



<b><u>Decision Ref:</u></b>	2020-0060
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Fixed Rate
<b><u>Conduct(s) complained of:</u></b>	Arrears handling - Mortgage Arrears Resolution Process Failure to provide correct information Maladministration
<b><u>Outcome:</u></b>	Partially upheld

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

#### **Background**

The Complainants drew down a mortgage in the sum of €180,420 from the Provider in **August 2007** to purchase a family home. The property is now in negative equity and the Complainants have been experiencing problems in making their contractual mortgage repayments due to difficult personal circumstances. The Complainants are looking for a fair and sustainable solution to their mortgage difficulties.

#### **The Complainants' Case**

The Complainants state that they purchased their property through a county council 'affordable housing scheme' in September 2007 and despite paying approximately €1,000 a month since that date, they still owe more than the house is worth (approx. €125,000). The house is on an unfinished "ghost" estate.

The Complainants state that they have been experiencing great difficulties in keeping up with their mortgage repayments. The first Complainant states that his wages have been cut and the second Complainant lost her job in 2010. He states that in the meantime they have been hammered by medical costs and expenses of the second Complainant's battle with cancer which the first Complainant believes is connected to the crushing financial pressure they have been under for the last number of years. The first Complainant states that his own health has suffered from stress and sleepless nights and he is simply trying to keep the household going. He argues that the mortgage debt is totally unsustainable.

The first Complainant argues that the Complainants have paid their mortgage repayments when other people did not bother and that they have sacrificed everything over the period to ensure that the mortgage is paid on time. He argues that they have no disposable income, no holidays, no social life, no Satellite TV, no second car, no money for water charges, no money for TV licences, Christmas, birthdays, and so forth. He argues that there is no one left to borrow funds from as they have already borrowed from family and friends.

The Complainant state that they submitted a Standard Financial Statement (SFS) and review, the Provider concluded that they could afford €659 per month. The Complainants state that they were completely misled by MX, a representative of the Provider, regarding a new mortgage product offered to them in June 2015. They claim they were misled and misinformed with regard to the new monthly payment. They argue that they were promised on several occasions that the new monthly repayments would be €650 under the new arrangements in line with what had been assessed as affordable for the Complainants in accordance with their completed SFS form. They argue that the monthly repayment amount jumped to €776 the following month and when they queried this with MX, she admitted that she had completely forgot about the tax credit. The Complainants state that this is inadequate and no amount of apologising for the Provider can excuse the misleading information provided. The Complainant state they made the decision to accept the low fixed interest rate offered in June 2015 based on the incorrect and misleading information received but the reality was that there were only €30 a week better off.

The Complainants state that they are grateful for the six year low fixed rate of interest provided to them by the Provider but that they need a fair and sustainable solution for the future that they can stick to. The Complainants state that they received financial advice on the split mortgage offer received by them from the Provider and they were advised that over the term of the loan, there was not much of a difference between the current low interest arrangement and the split offer. They argue that they tried their best to reach agreement with the Provider and were close in relation to the split offer, which they claim they did not turn down. They stated that they just wanted the Provider to be more realistic and tried to negotiate the terms as they felt it did not go far enough and was not much of a difference to the arrangement they were currently on and was ultimately not fair or sustainable for them. They argue that the Provider has shown contempt by slamming the door in their faces and telling them to start the whole process again and reapply with the new SFS.

The Complainant states that the most recent offer from the Provider does nothing but extend the term of indebtedness for a further 40 months, beyond the first Complainant's retirement age. They argue that the offer is nothing but a box ticking exercise pretending to help. The Complainants further state that J, a representative of Provider, threatened that the Provider would take steps to repossess their home if they did not accept the offer and rang from his mobile phone, so the call would not be recorded. The Complainants argue that financial institutions ruined their lives and the lives of hundreds of thousands of others. The Complainants argue that they are looking for a modicum of fairness with a fair and sustainable solution to end the nightmare of negative equity and debt that they found themselves in. They want to get their lives back after years of pain and hardship.

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They argue that they do not want to go through the hardship of making repayments knowing that the repayments will jump back up to something unaffordable in the future and that the suffering associated with trying to hold onto the home would be for nothing. They argue that the Provider knows how much the house is worth, knows how much it has been paid and knows how much the Complainants have suffered.

The Complainants have highlighted affordability problems with all four of the alternative repayment arrangements offered to them by the Provider since May 2015. They argue that initially the Provider was using a grossly overestimated valuation of their home of €210,000 rather than the real valuation of €125,000. The Complainants argue that the low fixed rate offers were misleading in that they suggested that the 0.5% interest rate would apply for the remainder of the term of the mortgage rather than for the initial six years. In relation to the first Complainant's calls with J, the first Complainant states that he did not inform J that he was turning down the split mortgage offer but that he was seeking clarifications to avoid further misunderstandings. He states that J threatened him that if he didn't accept the split mortgage offer, the Provider would take steps to repossess the home due to arrears, however there were no arrears.

The Complainants were critical of the €1,000 offered to them by the Provider. They say that its response to their treatment by staff is wholly inadequate and lacking in any real substance. They argue that a more fair and sustainable solution would be for the Provider to offer them €50,000 as a goodwill gesture, €40,000 which they would immediately apply to the balance of the mortgage to bring down to a fair and sustainable level and reduce the term of their indebtedness. The remaining €10,000 would be used to repay friends and family.

### **The Provider's Case**

The Provider states that it received a completed Standard Financial Statement (SFS) dated 14 April 2015 on **5 May 2015** together with supporting documentation from the Complainants. It states that there were no arrears on the Complainants' account at this point. The Provider states that it assessed the Complainants' financial circumstances and interest only payments of €489 per month were approved on the mortgage account for 12 months. The Provider explains that where a customer first applies for forbearance, it is the Provider's policy that short-term forbearance is first put in place to see if circumstances improve in the following year. In two calls with the Provider, the first Complainant expressed his dissatisfaction with the decision reached, indicating that they were looking for a long-term solution as their individual circumstances would not change. The case assessor agreed to reassess the case with a view to putting a long-term solution in place rather than requiring the first Complainant to appeal the decision.

On **22 May 2015**, the case assessor advised the first Complainant that he had completed a reassessment and that a low fixed rate product was approved with an interest rate of 0.5% to apply to the mortgage account for a period of six years, with a term extension of 16 months. Repayments under the new arrangement would be €688.36 (not inclusive of insurance payments and Tax Relief at Source (**TRS**)) per month as opposed to full capital and interest repayments of over €1,000 which the Complainants had been paying.

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The Provider states that the assessor explained to the first Complainant that at the end of the six-year period, the Complainants' financial circumstances would be reviewed. He was further advised that the Provider would cover the cost of obtaining independent advice if he wished. A low fixed-rate agreement letter was issued to the Complainants on **3 June 2015**. The Complainants were required to sign and return the accepted offer within 20 business days if they wished to avail of the new arrangement.

On **10 June 2015**, the Provider states that a staff member from its Arrears Support Unit (**ASU**) called the first Complainant to follow up on the low fixed rate offer letter. It states that the first Complainant expressed dissatisfaction with the term extension and the reversionary rate at the end of the six-year term. He argued that the offer was not sustainable and mentioned additional travel costs related to medical issues. The case manager agreed to review the case further with her manager to explore alternative options. The first Complainant was also advised he could appeal the assessment. Later that same day, the case manager called the first Complainant to advise that on review of the case with higher expenses, the mortgage would be deemed unsustainable. The case assessor recommended to the first Complainant that the low fixed rate offer was the best available to him at the time. She further recommended that he seek independent financial advice before making a decision.

On **11 June 2015**, the Provider states that the first Complainant rang the case manager with a number of queries about the proposed low fixed rate agreement. He specifically sought information in relation to the exclusion of insurance and tax relief from the assessment. The Provider accepts that during the conversation, the case manager discussed the insurance amount and TRS amount that was being applied to account at the time, assuming that they would remain the same when the proposed new arrangement came into force. They also discussed what would happen when the tax relief ceased completely in 2017 and he was advised that the case could be reviewed at that point.

The Provider states that on **19 June 2015**, the first Complainant advised that he had received independent financial advice but had not found it useful. He stated that they would be no better off under the new arrangement. The case adviser said that all of their circumstances had been taken into account during the assessment and again outlined the appeals procedure. The Provider states that on **25 June 2015**, the first Complainant indicated to the case manager that he would be signing the low fixed rate agreement and would not appeal the offer but would include a side letter outlining a number of concerns that he had. He confirmed that he wished this letter to be logged as a complaint. The Provider states that the signed letter was received on 29 June 2015 and was applied to the Complainants' account to commence in July 2015. It also received the correspondence which was logged as a complaint. The Provider states that on 8 June 2015, it issued a letter to the Complainants to confirm that the low fixed rate was in place as per the signed acceptance.

On 23 July 2015, the Provider states that the first Complainant contacted the case manager and stated that the letter of confirmation he had received quoted a repayment amount of €775 per month. The Provider states that he queried why he had been previously provided with an incorrect repayment amount of €649 per month.

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The case manager explained that she quoted the tax relief that was currently applied, assuming they would remain the same and that she was not aware that the tax relief would be reduced when the arrangement was put in place. The Provider notes that the first Complainant stated that he felt he been completely misled. The Provider states that the case manager apologised for the inaccurate information.

In a call on **31 July 2015**, a staff member of the complaints team contacted the first Complainant to discuss the ongoing issues and apologised for the confusion in relation to the tax relief. She offered that the case could be reassessed by the Provider in an effort to see if an alternative long-term solution could be reached. She also sought and obtained the Complainant's consent to get a valuation of the property completed.

The Provider states that the valuation was subsequently carried out on the property and it was valued at €125,000 which was considerably lower than the valuation the Provider previously used of €210,000. It states that the Complainants' case was reassessed and a split mortgage was deemed as the most appropriate and sustainable option for the Complainants. It states that a split mortgage was approved with monthly repayments of €685.62 (or €772 taking insurance payments and tax relief into account).

The Provider states that it called the first Complainant on **19 August 2015** to advise him of the decision. The Provider notes that the first Complainant acknowledged during the call that he understood how changes to the tax relief calculation resulted in the difference in the monthly payments quoted and appreciated the fact that the Provider had offered two alternative repayment options to consider. The case assessor explained the split mortgage product to the first Complainant and how the loan would be split into two components, Tranche A of approximately €100,000 and Tranche B of approximately €44,000. The Provider states that the assessor explained the benefits of the split loan and advised of the right to appeal. The split loan agreement letter issued to the Complainants on **27 August 2015** and they were required to sign and return it within 20 business days if they wished to avail of the new arrangement.

In a follow-up call on **9 October 2015**, the first Complainant indicated that he was not happy with this split mortgage offer because it would not be affordable when the tax relief expired in a few year's' time. The staff member advised the first Complainant that it was the best offer available at this point in light of the financial circumstances, but that if circumstances change in the future, it could then be reviewed. The Provider argues that the first Complainant was advised that if he declined the offer, correspondence would issue to him in line with Provision 47 of the Code of Conduct on Mortgage Arrears 2013 (CCMA). The Provider states this correspondence subsequently issued on 9 October 2015 and a complaint from the Complainants was then received. In a follow-up call on **14 December 2015**, the first Complainant stated that he had not declined the split mortgage offer but had a number of issues that he wished to be clarified before he could consider accepting it. The Provider states that a response issued to the Complainants on 29 January 2016 in relation to the complaint and as they continued to meet the contractual repayments and there were no arrears outstanding, there was no further contact between the parties until April 2016.

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In **April 2016**, the Provider states that the Complainants advised that the level of affordability for the mortgage was €659 per month and based on that information, the Provider progressed with an assessment of their financial circumstances to resolve the matter to put a long-term solution in place. The Provider states that the assessment was conducted on 7 June 2016 and the Provider agreed to sanction a revised low fixed rate in order to reduce the mortgage repayments to a level that they outlined was affordable. The new agreement featured an interest rate of 0.5%, a term extension of 40 months and payments of €584 per month plus insurance of €111. Written confirmation of the offer was issued on the 25 July 2016 and was not accepted by the Complainants.

The Provider argues that it complied with all of the provisions outlined in the CCMA in relation to the Complainants' pre-arrears situation. It states that all of the forbearance applications submitted were examined on their individual merits, taking into account in full the individual circumstances of the Complainants, particularly given the sensitivities of the case. The Provider states that in an attempt to resolve the matter, the Provider has assessed the Complainants' circumstances on four separate occasions and offered the Complainants a 12 month interest only period, a low fixed rate solution, a split mortgage, and a further low fixed rate solution. The Provider states that only the initial low fixed rate arrangement offered to the Complainants in June 2015 was accepted. It states that this repayment arrangement was applied to the account in July 2015 and remains in place today. The Provider confirms that the current, contractual monthly repayments are €785.53 and repayments are up-to-date.

The Provider acknowledges that during the telephone call on **11 June 2015**, the first Complainant was given misleading information in relation to the monthly repayment that would be due on his mortgage. It states that it has apologised for any inconvenience caused but that it was a genuine oversight on the part of the staff member who made an assumption that the Complainants' tax relief payments would remain unchanged when the low fixed rate arrangement was put in place. The Provider states that it administers tax relief on behalf of the Revenue under Revenue guidelines. The Provider apologised for the confusion caused and offered a payment of €1,000 as a gesture of goodwill. The Provider states that it was a genuine mistake made by the staff member and was never intended to cause any confusion.

The Provider states that once it became aware of the difference in the mortgage repayments, it offered to complete a further assessment of the Complainants' case. It also outlined that the misleading information incident took place on 11 June 2015 and by 19 August 2015 it had communicated the reassessment decision and a proposal of a new alternative arrangements to the Complainants.

In relation to the complaint that it has not offered a fair and sustainable solution to the Complainants, the Provider argues that it agreed to review the initial 12 month interest only repayment arrangement in May 2015 given the Complainants' personal circumstances and that this was not in line with normal policy. It states that it offered a low fixed rate product which would reduce repayments from over €1,000 to €688.36 per month (not inclusive of insurance payments and TRS). In light of the incorrect repayment amount being advised, the Provider completed a further assessment and obtained a valuation of the property at €125,000 which was less than the valuation that had previously been used.

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After the reassessment, a split mortgage was approved. The first Complainant indicated that he was not happy with the split loan offer as he felt it was not sustainable. The Provider again reviewed the case in June 2016 having sought to understand the medical expenses that were being incurred due to the second Complainant's illness. Based on the information received, the Provider agreed to sanction a new low fixed rate in an effort to reduce the Complainants' mortgage repayments to €659 a month, which was an amount they had outlined was affordable.

The Provider states that it has now reviewed the case on four separate occasions and offered four separate alternative repayment arrangements. The Provider states that it has in place a specific suite of short and long-term forbearance products and has considered all alternative repayment options available when reviewing the Complainants' case. It states that it has offered the Complainants what it considers to be the best and fairest option available to them on each occasion. The Provider argues that while it is not obliged to enter into an alternative repayment arrangement, it has endeavoured in the Complainants' case to put a long-term sustainable solution in place to assist them with their financial difficulties. It states that the ASU has at all times taken into consideration the individual circumstances of their case and in particular the health of the second Complainant.

In relation to the complaint letter of 18 October 2015 and the Provider's response of 29 January 2016, the Provider states that as the telephone call of 9 October 2015 was not recorded, it is not possible to comment on the content of the conversation. The Provider offered an apology to the Complainants if they were unhappy about any aspect of the telephone conversation. The Provider rejects the assertion that it has slammed the door in the Complainants' faces. It argues that it continued to engage with the Complainants over a 22 month period and assessed their circumstances on four occasions in an effort to come to a long-term solution. In doing so, the Provider has stepped outside its normal policies to try to accommodate the Complainants and reach an amicable solution.

In relation to the Complainants' suggestion that the letter of offer states that the fixed rate of 0.5% interest would apply for the remainder of the mortgage rather than for six years, Provider confirms that the information contained in its correspondence of 27 August 2015 was correct. The Provider states that it set out the current interest rates, current repayment made and other details of the current mortgage loan account at the time. It states that it did not state that an interest rate of 0.5% applied to the loan, full term. It accepts however that by letter dated 25 July 2016, the proposed variable rate following the expiry of the fixed rate was incorrectly stated to be 0.5%, rather than the variable interest rate at the time of 3.4%. The Provider apologised for this confusion but pointed out that the proposed variable repayment amount following the expiry of the fixed interest rate of €731.47 per month, was correct.

### **The Complaint for Adjudication**

The complaint is that the Provider was guilty of maladministration of the Complainants' mortgage account insofar as it gave incorrect information in relation to a new repayment arrangement, there were customer services failings and the Provider failed to offer a fair, affordable and sustainable repayment solution.

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## Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties. In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 8 January 2020, 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

It should be noted from the outset that a number of the matters raised by the Complainants cannot be investigated by this Office. First, a complaint has been raised in relation to advice received by the Complainants at the time of their mortgage application in **April 2007** in relation to available interest rates from the Provider. Both parties to the Complainants were asked for representations in relation to whether this complaint falls within the statutory time limits under **Section 51** of the **Financial Services and Pensions Ombudsman Act 2017**. Following a full consideration of this issue, the parties were informed that this Office had determined that this aspect of the complaint falls outside the jurisdiction of this Office. Secondly, a complaint has been raised in relation to a subject access request made by the Complainants. This Office is not in a position to investigate issues relating to data access requests, which are a matter for the Data Protection Commission.

Thirdly, this Office does not investigate the details of any renegotiation of the commercial terms of a mortgage as this is a matter between a Provider and a customer and does not involve this Office, as an impartial adjudicator of complaints. The Financial Services and Pensions Ombudsman will not interfere with the commercial discretion of a financial service Provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**. In dealing with mortgage arrears issues, this Office is only in a position to investigate a complaint as to whether the Provider correctly adhered to its obligations pursuant to the CCMA.

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The background to the present complaint is one of extraordinary personal difficulty. The Complainants, like countless others, bought their family home at the height of the market and are now in a negative equity situation whereby the amount due and owing on the mortgage account is greater than the value of the property, despite the fact that they have met their mortgage obligations since 2007. It is abundantly clear that the Complainants have done everything in their power to reduce their monthly outgoings to a minimum level in order to ensure that they meet their monthly mortgage repayments. It is to their credit that they have never been in arrears, in spite of the acute financial pressure they have been living with. This pressure has been compounded by the serious health difficulties experienced by the second Complainant since 2010. These health difficulties have resulted in a reduction in income and an increase in expenditure, a situation completely out of the control of either of the Complainants. I am conscious of the combined pressure from ill health and financial concerns facing the Complainants as they have attempted to reach an amicable solution with the Provider in relation to their mortgage liability.

The first Complainant has engaged with the Provider since a letter of September 2014, in the face of unsustainable mortgage repayments, in an effort to agree a long-term solution with the Provider. The first Complainant seeks some recognition from the Provider of the fact that the Complainants have already repaid the value of the property to the Provider and still have an amount in excess of its value to repay. This is an understandable position from a personal perspective. As set out above, however, it is not the function of this Office to investigate the details of any renegotiation of the commercial terms of the mortgage. This Office cannot interfere with the commercial discretion of the financial service Provider and cannot dictate or direct the offer of any particular alternative repayment solution. Only the Provider can make specific alternative repayment arrangement available to the Complainants, unless they seek to have their overall financial position rearranged by way of a Personal Insolvency Arrangement under the Personal Insolvency Act 2012 (as amended).

The present case is one of pre-arrears, appropriately dealt with by the Provider under the CCMA. I have been furnished with a copy of the Complainants' SFS from April 2015. I have also been furnished with a copy of the Provider's 'forbearance option summary', which details the alternative repayment arrangements that were considered by the Provider on 15 May 2015. This document notes that the then current repayments were unaffordable and based on the allowable household income, the debt servicing capacity was assessed at €686 per month. It recommended a short-term interest-only period of 12 months.

The document further indicated that the loan itself was not affordable pursuant to the SFS submitted. When the SFS was reassessed on 22 May 2015, a number of options including term extension, split mortgage, mortgage to rent, and mortgage lease were not deemed suitable. It was recommended that a low fixed rate arrangement would be approved. The case assessor noted in his conclusion that the recommendation was being made in light of the sensitive nature of the case and the fact that a long-term solution had been requested. It further noted that the Complainants' children would be finished college after six years and that there was a chance that the first Complainant's income would increase in the timeframe.

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The low fixed rate arrangement was offered to the Complainants by letter dated **3 June 2015**. The first Complainant had two calls with a representative of the Provider, on 10 June 2015, MX. The first Complainant indicated that the offer being made was not realistic. MX offered to look into the matter for him and to seek to increase his travel and medical costs allowance.

When she called back later the same day, MX indicated that if she increased the travel and medical costs associated with the Complainants, the Provider would deem the loan to be unsustainable and seek to have the property sold. She recommended that the first Complainant receive independent advice.

On 11 June 2015, MX and the first Complainant had another call where they discussed in detail the figures that the Complainants had been paying and the new fixed rate offered. Although MX informed the first Complainant that the new offer was being made without account being taken of the insurance and TRS, she did try to assist him by calculating the new offer on the basis of the insurance that he was currently paying, less any tax relief he was currently receiving. MX indicated that his monthly payments would be reduced from €937 (his current repayments) to €649, which sum included the insurance minus tax relief. She discussed with the fact that the tax relief would end in 2017 and so his payments would go back up by €150. MX indicated that if he couldn't afford this when the tax relief ran out, the first Complainant should come back to the Provider. She indicated that the door was never closed and that he could always come back to the Provider in two years' time if he needed to. MX noted that the tax relief that the Complainants were receiving was quite high.

This call of the **11 June 2015** is very significant in respect of the present complaint. The Provider's letter of 3 June 2015 sets out the proposed fixed rate repayment of €668 per month that had been deemed affordable. It did not include monthly insurance being paid by the Complainants and did not include the TRS which had been so important to the Complainants. The Provider's letter stated that contact should be made with Revenue in relation to mortgage interest relief and also offered a payment of €250 plus VAT for the meeting with an independent adviser so that the Complainants could receive independent advice on the offer. There was also a warning at the bottom of the letter which stated that if the existing loan qualified for TRS, the proposed amendments may impact on the TRS entitlement. In the call of 11 June, however, and in an effort to assist the first Complainant to understand his payments under the new proposal, MX incorrectly discussed future payments on the basis that the €150 TRS would continue to be available to the Complainants.

MX subsequently apologised personally to the first Complainant for this error and the Provider has further apologised in relation to him. I have no doubt that this error was inadvertent and was not intended to mislead the first Complainant. On the other hand, in the three phone calls between MX and the first Complainant on 10 and 11 June 2015, it was abundantly clear that the first Complainant believed that he could not afford the new proposal being made due to his personal circumstances. It is clear that he was relying on the information and advice that was given to him by MX and that she was aware that he was relying on the advice.

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I note that MX recommended to the first Complainant that he receive independent advice in relation to the new offer and that he duly did so. Surprisingly, it appears that this independent adviser did not allude to the fact that the TRS would reduce when the level of interest being paid on the mortgage would reduce under the new low fixed rate offer.

The first Complainant was clearly quite concerned about accepting the offer and he made this clear in further calls with MX on 19 June 2015. He ultimately opted, along with his wife, to accept the offer, but to write a side letter of complaint explaining that they did not feel that the offer being made was fair or sustainable. In this letter, significant attention was drawn to the fact that the mortgage interest relief would expire in 2017 which would result in monthly payments going up above €800 month and that payments would go up again after the six year fixed term period. He also noted other expenses such as the loss of the children's allowance and the expense of having a second child starting in college. The first Complainant made it abundantly clear that he was concerned about the affordability of the new offer. The Provider acknowledged this complaint that was received by it on 29 June 2015. On 8 July 2015, the Complainants received a letter entitled 'confirmation of account amendment', explaining the conversion to the lower fixed rate arrangement. This letter set out that the applicable TRS was now €25.98 resulting in a total monthly repayment of €775.99. This represented a monthly repayment of €127 more than the figure that had been discussed between MX and first Complainant in the call on 11 June 2015.

In a subsequent phone call between the first Complainant and MX for 23 July 2015, the first Complainant expressed his frustration with the increased payment and indicated that he felt he had been tricked or misled. MX explained that the TRS payment was a Revenue issue and she was not aware that tax relief was going to change. The first Complainant indicated that he would not have signed up if he had been aware of the €775 payment and was now far worse off. MX apologised to him but stated that the Provider disregarded the tax credit when assessing affordability relief and indicated that he should go to the Irish Mortgage Holders Association if the repayments were unaffordable. The first Complainant wrote a letter of complaint dated 24 July 2015 in relation to the misleading monthly repayments that the Complainant had been promised, if they signed up to the new offer.

On 31 July 2015, the Provider called the first Complainant with an offer to reassess the Complainants' financial circumstances again. On this occasion, an offer to carry out a full valuation of the property was made. This was ultimately carried out. On a call on 19 August 2015, the Provider informed the first Complainant that a split mortgage option would be made available to them. It was explained that the new offer would be at the variable rate and subject to monthly repayments of €772, which sum would be subject to change in interest rates up and down, until the first Complainant's retirement. The split mortgage offer letter was sent on 27 August 2015. I have been furnished with a copy of the Provider forbearance summary report from August 2015 in which the split mortgage was recommended. I am satisfied on the basis of this, that the Complainants' individual circumstances were considered by the Provider in recommending that a split mortgage was suitable to them. I am also satisfied on the basis of this document that other forbearance options were considered and deemed as not affordable and sustainable.

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By letter dated 3 September 2015, the Provider responded to the letter of complaint sent by the Complainants dated 29 June 2015, in conjunction with accepting the low fixed rate offer. The letter set out the writer's appreciation of the feelings of anger and despair that the Complainants felt in relation to their mortgage account. The letter indicated that the writer's understanding was that a further review had taken place since the low fixed rate mortgage product was offered and that a further option of a split mortgage was being offered to the Complainants.

There appears to have been a call about **9 October 2015** between the first Complainant and a J. of the Provider in relation to the split mortgage offer but this call has not been recorded. The first Complainant states that on this call, J threatened that if the Complainants refused the split mortgage offer, that the Provider would take steps to repossess their home. He states that he made it clear that he was not rejecting the split mortgage offer but was seeking further clarifications before he could make an informed decision. The Provider states that the first Complainant advised that he was not happy to agree the split mortgage offer as repayments would not be affordable when the TRS expired. The Provider states that the staff member advised the first Complainant that this was the best offer available at that point and that if the Complainants' circumstances changed, it could be reviewed. It further states that the staff member advised the first Complainant that if he declined the offer, correspondence would issue to him in line with provision 47 of the CCMA, which correspondence subsequently issued on 9 October 2015.

By letter dated 18 October 2015, the first Complainant responded to the split mortgage offer. He noted that he did not tell the Provider's representative J. that they were refusing the offer but that they had more queries. He asked that the Provider would recheck and reconfirm the figures quoted. He also asked that the ASU reassess and reconsider certain of the conditions attached to the offer, especially 5% discount to Tranche B after 5 years of repayments, which he argued was grossly unfair, considering what they had paid and would pay.

The first Complainant argued that the incentive was perverse as it was only a token gesture considering the fact of the negative equity position and he requested that the incentive be increased to 20% or 33% every five years if repayments were met. He argued that when they drilled into the detail of the offer with their independent financial adviser, it showed that the offer did not really change their circumstances and they would still have €40,000 to pay off at retirement. He asked that the Provider would reconsider the obligation to repay Tranche B. He also noted that their monthly repayments would increase with the loss of the TRS in 2017. The first Complainant further stated that Provider failed to address many of the points he made in his previous letter of complaint. The first Complainant argued that he was contacted by a representative of the Provider (J) via mobile phone and J informed him that if the Complainants turned down the new offer, the Provider would take steps to repossess their house. He states that this upset him greatly and he pointed out that they were not in arrears so how could such a threat be made. He states that J rang him a second time on his mobile phone and on that occasion hung up on him mid-sentence, which he found rude and unprofessional.

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In response to this letter, the Provider wrote to the Complainants by letter dated 29 January 2015. The letter noted that the Complainant had queried some of the conditions contained in the split loan offer letter which was issued on the 27 August 2015 but stated that

*“these conditions are standard conditions included as part of a Split Loan and will not be amended.”*

In relation to the repayment amount quoted, the Provider stated that the repayment amount of €690.36 was correct at the time and did not include any insurance repayments or mortgage interest relief, as advised on the third page of the letter of offer. The letter explained that as the Complainants had 20 business days from the letter date to sign and return the letter, and as the split loan was not accepted in that timeframe, correspondence would issue to the Complainants on 9 October 2015 in line with Provision 47 of the CCMA advising of the implications of not accepting the offer. The letter notes that the Complainants were meeting their contractual repayments under the low fixed rate alternative arrangement put in place in July 2015 and that repayments were up-to-date. The letter noted that if financial circumstances changed in the future, the Complainants should complete and submit an SFS with relevant supporting documentation. There was no mention of the complaint in respect of the behaviour of J. in this response.

As has been accepted by the Provider in its more recent correspondence, the information provided to the first Complainant by MX on the call of 11 June 2015, was misleading. I accept that the information was provided in good faith and without any intention to mislead. On the other hand, I accept the arguments made at the time by the first Complainant that MX ought to have been aware that a large reduction in the applicable interest rate, would lead to a reduction in mortgage interest relief and she should have been aware of this and brought it to the attention of the first Complainant in discussing the new monthly repayment. In light of the circumstances which were facing the Complainants at the time, and the fact that the first Complainant was already so reluctant to sign up to the new arrangement based on his concern as to affordability even at the rate of €650 per month, this customer service failing is quite significant.

Although I acknowledge that MX apologised to the first Complainant in the call of 23 July 2015, the main tenor of the phone call involved explanations by MX that TRS was not a matter for the Provider. I further acknowledge that the Provider has offered a sum of €1,000 in compensation to the Complainants for this oversight. While this might be sufficient for misleading information in other circumstances, based on all the circumstances of the present case and the significance of the phone call 11 June 2015 to the Complainants' decision to sign up to the offered alternative repayment arrangements, I do not think that this is sufficient and in my opinion, neither was this offer made promptly enough.

In respect of other customer service failings identified by the Complainants, I note in particular the allegation that J. threatened that the Provider would repossess the Complainants' home if they failed to accept the split mortgage offer and deliberately rang from his mobile so the call would not be recorded. I further note that when this complaint was first made to the Provider, it failed to acknowledge it or respond to it, in its January 2016 letter.

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The Provider has given a different version of events in which it claims the staff member in question informed the first Complainant that correspondence would issue in line with Provision 47 CCMA if the offer was not accepted. It seems strange that this call was not recorded by the Provider in line with its normal procedures. There is no explanation for why the staff member in question rang the first Complainant from a mobile phone which would not be recorded. The first Complainant has given his account of the repossession threat made to him on this call. I note that a complaint was made by him in writing to the Provider in this regard approximately 9 days after the call.

Inexplicably, the Provider failed to acknowledge this aspect of the complaint in its letter of response in January 2016 and provided no explanation in relation to the tenor of the call. Further, no direct response from the representative in question has been submitted to this Office. When these circumstances are taken together, I consider that there was a customer service failure in this regard as it would be unacceptable for a Provider to threaten possession proceedings when a customer is not in arrears, to fail to provide an adequate record of telephone communications, and/or to fail to respond to customer complaints in line with its obligations under the CCMA.

In relation to the Complainants' main complaint that the various alternative repayment options made available to them are not sustainable and are unaffordable, I am unable to uphold this aspect of the complaint. As previously indicated, this Office is only in a position to investigate whether the Provider has adhered to its obligations pursuant to the CCMA in relation to sustainability and repayment capacity.

I have been furnished with reports from the Provider which demonstrate that on the four separate occasions an ARA was offered to the Complainants between 2015 and 2016, their individual circumstances and the suitability of all ARAs offered by the Provider were considered. While I appreciate that the Complainants are of the view that the overall amount that they have to repay is unfair based on the value of the property, this is not a matter which this Office can investigate. This Office cannot investigate the details of any renegotiation of the commercial terms of a mortgage.

I am not satisfied that the conduct of the Provider in this case has been unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants. In fact, I am satisfied that the Provider has demonstrated that it has gone outside its usual procedure in agreeing to reassess the personal circumstances of the Complainants on four different occasions and has offered four different solutions to them. I appreciate that the solutions offered are not those sought by the Complainants but I am satisfied that the Provider has demonstrated a willingness to engage with them in this regard.

I am further satisfied that the Provider has indicated its willingness to further consider the financial circumstances of the Complainants, if their current repayments become unmanageable, and indeed the Provider has confirmed that it will do so, if the Complainants require their payment arrangements to be further reviewed, on the expiry of the current arrangement, in 2021. The Complainants will, in the usual way, receive at least 30 days' notice of the pending expiry, and can consider their requirements, at that time.

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I am conscious that the Complainants, in response to the Preliminary Decision in this matter have suggested that the amount of compensation directed to be paid to them by the Provider, creates the impression that the Provider's errors, were "*minor and fluffy*". Whilst the compensation directed may (as indicated by the Complainants) be "*a tiny drop in the ocean*", by way of comparison with banks' significant profits, this office must direct compensation which is proportionate to any finding of wrongful conduct on the part of a financial service provider, rather than assessing compensation in a manner which is in some way linked to the profitability of a bank. In this instance, I am very mindful that although the Provider made a number of errors, as outlined above, it also engaged on an ongoing basis with the Complainants, and went outside its usual procedure in agreeing to reassess the personal circumstances of the Complainants on four different occasions and offered four different potential solutions to them.

In all of the circumstances, I consider it appropriate to partially uphold this complaint. As indicated above, I do not consider that the Provider's offer of €1,000 to the Complainants was adequate in all of the circumstances. Instead, I direct that the Provider make a compensatory payment of €3,500 to the Complainants (to an account of the Complainants' choosing) in light of the customer service failings identified above.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2(g))**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €3,500, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**

**MARYROSE MCGOVERN  
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

24 February 2020

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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.

