 2 years and again in the last 4 months making us believe that they were willing to negotiate and progress with the proposal which they 'advised us was most suitable for the bank' as per [Agent] and we were led to believe when we were getting all the information together over the last few months through [third party lender] etc that they would allow a full and final settlement on the basis of €425k being paid to [Provider/ associated provider], and now to reject it again just like that.

I took over the phone… and advised him of my total dissatisfaction with him and the other staff members of [the Provider] for misleading its consumers. He was speaking as if he didn't know what was happening with the file, and when I said that the bank agreed to accept that proposal (from a number of other proposals given to them some months back) he then said that the credit department refused to accept 'the level of compromise' on the table' at the minute given the new information that has come to light and that they would look at it again to see if they could 'put a sustainable solution in place' and when I asked him what he meant by 'sustainable solution' he said 'an arrangement going forward to suit everyone given the circumstances' (in that we would continue with the mortgage with [Provider/ associated provider].

I advised [Agent] that this was not acceptable as we did not want any further dealings with [Provider/ associated provider] and that we would not be paying them any more money as at this date as they are being totally dishonest with us and leading us along, while they sit back and watch us struggle and make payments and then offer us a bone and take it away at the last minute…totally not acceptable.

I advised we would be engaging barristers in this case on Monday morning and that he could write back to the credit department to advise them that 'we did not want any sustainable solution that would involve us staying with [Provider/ associated provider] for

/Cont'd…

those mortgages and that we want them to put them to put their reply in writing as we will be taking this further from now on' as any negotiations have been discredited by this act by the bank.
…
I asked him again did he get a reply to our file verbally or in writing and he said he got the reply verbally and that he should have the written reply today or Monday morning.

He asked if I wanted him to call me again on Monday and I asked why would he ring me on Monday 'to tell me the same thing again' and he said it would be 'to advise what the bank's proposals are for a sustainable solution'. Again I advised that we were not going to be paying the [Provider/ associated provider] any further mortgage payments and if they were not willing to accept the €425k then we would see them in court as this was disgraceful and that they were putting our lives in danger and [Second Complainant] was close to a heart attack, so much that I could not let him back on the phone."

The Complainants are of the view that they had previously been advised by the regional centre that the Provider had accepted their proposal and was willing to accept settlement of their debt by pay of a lump sum payment of €425,000 with a compromise on the balance. They submit that were advised that the Provider's credit department had approved this offer, subject to their obtaining the necessary funding. They submit that the offer had been accepted by them but that it "*was unilaterally revoked/retracted/reneged on by the Provider*" in their call.

The Provider submits that this proposal had not been accepted by it and was at all times subject to credit approval.

I accept the Complainants were clearly of the understanding from **30 March 2015** that the Provider was proceeding with the settlement proposed, until this call of **August 2015.** However, no evidence has been made available of any formal agreement between the parties of the terms of the proposal in question.

I do accept that the Provider demonstrated a lack of consistency in its approach, in that having communicated that it was no so proceeding in **August 2015**, and without any further explanation, it engaged in a further reversal of position and sent a letter to the Complainants dated **27 of November 2015**, confirming that it would in fact accept the proposal of €425,000 in full and final settlement in respect of the loan capital balance and the arrears balance at that time.

The Provider's version of events is that:

On 6 May 2015 the case manager called the Second Named Complainant and left a voicemail for him stating that before the Bank could make a decision on his proposal it would need to see evidence of a sanction in principle from the financial institution who were providing finance to the Complainants…The Bank and the Complainants were in regular contact in the following months. On 29 October 2015 the case manager contacted the Second Named Complainant and advised him that approval had been given to accept the amount of €425,000 in full and final settlement of the Complainants'

/Cont'd…

[Provider] debt of approximately €646,000 and €60,000 in full and final settlement of [parent provider] debt of approximately €109,000. On 27 November 2015 a Settlement Agreement issued to the Complainants in relation to their [Provider] mortgage account.

I note that this narrative completely omits the events which occurred in or about **August 2015**, when the Complainants were informed that the Provider was no longer willing to accept the proposal, as evidenced by its own call note and I am unimpressed with this less than comprehensive explanation of events by the Provider.

The Complainants contend that due to such a long delay from their initial approval in principle with the third party provider, they had to begin the loan application process again which took approximately four months. They also say that the third party provider ultimately declined to provide them with a loan on the basis of their poor credit rating, arising from the ICB report on their mortgage loan. The Complainants contend that this was as a result of *"the manner in which the Provider was incorrectly reporting to the ICB."*

I will turn to examine this issue of the manner in which the Provider reported upon the Complainants' loan to the ICB, further below.

Assessment - **October 2015.**

A Fourth Assessment of the Complainants' financial circumstances was completed by the Provider on **28 October 2015.**

The assessment document sets out the following considerations and recommendations which had been put forward by their case manager - the Agent they had been dealing with, at the regional centre:

Accept Bwrs offer of €425k against [Provider] loan. OMV on PDH €250k v loan €644.9k LTV: 258%
Consent to sale and accept offer on property €62.5k NSP €60k on Ms Bwrs BTL OMV on BTL €62.5k v loan €109.8k LTV 176%
Overall Mtg debt €754,738 less NSPO €60k less settlement for PDH €425k = compromise settlement €269, 738k (36%)
DSC for bwrs in the immediate future is not evident…
[Third party provider] loan €325k secured by PDH and unencumbered property in [location] and second charge to be put on [other Provider] property in [location]. Bwrs mother is providing deposit circa €100k in a bid to get bwrs out of current financial difficulty and save their family home. [Third party provider's] approval is based on business accounts for y/e 2014 and the timeframe for acceptance of the offer is running out. Bwrs also very conscious that if new application to be submitted to [other Provider] based on Mgt A/Cs as at 05/15 then [third party provider] will withdraw the offer.

If as per previous credit decision all BTLs were sold and net sale proceeds circa €150k (allowing 20k for selling costs and costs involved to get p/p approved on [third party provider] property which has been converted to 4 single apts including attic conversation

/Cont'd…

[sic] and sewerage problems that need to be corrected were applied to overall associated provider/Provider debt total outstanding would be €530 k v PDH property €250k
As per current SFS (09/15) NDI: €865. Bwrs currently paying €1132 but could not continue this amount going forward if all assets were sold as current payts of €1132 being supplemented by rental income.
Split loan option: €200k @3.95% over 359 months = €950 pm with remainder of balance circa €330k to be split over tranche B&C
Acceptance of current offer will net [associated provider]/Provider €485k v debt €754,738 with compromise settlement €269,738 (36%).

The initial Business Approval dated **15 October 2015** was to "*agree with the overall strategy in this case*". However, in a handwritten note signed and dated **28 October 2015**, the final decision was:

"*Considered option of providing split with sale of non [associated provider] assets and btl which would give rise to a lower Cnote however cost of carrying €80k B note also needs to be factored in. Key concern given Mr Co financials is redefault risk on any split granted…On balance given primarily the redefault risk and holding costs of split, lump sum and bridge to disposal of BTL is the better option in this case.*

A letter subsequently issued to the Complainants dated **12 November 2015** advising that it was not in a position to offer an alternative arrangement as it deemed the mortgage to be unsustainable. It outlined the options available to the Complainants going forward, in the form of trading down/downsizing, voluntary sale, voluntary surrender. It further advised the Complainants that they were now outside of the protections of MARP.

However, as noted above, some 2 weeks after this time, on **27 November 2015,** the Provider wrote to the Complainants and offered settlement in the terms previously discussed between the parties, with the Provider prepared to accept settlement in the amount of €425,000 with a similar compromise on the balance and a compromise on the balance of [its associated provider] mortgage following the sale of a property – the letter set out the details of the settlement offer as follows:

We, [Provider name] (the 'Lender'), refer to our recent discussions and/or correspondence in relation to the repayments on the above Mortgage Loan(s). Based on these discussions, and on our assessment of your financial circumstances as disclosed in the information provided by you, we have concluded that you are no longer able to make the repayments due in respect of your Mortgage Loan(s) and that this is unlikely to change in the foreseeable future. In light of this the Lender has agreed to grant accommodation to you in respect of the outstanding balance(s) of your Mortgage Loan(s), under the terms and conditions of this Settlement Agreement.
On condition that you lodge a Lump Sum payment (the 'Lump Sum') to your Mortgage Loan(s) in partial satisfaction of the Mortgage Loan balance(s), the Lender will reduce the remaining balance(s) by way of compromise (the 'Compromise Settlement'). This compromise is granted in full and final satisfaction of your liability to the Lender in respect of this Mortgage Loan(s).

/Cont'd…

Details of your Compromise Settlement are set out in the table below. Please note that these details are correct as of the date of this Letter of Agreement but are subject to change.

Compromise Settlement	*Lump Sum*	*Residual Debt*
€222, 180.00	*€425,000.00*	*€0.00*

Any arrangements or modifications to your existing Mortgage Loan Account(s) will be reported to the Irish Credit Bureau and will appear on your credit report. The impact of this may affect your ability to borrow future funds. Please note that non payment of your loan can have a negative impact on your credit rating both within the Lender and with other financial institutions. On a monthly basis information may be passed to the Irish Credit Bureau, including your payment profile information and the number of missed payments. If you do not make your monthly payments, it may take longer than originally scheduled to pay off the loan. How much longer will depend on the amount owed and the length of time it has been unpaid.

By signing this Settlement Agreement you agree to be bound by the following terms and conditions:

1. *Target Lodgement Date: You must lodge the Lump Sum in partial satisfaction of your Mortgage Loan(s) on or before 26th February 2016, and notify [Named Agent] in the Arrears Support Unit immediately upon making the lodgement. In the event that you are not in a position to lodge the Lump Sum by this date, you must notify the Lender immediately, and the Lender may reconsider the position, up to and including terminating this Settlement Agreement.*

2. *The Lender's consent to the release of its security over the Mortgaged Property is conditional on the Lump Sum being no less than as set out in this Settlement Agreement, or as otherwise agreed with the Lender.*

3. *The terms and conditions contained in this Settlement Agreement should be read in conjunction with the terms and conditions applicable to your letter(s) of Offer (including any subsequent top-up loans), and any other security documents supporting your Mortgage Loan(s). If there is any conflict between this Settlement Agreement and the terms and conditions of your letter(s) of offer and/or your security documents, the terms and conditions of this Settlement Agreement will prevail.*

4. *For the avoidance of doubt, except as expressly amended by this Settlement Agreement, the letter(s) of offer and all security documents supporting the Mortgage Loan(s) (including the deed of mortgage and mortgage terms and conditions) shall remain in full force and effect and shall be read together with this Settlement Agreement as one agreement until such time as the Lump Sum is lodged to your Mortgage Loan(s) and the Compromise Settlement has been applied in full and final satisfaction of your liability to the Lender in respect of this Mortgage Loan(s).*

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5. *It shall be a breach of this Settlement Agreement if you breach any of the terms and conditions of this Settlement Agreement and/or if any of the information that you have provided to the Lender is deemed to be fraudulent. In the event of such a breach, the Lender reserves its legal rights of redress including but not limited to terminating this Settlement Agreement and seeking immediate repayment of the full Compromise Settlement and/or any reductions applied by the Lender (and any interest which might be applicable).*

6. *Should you wish to obtain independent financial advice (which we strongly recommend), the Lender will pay a total of €250 (plus VAT) for a meeting with an adviser chosen from the panel of practising accountants (full details of the panel are available at www.keepingyourhome.ie) You should already have received a copy of your completed Standard Financial Statement (which will enable the adviser to assist you at this meeting), together with a declaration document that must be completed by you after this meeting. On receipt of this completed declaration, the Lender will make the payment to the advisor.*
   Where applicable, the total Mortgage Loan balance quoted above includes arrears. If your account is in arrears, the Lump Sum will first be applied against the arrears and the account will be restructured as detailed within this Settlement Agreement. Any accrued interest not yet posted will be capitalised on your account prior to the restructure

As noted above the Complainants did not accept this offer as they were ultimately unable to secure the funding required from a third party lender.

Assessment - July 2016.

A fifth Assessment was completed by the Provider on **14 July 2016**.

The "*Reviewer recommendation*" noted a change to the Complainants' circumstances in that the Complainants' income since the last assessment had increased from €4,244 to €6,686 per month.

It based its decision on the following consideration of the Complainants' circumstances:

> ***ASU conclusion***
> *Reason for selected Other Debt prioritisation:*
> *-previous forbearance : 18 mths short term*
> *- MAFF Sept '13 Appeals Board granted 6 mths I/O minus*
> *- June 2014 6 mths I/O minus granted to facilitate the sale of BTLs*
> *- Feb 2015 6 mths I/O minus granted to facilitate the sale of BTLs*
> *- Previous credit decision Oct 2015: VSFL on PDH compromise of €220k & VSFL on [associated provider] compromise of €49k*
> *- This was to facilitate refinancing of PDH with another lender*
> *Full valuation took place in Nov 2014 @250k. Same input into CSO calculator*
> *Change since last assessment: income has increased from €4244 to €6686*
>
> …

/Cont'd…

> ***Assessor recommendation:***
> *Since the last credit decision the bwrs have appointed [financial consultants] who have submitted a proposal that [the Provider] finance the bwrs with a mortgage of €400k which they can pay C&I on, accept at €25k lump sum and write off the remaining balance. There are now currently arrears of €57,653/ 20 payments down on the account, while the bwrs maintain a payment of €1132pm on the account against C&I of €2821.*

The outcome of the assessment was that the mortgage was affordable. The Provider was of the opinion that the Complainant's expenditure was "*well in excess*" of ISI guidelines and noted that they had equity of €211k in both the unencumbered and mortgaged property (after sale costs had been factored in). It stated that the Complainants needed to consider disposing of same and reducing the PDH mortgage and that it had been advising of asset disposal since 2014 with only the associated provider's BTL disposed of (in February 2016).

On 15 July 2016 Provider called the Complainants, to say assessment had been completed and full repayments were deemed affordable.

The Complainants appealed and by letter dated **16 August 2016** were offered 6 months at €1,172, received by Complainants on **25 August 2016**. The Complainants wrote back on the same day saying that it was not a long term solution and they were not comfortable with yet another 6 month ARA and requested a reduced interest rate.

On **12 September 2016** the Provider wrote to the Complainants noting that as the Complainants had advised that they were neither accepting nor declining the Provider's short term forbearance offer per letter of **16 August 2016**, repayment of €1,742pm, it would be applied to the mortgage account, by default.

It advised that it was continuing to assess their full circumstances and explore options for a long term sustainable solution and to this end requested estimated net sale proceeds from the sale of two BTL properties as well as an estimated timeframe for the sale.

The Provider subsequently wrote to the Complainants by letter dated **09 November 2016** regarding potential options for a long term solution post sale of their BTL properties, in the form of a Split Mortgage structure.

The Provider's proposal set out in the letter, involved their making repayments on a *"sustainable portion of the debt to be in the amount of approx. €1742 over 309 months and the balance parked at an interest rate of 0% until their retirement aged 71 with the balance to be reviewed at that time and a sustainable solution offered."*

It went on to say:

> "*now that we have outlined the envisaged Solution, can you please confirm in writing within the next 14 days your willingness to proceed with the sale of the properties outlined above and the introduction of the sales proceeds plus savings of €20,000 (total circa. €150,000) to reduce the current balance of your loan. If you are not in a position to confirm your willingness to sell the [location] and [location] properties and to*

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introduce the €20,000 savings and thereby reduce the account by circa €150,000, the debt is not considered to be sustainable… ***Any future consideration in regard to a long term sustainable solution must be based on full cooperation by you following the sale of both properties with the net sale of both proceeds confirmed by your solicitors."***

The letter ended by advising "*it is important to note that at present you are not meeting the repayment of €1742pm as outlined in our letter dated 16 August 2016. Please note your home may be at risk if you do not keep up payments on your mortgage*".

[emphasis added]

I note that during this time the Complainants were continuing to make repayments of €1,132 per month.

The Complainants' position in respect of the Provider's proposal is that, in advising them to sell the properties it did not advise as to what would happen with the remaining balance of the mortgage of circa €500,000 and as a result, they were wary of proceeding without any guarantees in this regard.

They wrote to the ASU by letter dated **22 November 2016,** upset at how the Provider had dealt with their account to date. They confirmed that their position was that:

*"it is up to [the Provider] to offer a more long lasting or permanent solution to us and we have been requesting this since the outset and before any arrears had accrued on our account (*which is not [sic] currently at circa €60k which we are frustrated about as we deem the bank to have caused the arrears/interest to reach this level due to their inaction in dealing with our file and we will be expecting the Provider to absorb this in any sustainable solution offered to us, as opposed to expecting us to voluntarily surrender our BTL to clear that "unfair interest/ arrears balance) and without being advised clearly or otherwise how [the Provider] will treat the outstanding debt after the BTL is voluntarily surrendered or sold and without being advised as to any arrangements proposed for the continued repayment of such debt.*

We are being told (again my [sic] your most recent demand giving 14 days as per your letter of 9th November received on 17th November 2016) to voluntarily surrender our BTL property (which is increasing in value and only has a short and small mortgage remaining and massive rental potential which is clearly demonstrated and credible) without [the Provider] setting out any proposals as to how the outstanding debt will be treated. This is a breach of the central bank rules and is wholly unfair on us as we have been asking, pleading, begging the [Provider] to assist us with our situation since July 2013.

By phone call of **28 November 2016**, the Second Complainant spoke with the Provider, the Agent identified that they had met in met in September, and that he was manager of the regional centre. He said that he was issuing a letter regarding a long term solution and that that the Provider hadn't changed its view since the last letter which had issued, regarding the split mortgage and the sale of the two BTL properties.

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The Complainant noted that the letter the last time didn't address what happens after the sale of the properties. The Agent responded that it "*said we will look at giving you a long term solution of a split mortgage"*

The Complainant questioned, so hypothetically, if €700,000 owed and we pay off €200,000 what happens to the €500,000. He was told that the €500,000 is your loan amount and the Provider would park part of that loan and put it on 0% finance. "*What mortgage will that service?*" asked the Complainant and was told, "*Loan A*" and the other portion would be parked until retirement and would be reviewed for a further solution at that stage.

The Complainant said, I hear what you are saying but we need to know what is happening with Loan B. The Provider said that was recognised as a sustainable solution by the Central Bank. The Complainant disagreed and wanted to know if Central Bank had discussed their loan in particular. The Agent confirmed it had not, but that it was a sustainable solution it offered to customers, as approved by the Central Bank. The Agent reiterated that such an arrangement was available to them if they were to sell their BTL properties and that it would have to review the position once the properties were sold, based on their financial circumstances at the time.

The Complainant wanted to know why his own proposal to pay 0.5% interest rate on the loan, to pay down a BTL mortgage, had not been considered and that it seemed to be a logical approach, to him. The Agent replied that the Provider "*wouldn't look at it*" where there were properties in equity and that it was bank policy not to look at someone with assets in positive equity, when their PDH is in difficulty. The Complainant said that he wanted to go through why the Provider said it wasn't a good solution. The Agent explained that it had outlined that they needed to sell the properties in order to proceed with a sustainable solution. The Complainant asked how they could appeal the matter and was told they could do so to the Provider's Mortgage Appeals section or to the FSO.

Assessment - May 2017.

On **20 January 2017** Complainants responded to the Provider's letter of **28 November 2016** (declining to consider a settlement in the amount of €425,000 on the basis that their financial situation had improved.) They submitted an SFS in support of their contention that this was not the case.

They spoke with Provider on **31 March 2017** which advised that it wanted valuations carried out on the properties. They further spoke with the Provider on **06 April 2017** and **24 April 2017** but there were no further updates available.

A further assessment was completed by the Provider on **23 May 2017**. It noted that

> "*The bwrs have stated in the past and through numerous letters that they wish to keep the [location] property as the mortgage will be completed in the next five years which means the rental income will go solely towards the PDH mortgage. However the bank have advised them that we need to now look at a long term sustainable solution in order to keep the bwrs in their home and in order to do so as per the bank's policy there can be no assets remaining in the background.*

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The latest proposal from the bwrs is as follows: [Provider] to accept a lump sum payment of €425k in full and final settlement of the debt. They require a period of 12 months as a "Target lodgement date" to make the lodgement of the €425k and this will allow them to place their 2 properties on the market and to finalise the sales.
They also request a repayment during this 12 month period of the €1132 which they are currently paying plus €428 which they advise is their surplus on the SFS, this is a total of €1570 pm.
The bwr has not stated where they will get the funds of €425k in order to reduce the mortgaged debt also note this would leave a residual debt of €236,041 which the bwrs want compromised. If we were to go with a split as recommended by IDST with Loan B and Loan C of €168,664. This with [sic] give a loss of €136,671.
The IDST suggests a split mortgage would be available at the repayment of €2229, however as per bank policy this cannot be applied where there are unencumbered assets or properties with equity in them.

The Provider's recommendation was that:
…

"Bwrs looking for full and final settlement of €425k. As borrowers has two properties in positive equity and are not happy to sell these properties to provide net sales to reduce mortgage balance on PDH. Recommending loan is deemed unsustainable with the account to be routed to legal within 3 mths of Unsustainable letter issuing."

By letter dated **06 June 2017** (at which date arrears on the account were in the amount of €76,235.81) the Provider wrote to advise that it was not prepared to grant an alternative repayment arrangement on the basis that the mortgage was unsustainable.

The decision was appealed by the Complainants in **June 2017**, an appeal which was then communicated to them as having been unsuccessful, by Provider letter of **10 July 2017**.

The Complainants were notified by letter dated **09 October 2017** of the Provider's intention to commence possession proceedings, before the Circuit Court.

A Civil Bill issued on **08 November 2017**, which together with Verifying Affidavit and exhibits, sworn on **03 November 2017**, was served upon the Complainants by post on **21 December 2017,** with the matter listed for **12 March 2018**.

A stay on Court proceedings, pursuant to ***section 49*** of the ***Financial Services and Pensions Ombudsman Act 2017***, was granted to the Complainants, by way of Court Order, following an Ex-Parte Motion of **09 October 2018**.

Despite this, however, I note that the Provider continued to discuss possible arrangements with the Complainants. I have listened to a recent call dated **26 April 2019** between an Agent of the Provider and the First Complainant.

During this call the Provider discussed the possibility of reaching an agreement with regard to a Split Mortgage. The Agent re-iterated that the **November 2015** proposal of settlement

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in the amount of €425,000 was no longer on the table and the Provider was not prepared to enter into renegotiations in this regard. The Agent advised that a letter had issued to the Complainants in December 2016 outlining the Provider's position regarding a split mortgage and that this remained its position.

The Agent advised that it couldn't provide confirmation of the figures involved until such time as it received the relevant sale figures from the Complainants of the two remaining BTL properties with the lump sum applied to reduce the PDH mortgage. At that point it would review the "*new balance*", to determine details of the spilt. The Complainant indicated he was concerned about the lack of specific calculations on the part of the Provider and that they would not be willing to accept the arrangement without the Provider providing such detail.

The Agent said that it could give indicative figures regarding the proposed Split, based on the information which it had to hand but this would not be legally binding and that it didn't know the Complainants' position with regard to capital gains tax.

The Complainant advised that he wanted to see "*the maths and methodology*" behind the Split, pointing out that the Provider had the valuations of the properties on the file. He said he would then consider matters with his legal team. He described the Provider's approach as "*shocking*."

The Agent reiterated that the: *"main crux of it here is that there are assets in the background okay and this is the bit that I suppose we have and I've explained this to you before that when we do an assessment we have an obligation to look at every case on a case by case basis, okay, on an individual basis however we have to operate within certain parameters and one of the parameters that we operate within is that if there are other assets outstanding or outlying out there, that they need to be sold in permanent reduction of the mortgage insofar as that we can then offer a solution that we know that, okay, there is nothing else to reduce the balance here, and then we look at potential options. There is a solution available to you, I can confirm that the solution's available to you. The letters which issued previously says that here is a solution available we just can't give the exact set of figures because we don't know the exact amount…"*

Complainant: *"Ye haven't given anything to me"*

Agent: *"What is it that you want exactly [Complainant]…"*

Complainant: *"It is very clear what I want and I have written it down numerous times but the Bank again is choosing to ignore it"…*

The Complainant said that he wanted the Provider to use the property valuations to show him the mechanical workings of how it arrived at a Split mortgage. He said he wouldn't be selling the houses without that.

The Complainant sought confirmation of the details of the senior managers working on his file.

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The Agent advised that he could give indicative figures for the Spilt based on the valuations it had and outlined the following: potential Tranche A of circa €238,000, based over the lifetime of loan up to normal retirement age. Depending on the amount that was then outstanding, reduced by the sales of the properties, the figure could differentiate, depending on the CGT, there would be a Tranche B, a portion which would be parked at circa €185,000.

The Complainant noted that he owed €600,000 – between two houses he would get €300,000 which would leave him owing €300,000 and asked how the Provider had come up with €185,000?

The Agent responded that there was a lump sum potential reduction net of legal costs, of €263,000 and that the balance as at that date was €688,109 including arrears but not inclusive of interest that may have accrued but not applied that quarter. He advised that if the balance was reduced by €263,000 it left approximately €424,000 remaining – effectively then (indicative only) if they sold at those levels, tranche A of the split would be €238/240,000 with €186,400 parked until the end of the term. He stated that there may be other potential breakdowns such as a tranche C, a potential compromise which would depend on the ultimate proceeds of sale. He said it wouldn't know the full details until the mortgage had been reduced through sale of the assets.

The Complainant noted that if amount A is what it determined he could afford, and if amount B is what was to be parked with a 0% interest rate, he advised that he had "*no handle on how you arrive at point B".*

The Agent indicated that €688,109 was the amount outstanding at that time, minus a lump sum of €263,000 would leave €424,000/425,000 outstanding. Minus €238,000, would leave €186,762 rounded up to €187,000 and that tranche B would then be parked interest free until the end of the term.

The Complainant asked what happens at the end of the term. The Agent said that Tranche B could be reviewed every 5 years, for potential write downs.

Agent reiterated that it couldn't look into the solution without the sale of other two assets. It noted the Complainants' concern that Complainants didn't want to be at mercy of the bank but the Agent said that the aim was to keep them in the family home.

The Complainant said that he was "*gutted*" and had hoped the Provider would have come to its senses. He had set up a direct debit of €1,132 at all times and believed that the Provider had acted unfairly.
The Agent said that if the Provider was to give them a long term solution before asset disposal then that it would go against their policy which would be unfair to others.

The Complainant was insistent that the Provider had not provided any help to them whatsoever and reminded the Agent that he had wanted a long term solution in the form of low interest rate to pay off a BTL loan and have the rental income put toward the PDH mortgage repayments.

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The Agent concluded that there was a solution available but it needed them to work with it regarding asset disposal and the Complainants were not willing to do that. It said it couldn't give a definitive offer at that point because it didn't know what the figures would be.

The Complainant said that what the Provider had done was to "*offer nothing".*

Issues arising from consideration of the above events

The Complainants contend that the short term periods of forbearance offered by the Provider were unsuitable to their needs and they at all times required a sustainable solution, which was not forthcoming from the Provider.

I would note in this regard that section 37 CCMA 2013 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 repayment history.*

A Provider must base its assessment of the borrower's case on the full circumstances of the borrower and where an arrangement is offered, it must provide the borrower with the reasons why it is considered appropriate and sustainable for the borrower.

Ultimately MARP provides for a framework which places specific obligations on a Provider to comply with the following steps:

Step 1: Communicate with the borrower;
Step 2: Gather financial information;
Step 3: Assess the borrower's circumstances; and
Step 4: Propose a resolution

It does not however require a provider to include any particular arrangements within the suite of arrangements that it provides, nor does it require a regulated entity to put in place any particular specific arrangement for a borrower; these are commercial decisions for the lender.

As regards the information which must be furnished to a borrower when an ARA is offered, the CCMA 2013 provides as follows:

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

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advice and 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 have had regard to the ARA letters which issued and am satisfied that those dated **19 June 2014** and **16 August 2016** contained the information required.

The ARA letter which issued dated **19 March 2015** did not include reference as to why the Provider considered the offer appropriate and sustainable. The Provider has also acknowledged that the letter which it issued in **October 2013** did not set out the information required by provision 42 of the CCMA.
The Complainants have submitted that they were not provided with an information booklet providing details of the Provider's MARP as required by provision 14 of the CCMA. The Provider contends that when it received the Complainants' SFS dated 26 July 2013 it was accompanied by a "*recommendation template*" completed by the Complainants' branch and that on this document a box had been ticked to confirm that the "*customer had been taken through the MARP process an given a MARP booklet."*

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The Provider has not furnished a copy of this template or a copy of the MARP booklet itself. I note that during phone calls the Complainants mentioned having initially attended at a branch and having discussed the MARP however it is not clear whether a copy of this booklet was in fact furnished to the Complainants.

I am satisfied that it was a matter for the commercial discretion of the Provider as to the solution it deemed appropriate, based on its assessments of the Complainants' circumstances. In respect of the Complainants' complaint that it failed to put in place a sustainable solution to the Complainants' mortgage, it is clear that the Provider made clear its position that it required the Complainants to dispose of their BTL properties and to use the proceeds to reduce the mortgage outstanding on their PDH prior to putting in place a long term solution, and the Provider indicated this throughout its course of dealings with the Complainants. It appears that the Complainants did not agree with this approach and were of the view that their own proposals were more advantageous to both of the parties.

Given that the framework of the MARP process is designed to provide certain protections in respect of the family home, in attempting to find a solution to their mortgage issues that would result in the Complainants retaining their PDH, I am satisfied that it was not unreasonable of the Provider to look at the assets held by the Complainants that could be used to address the balance outstanding on the PDH loan. The Complainants were not entitled to insist on the proposal which they believed was the one most suitable. It was for the Provider to consider this, if it wished to do so in assessing the potential arrangements which might be suitable to the Complainants' circumstances.

Having had detailed regard to all of the evidence before me, I am of the opinion that the Provider was willing to put in place a sustainable solution to the Complainants' mortgage, in the form of a Split mortgage but that the Complainants did not wish to proceed on the basis proposed, because in advance of the other properties being sold, the figures could not be confirmed. Having considered the matter at length, I take the view that on the evidence available, this aspect of the Complainants' complaint cannot reasonably be upheld.

I will turn now to examine the Complainants' complaint that the Provider incorrectly reported their loan to the ICB since 2013.

ICB Reporting by the Provider

The Complainants say that their mortgage loan has been misreported by the Provider to the ICB since 2013. They submit that they have repeatedly requested the Provider to amend their ICB record but the Provider has advised that it is not willing to do so, as it disputes that it has incorrectly reported their loan profile.

I note however that it did amend the Complainants' report in respect of one period – **November 2013** to **February 2014.**

The Provider has subsequently claimed that it did this as a "*gesture of goodwill*" toward the Complainants and that it is not its general policy to do so.

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The Complainant's ICB report, as at **02 February 2015**, showed the following payment history:

***24**	**23**	**22**	**21**	**20**	**19**	**18**	**17**	**16**	**15**	**14**	**13**
9	9	9	8	8	7	6	5	5	6	4	4
12	**11**	**10**	**9**	**8**	**7**	**6**	**5**	**4**	**3**	**2**	**1**
√	√	√	√	1	√	√	√	√	√	√	√

This office wrote to the Provider (by letter dated **26 March 2019**) and requested that the Provider provide an explanation as to why the account was reported as being:

One payment in arrears at month 8.
Four payments in arrears at months 13 and 14.
Six payments in arrears at month 15.
Five payments in arrears at months 16 and 17.
Six payments in arrears at month 18.
Seven payments in arrears at month 19.
Eight payments in arrears at months 20 and 21.
Nine payments in arrears at months 22, 23 and 24.

It was also asked to provide a similar breakdown as to why the arrears which appear on the Complainants' ICB reports dated **01 December 2015**, **01 March 2017** and **02 July 2018**, were reported by the Provider in the manner in which they were.

The Provider responded that the account was reported as being one payment in arrears at month 8 (September 2013) as at this time the arrears totalled €4,041.68 and the contractual repayment due was €3,040.62. As such, it says, the ICB profile reflects that the Complainants' account was one payment in arrears.

The Provider submits that the account was reported as being **four payments** in arrears at months 13 and 14 (February 2014 and March 2014) on the basis that the Complainants' mortgage arrears totalled €14,452.03 in **February 2014** and €13,025.08 in **March 2014**, as it had agreed to accept repayments of €1,132 per month for the period from **November 2013** to **April 2014**, which were less than the amount required to meet the interest on the loan.

It says that due to "*technological restrictions*," its system reflected that full capital and interest repayments of €3,081.27 were due to be paid to the account each month. It says that the Provider's system can "*only reflect that either interest only or full capital and interest repayments are due on an account.*" As a result the system continued to call for the full capital and interest repayments each month. The Provider has confirmed that the "*reporting that was made to the ICB was based on the full capital and interest repayment due each month.*"

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The Provider stated that the account was reported as being six payments in arrears at month 15 (**April 2014**) because, at the time arrears totalled €14,264.89 and the contractual repayment due was €2,371.81. The Provider says "*as such the ICB profile reflects that the Complainants' account was six payments in arrears.*"

It reported the loan as being five payments in arrears at months 16 and 17 (**May 2014** and **June 2014)** because "*Arrears on the Complainants' mortgage totalled €16,236.07 in **May 2014** and €18,207.25 in **June 2014**, whilst the contractual repayment due was €3,103.18. As such the ICB profile reflects that the Complainants' account was five payments in arrears for each month."*

It reported the loan as being six payments in arrears at months 18 (**July 2014**) because, "*Arrears on the Complainants' account at this time totalled €20,178.43 and the contractual repayment due was €3,103.18. As such the ICB profile reflects that the Complainants' account was six payments in arrears for each month."*

The account was reported as being seven payments in arrears at month 19 (**August 2014)**. *"Arrears on the Complainants' account at this time totalled €22,149.61 whilst the contractual repayment due was €3,103.18. As such the ICB profile reflects that the Complainants' account was seven payments in arrears for each month."*

The account was reported as being eight payments in arrears at month 20 and 21 (**September 2014** and **October 2014**.) Arrears on the Complainants' mortgage totalled €25,252.79 in **September 2014** and €27,223.97 in **October 2014**, whilst the contractual repayment due was €3,103.18.

The account was reported as being nine payments in arrears at month 22, 23 and 24 (**November 2014**, **December 2014** and **January 2015)** because arrears on the Complainants' mortgage totalled €29,195.15 in **November 2014**, €31,078.74 in **December 2014** and €32,962.33 in **January 2015**. The contractual repayment due for the month of **November 2014** was €3,103.18 and for **December 2014** and **January 2015** was €3,015.59.

In each instance then, the Provider has based its reporting on the full contractual amount that was owing each month.

The Provider has submitted "*It should be noted that the contractual repayments of €1,132 due on the Complainants' mortgage account in March/April 2014, if applied to the Complainants' ICB profile, would have resulted in the Complainants' ICB profile showing that they were nine payments in arrears. The ICB profile for the Complainants' account reflected that they were only four payments in arrears which was in the Complainants' favour."*

I do not believe that it is fair or reasonable of the Provider to have based its reporting on the full contractual amount that was owing each month, simply dividing the amount of arrears by the monthly repayment due under the original terms, irrespective of whether an ARA was in place or not. I do not consider it satisfactory of the Provider to have accepted a reduced monthly repayment amount for certain periods but nonetheless to

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have continued to report to the ICB based on whether the full original amount of capital and interest repayments were being met, contrary to that new repayment arrangement.

In circumstances where the Provider agreed to accept a reduced repayment amount it should have based its reporting to the ICB on whether payments in those amounts were being paid, i.e., whether the Complainants were meeting the terms of the alternative arrangement as agreed rather than on the full contractual amount. The fact that it seems to have reported in the manner it did, due to a system limitation of its own is very unsatisfactory. Given that the Central Bank introduced a Code of Conduct on Mortgage Arrears (CCMA) in 2010, and then revised it in 2013, these issues have been at play for a considerable period and it is very disappointing that the Provider now seeks to explain its position regarding ICB reporting in 2014, on the basis of "*technological restrictions*".

Communications between the Complainants and Provider as regards the manner of reporting

In relation to the manner in which their account was being reported to the ICB, the Second Complainant called the Provider on **09 January 2014**, wanting to know why he was "*getting these letters*". This call occurred during the Complainants' first Alternative Repayment Arrangement period. The Agent confirmed arrears on the account of €10,553.49

He explained that he had made an arrangement with the Provider to pay €1,300 a month. The Agent, confirmed that there was an Arrangement in place for 6 months, of €1,132 per month.

The Complainant asked why it was reported on the ICB as an unpaid payment. The Agent advised that him that if there were arrears on the account, they would remain. He advised that although there was "*a tolerance payment in place*" the arrears which had previously accrued were still there.

The Complainant said that he had been of the understanding that the repayment arrangement shouldn't affect his credit rating and that he had a "*major issue*" with the fact that his credit rating and that his business was being affected. He said that no arrears had arisen before the arrangement was put in place.

The Agent questioned this and the Complainant said that they had paid their mortgage in full up to the point that an arrangement put in place of €1,132 and that he didn't know how he could be in arrears if he was paying €1,132 per month. The Agent examined the file and said they were paying less than interest, which represented a tolerance payment and that as a result interest would continue to accrue.

During another phone call the following day, on **10 January 2014** the Second Complainant explained that he had been declined for a business loan because they were showing 4 months in arrears on their ICB mortgage account loan report.

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The Agent confirmed that they were due to make repayments of €1,132 but that they were also in arrears and advised that the arrears would continue to grow because of the difference between what was falling due and what being paid on the account.

The Complainant was annoyed that the letter advising of the repayment arrangement did not advise that it would result in the account going into arrears. I accept this as a very valid point on of the part of the Complainants and I believe that this was critical information which should have been explained in the letter. I note that the Provider has acknowledged that the letter which it issued in October 2013 did not set out the information required by provision 42 of the CCMA in this regard.

The Agent on the call of the **10 January 2014** advised that although there was an ARA in place that arrears would continue to grow while on the arrangement, because the difference between the amount of payments falling due and what being paid.

Complainant said "*I didn't propose that. That's what ye proposed, not me*".

Whilst I accept that this was arrangement put in place by the Provider, I would also note that the Complainants had initially advised the Provider in 2013 that they could not afford to make payments of more than €800 per month. Consequently, arrears were bound to accrue as the monthly contractual amount falling due was far in excess of this amount and the Complainants had been so advised.

During a further phone call of **30 January 2014** the Complainant wanted to know why there were arrears on the account. He maintained that they were told that there was an agreement in place and they should not be getting arrears letters. I do not however find any evidence that the Complaints were advised that they would not get arrears letters.

The Agent said that there was a "*tolerance arrangemen*t" in place at that time but that the account had gone into arrears in August 2013.

The Complainants disagreed and responded that it didn't go into arrears and that there had been an agreement in place – "*we had made an arrangement with the Bank before it into any arrears and we told them what we were going to pay and we had initially agreed €800 and then after the appeal they went the €1132*."

The Complainants are not correct in this respect. Although they had indeed told the Provider what they were going to pay by way of a reduced sum, there was no formal agreement in place to this effect at the time and the monthly repayments as per the original loan agreement were still falling due. The Provider had declined to grant an ARA initially and during the months of August and September and October 2013, and during these months the full contractual repayments were due and owing but not met and as a result arrears accrued on the account. After the Complainants' appeal an ARA was put in place with effect from November 2013, for 6 months, in the form of "*less than interest only*" repayments.

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The Agent advised the Complainant, during this call, that €2,760.41 had been charged to the Complainants' account in August while €800 had been paid. Therefore, arrears at end of August were €1,960.41. In September the full amount had been charged and €100 paid, so arrears accrued again at end of that month. The Agent explained that the ICB profile had been affected as there wasn't an arrangement in place for those months.

The Complainant told the Agent that she had been advised within a branch, before they missed any payments, that if they made "*any payment*" to the Provider that their ICB "*would be kept okay*", as long as they were in negotiations with the Provider throughout the whole affair. The Agent told her to go the branch and make a complaint because "*that's not right.*" The Complainants have not submitted details of their dealings with their branch in this regard.

The Complainant said that the reduced payments which they made in August and September 2013 were with the agreement of the Bank. I do not however accept that this was the case and there is no evidence to support this contention.

On **04 February 2014** the Provider rang the First Complainant, confirming that he would arrange to amend the report in respect of **October, November, December 2013** and **January 2014**.

When the Agent stated that there were €12,000 of arrears in place, the Complainant refuted this and said that she had been advised by the branch that if they paid anything that they would be okay, so they were not in arrears as they always paid the ARA amount.

The Agent advised her to get independent advice. But the Complainant said that they "*don't need independent advice"* as they *"know where [they] are at"*.

I consider that it may have been prudent of the Complainants to have sought independent legal advice.

I would agree with the Agent conclusion that he couldn't "*fix*" the ICB rating for the months where no arrangement was in place.

I note that although the Complainants were advised during this conversation that the Provider would amend the months from **November 2013** to **April 2014** to reflect the fact that the Complainants were in an ARA during this period and were meeting the ARA repayments and did so amend, the Provider has since adopted the position that it has, at all times, reported on the Complainants' account accurately to the ICB. It has submitted that:

> *" the Bank amended the ICB profile for the Complainants' mortgage account for the months of November 2013 to February 2014. The Complainant's ICB was amended to reflect that the Complainants' account was not in arrears at this time. It should be noted that the decision to amend the Complainants' ICB profile was not in line with the Bank's normal policy in relation to ICB reporting and was done as a gesture of goodwill to the Complainants*."

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On the call of **30 January 2014** however the Provider had advised that the **November 2013** record to that date could be amended but not the ones before that, because there had not been an arrangement in place. The Agent confirmed that if there was an ARA in place comprising interest only repayments but their ICB was affected "*we can reverse that.*"

In my opinion this initial approach of the Provider is the more satisfactory one and it disappointing that it has subsequently changed its position to deny that it ought to have so amended.

2015 ICB Report, onwards.

For the period from **February 2015** to **November 2015** the Complainants' mortgage account was reported as being nine payments in arrears.

The Provider has explained its reporting as follows:

> "*arrears on the Complainants' mortgage account in February 2015 totalled €34,845.92 and by November 2015 totalled €45,828.77. Repayments of €1,132 per month were due to be paid to the account from March 2015 to July 2015 whilst full capital and interest payments of approximately €2,800 were due for the months of February 2015 and August 2015 to November 2015. As such the Complainants' ICB profile reflects that they were nine payments or more in arrears for the period from February 2015 to November 2015*."

No distinction was therefore made by the Provider as to how it reported the Complainants' account during periods whilst the Complainants' were on an ARA, and were meeting those agreed repayment amounts, and those times when they were not on such an arrangement. I accept that whilst arrears continued to accrue on the account, they were nonetheless keeping to the terms of the ARA and not missing repayments as agreed during the period when an ARA was in place.

Regarding the Complainants' ICB report from **March 2017**, which covers the period from **March 2015** to **February 2017**, the Provider reported the Complainants' loan as being nine payments or more in arrears for this entire period on the basis that "*Arrears in March 2015 totalled €36,060.37 and had reached a total of €71,167.97 by February 2017. The contractual repayment due over this period was approximately €2,800 per month*."

Similarly, in relation to the ICB report for **July 2018**, which covers the period **July 2016** to **June 2018**, the Provider reported the Complainants' loan as being nine payments or more in arrears for this entire period on the basis that arrears on the Complainants' account in **July 2016** totalled €59,343.01 and had reached a total of €99,661.58 by **June 2018**. The contractual repayment due to the account over this period was €2,821.28. As such, the Provider's position is that the Complainants' ICB profile reflects that they were nine payments or more in arrears for this entire period.

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Periods during which an ARA was in place

The Complainants contend that as they have been making repayments of €1,132 since 2013 they have been fully compliant with their repayment obligations since that date. They have submitted the following letter in support of their position, which they requested from the Provider:

> *Further to your letter of 16 February 2015, email of 24 March 2015 and our subsequent telephone conversations I can confirm that you have been in negotiations with [the Provider] in relation to the above loan account since 2013 and that alternative repayment arrangements have been agreed.*
>
> *The above loan account is currently on an agreed reduced repayment arrangement of €1,132 per month from March 2015 for a period of 6 months and the terms of this repayment arrangement have been honoured to date. This repayment arrangement is for less than the contractual capital and interest payment.*
>
> *€1132 per month has been paid to the above loan account since December 2013 with the exception of September 2014 however [the Complainants] have since made this month's instalment.*
>
> *We trust that this is to your satisfaction, however if you have any further queries please contact us at the above number."*

I am satisfied however, that this letter simply confirms that payments of €1,132 were paid by the Complainants toward the mortgage loan each month and is not determinative of any issue save for the fact that the Complainants have been making payments in this amount, each month.

Although the Complainants submit that they have not missed any repayments and that the Provider has acted wrongfully in having reported them as having missed repayments, this does not take into account the fact that they were only on an ARA for certain, specified periods of time. As such, although the Complainants have been making repayments of €1,132 per month since 2013, these were not in fact the repayments which were falling due for repayment to the Provider at all times.

The Complainants' stated position is that the alternative repayment arrangements had, "*changed the terms of our loan and we are honouring the revised terms, therefore we should be reported to the ICB as compliant customers.*"

I believe that the Complainants have fallen into error in this regard - although the Provider agreed to accept an alternative, lesser, amount to the contractual repayments which were due under the loan agreement, for specified periods of time it remains that case that the repayments due pursuant to the underlying, original terms continued to fall due and owing during those periods when there was no ARA in place.

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In determining the issue, it is necessary to therefore look at the periods of time during which an ARA agreements was in place.

Having had regard to the evidence, I am satisfied as follows:

As per Provider's letter of **29 October 2013** - reduced repayments of €1,132 were granted for **6 months** (from **November 2013** to **April 2014**.)

These months in my opinion should not therefore have been reported by the Provider to the ICB as representing additional missed repayments and I note that November to February were indeed amended by the Provider to reflect that repayments were made during these months.

As per Provider's letter which issued on **19 June 2014 -** Reduced repayments of **€1,132** were granted for **06 months** granted effective from **01 July 2014.** This ARA was not applied to the Complainants' account as it was declined by Complainants per their letter of **14 July 2014**. The full contractual amounts were therefore due and owing during this period.

As per Provider's letter which issued on **10 March 2015 -** reduced repayments granted of **€1,132** from **01 March 2015** to **31 July 2015**. These months in my opinion should not therefore have been reported by the Provider to the ICB as increasing any already missed repayments on the loan.

Provider's letter which issued on **12 November 2015** - No ARA granted.

Provider's letter which issued on **16 August 2016** - Reduced repayments of **€1,742** for **06 months.** Although this ARA was applied to the Complainants' account I note that the Complainants continued to pay the amount of €1132 per month and this did not meet the agreed repayment amount, and were not full repayments in accordance with any agreement.

Provider's letter which issued on **06 June 2017** – No ARA was granted.

I am satisfied that it was clearly stated on each of the ARA letters which issued that, *"following the expiry of the alternative repayment arrangement, the account would revert to full capital and interest repayments unless otherwise agreed".*

On the basis of the foregoing considerations, it appears that there was an ARA in place, the repayment terms of which were met by the Complainants, for 2 separate periods, which together totalled 11 months – comprising 6 months from **November 2013** to **April 2014** and 5 months from **01 March 2015** to **31 July 2015.**

The Complainants have complained, as referred to earlier, that the Provider was responsible for their being unable to secure funding from a third party institution in 2015 with the result that they were unable to avail of the settlement proposal in the amount of €425,000 with the Provider. Whilst it is not possible to say, without being privy to the specific considerations of the third party provider in making the ultimate decision to decline

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facilities, in general terms it was, as per the Complainants' submissions, as a result of their credit rating. Having had detailed regard to the ICB reports relating to the period in question, I do not consider that the failure to secure funding, can be fairly attributed only to the misreporting by the Provider. I consider this to be so, in circumstances where the following would nevertheless have had a considerable impact upon their credit rating - there was a period of ten months, between the end first ARA period which the Complainants entered into, (which expired at the end **April 2014**) and the beginning of the second ARA period (which began in **March 2015**), during which time the full capital and interest repayments were falling due but were not being met. Similarly, after **31 July 2015** full capital and interest repayments were falling due but were not being met on the loan. This would have had a detrimental impact upon the ICB loan profile and the Complainants' credit rating at all material times, which could reasonably have affected the considerations of a third party lender in this regard.

Overall, I do not agree that the Provider has at all times misreported the Complainants' loan since 2013, as contended. However. I am of the view that it was not fair or reasonable to have reported the Complainants as having missed additional repayments during a month when an ARA was in place, the terms of which were being met by the Complainants. Nor do I find it acceptable that the Provider has proffered the explanation that it had:

> *"agreed to accept less than interest only/interest only minus repayments from the Complainants for the periods from November 2013 to April 2014 and from March 2015 to July 2015, however although these agreements were in place the Bank's system continued to call for the full capital and interest repayment and the arrears on the Complainants' mortgage account increased month on month. The reporting that was made to the ICB was based on the full capital and interest repayment due each month"*

I am particularly of this opinion in light of the fact that it was the Provider's own system limitations that caused the full amount to be called for during the periods in question.

I do not consider it appropriate, given the ARAs in place at those times, to have determined the relevant loan performance indicators each month by reference to the total amount of arrears, divided by the full contractual payment due per month.

Ideally, I would consider directing the Provider to amend these historical ICB profile entries, to take into account the periods of time during which an ARA was in place and the payment terms which were met by the Complainants. However, as identified above, this occurred during the months of **November 2013** to **April 2014** and **01 March 2015** to **31 July 2015** (I note that the Provider has previously amended the months of **October 2013** to **January 2014,** inclusive) and those indicators have long since become invisible (in circumstances where the ICB loan Payment History grid/table shows the performance for the most recent 24 repayments of the loan.)
In addition, as the Complainants only made repayments, on agreed repayment terms, for 11 of the months since August 2013, I take the view that any such amendment would not have a significant impact on the Complainants' overall Report and credit rating.

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In those circumstances I consider that an appropriate compensatory measure is the most appropriate redress. I am mindful in that regard that the Complainants would have most acutely felt the consequences of the Provider's reporting mechanisms during the period November 2013 to April 2014 and I note that in this regard that the Second Complainant submits he was declined for a business loan, in January 2014. I believe however that the Complainants' own failure to meet the repayments which fell due for the months of August, September and October 2013 (and which would rightfully have been reported as payment arrears) in all likelihood also contributed to the Complainants' loan application being so declined. Whilst loan approval may well have been declined on the basis of what the correct ICB profile would have confirmed, nonetheless the Provider will be aware that accurate reporting of a credit history is critical for any customer and misreporting to the ICB or the Central Credit Register can have potentially devastating consequences.

I have noted throughout the course of my decision, that there were lapses on the part of the Provider in the standards of service which could reasonably have been expected of it.

I note that that the Provider has previously offered the Complainants the sum of €500 in recognition of its omissions, in its letter which it issued in October 2013, which did not set out the information required by provision 42 of the CCMA. It has also offered €500 in recognition of its delay in assessing the Complainants' SFS and supporting documentation, initially dated **25 February 2014** with subsequent supporting documentation received by it on **09 April 2014**, the outcome of which was not communicated to the Complainants until **17 June 2014**. It has offered a goodwill gesture payment of €1,000 arising from the inconvenience caused to the Complainants when an agent of the auctioneer acting on the Provider's behalf was present on the Complainants' driveway, in **May 2014**, whilst taking a photograph.

However, taking into account the fact that I am satisfied that the Provider has not correctly reported the Complainants' credit profile on their mortgage loan in a satisfactory manner during those months when both an ARA was in place and the Complainants were meeting the terms of the Arrangement, as well as the other noted lapses in service on the part of the Provider, in particular, within the letters setting out the terms of the ARAs, I consider a larger sum to be more appropriate by way of compensation.

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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)(b) and (g).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €15,000, €10,000 of which I direct to be applied to the arrears on the Complainants' mortgage loan account and €5,000 I direct to be paid 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

9 January 2020

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.