



<u>Decision Ref:</u>	2020-0155
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Maladministration (mortgage) Application of interest rate
<u>Outcome:</u>	Rejected

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

The complaint concerns the Complainant's mortgage loan account with the Provider.

The Complainant's Case

The Complainant entered into a mortgage loan agreement with the Provider in or around 2007. The Complainant submits that he entered the MARP process in 2017, completing a Standard Financial Statement (**SFS**) with his local branch of the Provider on 15 May 2017. The Complainant states that "*my [Provider] didn't offer me all products with regard to my mortgage*". The Complainant further states that "*the Provider failed to contact me by any means or have enough information for me to make an informed decision*". The Complainant submits that the information provided to him by the Provider was not sufficient to make an informed decision regarding available products which would be suitable and enable him to reduce his mortgage payments.

The Complainant is also unhappy with the length of time it took the Provider to issue a Final Response Letter on foot of his complaint. The Complainant states he received holding correspondence in or around 11 October 2018 saying that the Provider's investigation would be finalised by November. The Complainant states that "*I am very unhappy with the length of time it took to get the final response letter and stress caused waiting on it*".

The Complainant wants to know why he wasn't informed of all the products that were available with regard to his mortgage and although the Provider says that the information is in the MARP booklet provided, he wants to know why he was not notified before he was given a copy of this booklet and it was only received by him recently.

The Complainant wants the Provider to place him on a lower interest rate and compensation for the financial loss for not being offered another choice of replacement mortgage.

A further complaint was made in the course of the investigation relating to confusion caused on a telephone call dated 31 May 2019 in respect of a direct debit payment.

The Provider's Case

The Provider has set out a timeline of events from January 2017. On 3 January 2017, it states that the Complainant requested an SFS and attended a local branch on 5 January 2017 to complete the SFS. The SFS stated that the Complainant had been out of work since September 2016 and was funding the mortgage repayments from personal savings. The Provider indicates that the Complainant completed the SFS requesting a payment holiday for a 3 months period. The Provider states that the SFS was assessed on 11 January 2017 and on 12 January 2017, the Provider's underwriter fully assessed the SFS and information provided by the Complainant. On 16 January, the Provider states that it issued a short-term arrangement moratorium offer to the Complainant. The offer was for a 4-month payment holiday and during that time, the monthly repayments would be set at €0.00. The Provider states that the Complainant signed the acceptance for the moratorium for a period of 4 months on 18 January 2017 and a letter issued on 19 January 2017 confirming that the mortgage repayment had been amended for the 4 month period commencing 2 January 2017.

On 7 April 2017, the Provider states that it issued a letter to the Complainant advising that the temporary arrangement in place was due to expire on the 2 May 2017 and that he would need to engage with it to complete a further SFS if he was unable to revert to full contractual mortgage repayments at the end of the arrangement. On a call on 13 April 2017, the Provider states that the Complainant advised that if he required further forbearance, he would need to contact the Provider. The Provider states on 15 May 2017, the Complainant completed a further SFS at the local branch and advised that he was seeking a further moratorium. After receipt of proof of income, the SFS was assessed by the Provider on 31 May 2017 and referred to the underwriters for decision.

The Provider states that the Complainant called it on 10 July 2017 querying the status of the SFS and advising "*he was in a position to meet repayments on the mortgage going forward*". On 17 July 2017, the Provider states that a 6 month moratorium was approved and the Complainant was contacted on 25 July and made aware of the offer. A short-term arrangement moratorium offer was made to the Complainant for a period of 6 months. The Provider states that on 31 July 2017, the Complainant telephoned the Provider confirming he would not be accepting its offer as he was currently employed and now did not require forbearance. At this point the Provider states there were no arrears on the account.

The Provider has also provided details of contact between it and the Complainants from September 2018 after the Complainant telephoned the Provider to indicate he was no longer employed and was dealing with MABS. Communication thereafter occurred between the Provider, MABS and the Complainants during which time a copy of the MARP booklet was sent. A small level of arrears accumulated on the account in 2019 and a further SFS was submitted by the Complainant in May 2015. The Complainant contacted the Provider on 17 May 2017 to request that the SFS be removed as he no longer required forbearance. The Provider states that the Complainant's mortgage account is currently up-to-date.

The Provider argues that information regarding its mortgage products and MARP booklet detailing the options available to customers experiencing repayment difficulties are readily available on its website and throughout the branch network. It states that its website sets out for customers experiencing mortgage payment difficulties the options available to them, including details of Alternative Repayment Arrangement (ARAs), information relating to all options, and the complaints and appeal process. It argues that its website also provides useful contact telephone numbers and websites (such as MABS) that customers may wish to contact. The website also provided the MARP booklet, an SFS and a guide to how to complete an SFS.

The Provider argues that a MARP booklet was provided to the Complainant on completion of the SFS on 5 January 2017 and on 15 May 2017. It states that a copy of the MARP booklet was also posted to the Complainant on 4 March 2019. The Provider argues that details of all options available are detailed in the MARP booklet. The Provider further argues that correspondence issued to the Complainant which provided a contact telephone number for the Provider should the complaint have any queries and recommend that the Complainant receive independent legal and financial advice.

The Provider argues that it considered all ARA options when assessing the Complainant's completed SFS and supporting documentation in an effort to determine which options were viable. The Provider argues that its ASU assessed the Complainant's request for forbearance using the information provided by the Complainant on the SFS, together with supporting documentation and all information to hand for a suitable ARA on each occasion.

The Provider argues that the correspondence issued following an assessment of the Complainant's SFS and detailed the ARA offered and set out: how a moratorium works; the advantages and disadvantages; a recommendation to obtain independent advice; requirements of what to do if accepting the offer; what is required if not accepting the offer; the conditions of the moratorium; and set out the steps following completion of the moratorium. It states that the correspondence also provided the contact telephone number should the Complainant have any queries.

In relation to the Complainant submitted by the Complainant, the Provider states that it acknowledged the complaint within 5 working days, providing the name of the individual to be the point of contact to the Complainant. It further states that regular updates were provided to the Complainant at intervals of not greater than 20 business days.

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The Provider states that it regrets that it was unable to issue a response to the Complainant in the timeframe it had hoped and apologised for this. It explains that this was due to an unprecedented level of queries at that time. In view of the delay, the Provider has offered a gesture to the Complainant in the sum of €500.

In respect of the call dated 31 May 2019, the Provider argues that the agent advised the Complainant that there was no overdraft on the account and as there were insufficient funds to meet the direct debit payment, the direct debit would probably be returned unpaid. It further states that this was reiterated on the call and that the Complainant appeared to understand the conversation.

The Complaints for Adjudication

The first complaint is that the Provider failed to provide the Complainant with sufficient information with regard to the mortgage loan. The second complaint is that the Provider delayed in dealing with the Complainant's complaint.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 9 March 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

Complaint 1 – Product Information

The first complaint is that the Provider failed to provide the Complainant with sufficient information with regard to the mortgage loan. It is not altogether clear from the Complainant what particular time period or periods the Complainant is referring to where he feels he received insufficient information. If the Complainant's argument is that the Provider should have kept him informed at all times over the duration of the mortgage of every different mortgage product that would be available to him, I do not see any basis for any such argument.

Further, I accept that the Provider has information on its website and available in branch in relation to various fixed and variable rate mortgage options about which the Complainant could have enquired at any time.

I am proceeding on the basis that the Complainant's complaint in relation to the provision of relevant information relates to the period from January to July 2017 when he was engaging with the Provider's MARP process and submitted two applications for alternative repayment arrangements.

When the Complainant attended the local branch of the Provider on 5 February 2017 to complete an SFS, he was provided with a copy of the Provider's MARP booklet. I have examined the MARP booklet closely. On page 3, the booklet emphasises that the Provider is there to help any customer having trouble meeting mortgage repayments and has dedicated mortgage consultants who are happy to support the customer. It states that the consultants can be contacted on dedicated phone lines and the numbers for those lines are given, including the hours that the lines are operational. Customers are also encouraged to call into a local branch or to visit the dedicated arrears section on the Provider's website.

The booklet sets out the importance of completing and signing an SFS to get started and again sets out that this can be done in a local branch with the help of a mortgage consultant or over the phone. The booklet also states that the customer may wish to get independent advice on completing an SFS, such as from MABS. The MARP booklet then explains the assessment and resolution process and explains that when reviewing a customer's mortgage, the Provider would consider certain listed ARAs. It states that the availability of the arrangements will depend on the individual circumstances of the customer and its assessment of the completed SFS. The booklet then goes through all potential ARAs on offer to its customers, providing a brief explanation of what is involved with each option. A mixture of short-term and long-term arrangements is set out. One of the short-term options is stated to be a moratorium which is expressed to allow a customer to stop paying all or part of the mortgage repayment for a specified period of time and might be suitable if a customer has a temporary shortfall in income.

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The booklet also sets out other options if any of the listed ARAs are not appropriate for the circumstances of the customer. Information is also provided in relation to appeals and complaint and a list of useful contacts, including MABS, and this office.

The Complainant completed and signed an SFS on 5 January 2017. The SFS set out that the Complainant had lost his job the previous year and was requesting a 3 month repayment holiday at the end of which he would seek a restructure if he had yet not found work. On 16 January 2017, a letter was sent to him offering a mortgage restructure short-term arrangement moratorium. The letter sets out that the Provider had considered the information provided in the SFS and that the assessment indicated that short-term structure is the most appropriate for the Complainant's then current circumstances. The letter set out that a summary of the Complainant's financial situation is set out in his SFS and explains how the moratorium would work.

It set out that the temporary repayment amount for a four-month period would be €0.00 and that the repayment amount after the moratorium term would be approximately €627.24. It explained that following the expiry of the moratorium, the regular mortgage repayments might be higher than before the arrangement to ensure the mortgage is repaid within the original term. Advantages and disadvantages of the moratorium were set out, in addition to a list of terms that the Complainant was required to comply with to accept the offer. The letter of offer suggested that the customer should receive independent legal and financial advice before accepting the offer and alternatively suggested that the customer contact the mortgage arrears advisers on a given number if he was unsure about the implications of the offer. A summary of the details of the restructure agreement was set out and this form was signed by the Complainant on 18 January 2017. By letter dated 19 January 2017, the Provider wrote to the Complainant and confirmed the amendment of the monthly repayments for the agreed four-month period.

There is no evidence that the Complainant raised any specific queries with the Provider in relation to the moratorium offered by the Provider at this time. In any event, I accept that sufficient information was provided to him by the Provider to allow him to understand, at least in general terms, the implications of the short-term forbearance arrangement being offered to him. Further he was encouraged to contact the Provider if he had any queries and further encouraged to seek independent advice in relation to the offer. In all of the circumstances, there is no evidence before me of any lack of information provided to the Complainant.

I note that the Complainant submitted two further SFSs to the Provider, one in May 2017 and one in May 2018. In the May 2017 application, the notes suggest that the Complainant was seeking further moratorium. Although a further six-month moratorium was offered to the Complainant on 26 July 2017, the Complainant indicated that he was not accepting the offer as he no longer anticipated difficulty in meeting his mortgage repayments. I note that the information provided to the Complainant in respect of the offer was identical to that provided in January 2017. Further I note that he was again provided with a copy of the MARP brochure in May 2017 when submitting his completed SFS.

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In the absence of any indication that specific information was sought by the Complainant from the Provider and was not given to him, I am satisfied that sufficient information was available to the Complainant at that time to make a decision in relation to whether or not to accept the offer. In light of the fact that the Complainant stated that he was now able to meet his full mortgage repayments, it is logical that the offered forbearance which he no longer required was rejected by him.

In relation to the May 2018 SFS, I note that the Complainant indicated on a call with a representative of the Provider on 17 May 2019 that he wished to withdraw the application for forbearance before this was assessed by the Provider so there does not seem to be any issue in relation to the provision of information relevant to this application. Further the third application postdates the initial complaint made by the Complainant to the Provider in relation to the provision of information in January 2018.

The Complainant has expressed concern that he was not provided with all the options set out in the MARP booklet in advance of being provided with the booklet. It is important to note at this juncture that potential alternative repayment arrangements that are made available by regulated entities through the MARP process are not normal mortgage products that a customer can choose to apply for. Rather alternative repayment arrangements may be offered to individual customers who are seeking assistance from the Provider because they cannot continue their contractual monthly repayments. It is important for the Complainant to be aware that he remained contractually obliged to pay his mortgage in accordance with its original terms and conditions. It is not the case that individual customers can choose one potential ARA over the others in the hopes that it will lead to lower monthly repayments. Rather the obligation on the Provider is to assess any SFS that is submitted by the Complainant and determine which (if any) of the suite of ARAs offered by it is most appropriate to the individual circumstances of the Complainant. I accept that all ARAs on offer by the Provider were considered in January 2017 when the Complainant applied for a three-month moratorium. The assessment undertaken in January 2017 indicates that the Provider found that the most suitable treatment was to allow the borrower time to find new employment by means of a 4 month moratorium and the logic behind this is clear.

Finally in respect of the call of 31 May 2019, although I accept that there was some initial confusion as to whether the direct debit taken out of the account would be returned or not, I accept on the basis of the call transcript and a call recording provided in evidence that the Provider's representative sufficiently clarified the position that had arisen with the Complainant. She explained that the direct debit had not yet been returned unpaid but would most likely be returned unpaid because there were insufficient funds in the account. The reason why the current and mortgage accounts did not tally was explained to the Complainant and he appeared to understand the necessity for making an additional payment to ensure that the May 2019 mortgage payment was met. While this aspect of the complaint falls outside the original complaint, the Provider has responded to it, and I am satisfied that it can be considered as part of this investigation. I accept that any initial confusion was appropriately remedied by clarifications from the Provider's representative on the call.

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Complaint 2 – Delay in Complaint Process

The second complaint is that the Provider delayed in dealing with the Complainant's complaint.

By letter received on 16 February 2016, the Complainant wrote to the Provider's customer service department in the following terms:

"I am writing this complaint in relation to not been informed of other products available from my mortgage also requested confirmation of the exact amount that was received in December 2017 in relation to my TRS I would appreciate a speedy response to my complaint . . ."

I note that the TRS issue was resolved between the parties and does not form part of this investigation.

The Provider acknowledged receipt of the complaint by letter dated 27 February 2018 and identified an individual responsible for contact with the Complainant in relation thereto. Further letters were sent dated 15 March, 7 April 16 May, 14 June, 12 July, 10 August, the tender, and 5 October 2018 indicating that the complaint was still being investigated and the Provider hoped to issue a response in the next month or so.

By letter dated 19 October 2018, the Provider finally responded to the Complainant's complaint of 16 February 2018. The Provider responded as follows:

"I note from your correspondence your dissatisfaction that you are not advised of the products available for your mortgage account Please note I have reviewed our records and I note you completed a Standard Financial Statement (SFS) with the [local branch] on 15 May 2017. At this time you were provided with a Mortgage Arrears Resolution Process (MARP) booklet which outlined all the products available to you for your mortgage account All details of products and services available are also available on the [Provider's website] or you can contact [the mortgage telephone line]."

Although holding letters were sent to the Complainant at regular intervals between February and October in relation to the complaint, it is difficult to understand how it could have taken the Provider 8 months to respond to a short and uncomplicated complaint. Under Provision 10.9 of the Consumer Protection Code 2012 (CPC), regulated entities must attempt to investigate and resolve complaints within 40 business days of having received the complaint. If 40 days have elapsed and the complaint is not resolved, the regulated entity must inform the Complainant of the anticipated timeframe in which the regulated entity hopes to resolve the complaint and must inform the consumer to refer the matter to this office. I acknowledge that the Provider remained in communication with the Complainant after acknowledging his complaint in relation to anticipated timeframe. I further acknowledge that the CPC does not mandate a maximum timeframe for the resolution of complaints.

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In light of the simplicity of the complaint, however, and the obligation on the Provider to attempt to resolve the complaint within 40 business days, I believe the delay in dealing with the complaint was unacceptable.

I note that the Provider has acknowledged its delay in responding to the Complainant's complaint and apologised for this. I further acknowledge that the Provider has offered €500 in compensation to the Complainant in relation to the delay that occurred. I believe this to be reasonable in the circumstances.

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

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

1 April 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.

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