



<u>Decision Ref:</u>	2020-0193
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Multiple Products/Services
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants held four mortgage loan accounts which were all on tracker interest rates with the Provider. One of the mortgage loan accounts was in relation to the Complainants' Private Dwelling Home (PDH), and three of the mortgage loan accounts were in relation to Buy to Let (BTL) properties.

The Complainants' Case

The Complainants submit that the Provider has engaged in a deliberate policy of refusing to process standard financial statements (SFS) in respect of applications for alternative repayment arrangements (ARA), until 60 days prior to the expiration of any existing ARA. In this regard, the Complainants state that they had contacted the Provider six months before the ARAs were due to expire on their four mortgage loan accounts, as they were concerned about future arrears. The ARA on the PDH mortgage loan account was due to expire on **10 January 2018** and the ARAs on the three BTL mortgage loan accounts, were due to expire on **10 February 2018**.

The Complainants submit that members of staff from the Arrears Support Unit (ASU) deliberately ignored and obstructed their efforts to set up new ARAs, even though the Complainants had not missed any repayments in over seven years and only had small historical technical arrears on two of their BTL mortgage loan accounts. They submit that this policy was adopted by the Provider to intimidate them into giving up their tracker mortgages and to permit the Provider to sell their tracker mortgages to third party entities without their consent.

They state that the Provider is *"using a policy of intimidating customers to give up their Tracker Mortgages through deliberate delays, evasions and by giving no reasonable notice of huge increases in repayments"*. The Complainants further state that *"this unofficial policy...is contrary to [the Provider's] own published SFS guidelines and to MARP and Central Bank regulations."*

The Complainants submit that the Provider has failed to respond to their complaint within certain time periods. The Complainants state in its complaint to this Office that *"when we complained to [the Provider] on 23 October 2017, they refused to send us an 'acknowledgement' within 5 working days or a 'final response' within 40 working days even though we followed up on our complaint multiple times"*. The Complainants submit that the Provider unreasonably delayed in responding to all correspondence and queries from them, as part of its policy to pressurise them into giving up their tracker loans.

The Complainants submit that the Provider offered an ARA of 12 months Interest Only payment (of €294 per month) on the PDH mortgage loan account, but that it immediately withdrew this offer and increased the amount to €1,831 per month as a *"punishment"*, because the Complainants did not agree to their three BTL properties being transferred to a third party entity.

On **28 March 2018**, the Complainants submitted an appeal regarding the Provider's ARA offers made in respect of all four mortgage loan accounts. The Complainants submit that the Provider failed to follow its own published guidelines and the Central Bank's guidelines by not making a decision on their appeal within 40 days.

The Complainants submit that the Provider confirmed that the three BTL mortgage loan accounts were to be transferred or sold off without their consent, even though they had not missed any repayments in over seven years. The Complainants submit that these mortgage loans accounts were sold, *"even though the [Provider's CEO] recently confirmed on the record to an Oireachtas Committee that only loans with a record of no repayments and no customer engagement and with substantial long term arrears would be sold on to the vulture funds"*.

The Complainants want the Provider to:

(i) *"keep their tracker mortgages with them and give [them] sufficient notices so that [they] can give [their] tenants sufficient notice and sell these properties within 12 months"; and*

(ii) *"to pass on the discount on [their] mortgages that [the Provider] afford to [third party entities] to [them] so that they can pay off these mortgages at the discounted rate and lodge any profits made against the mortgage on [their] PDH family home which is in negative equity"*.

The Provider's Case

The Provider states that at the time the complaint was raised, there were ARAs in place in respect of each of the Complainants' four mortgage loan accounts as follows (and referred to as 'Table 2' in the Provider's submissions):

Table 2

Account Number	****9904	****9917	****9920	****9933
Type of property	BTL	BTL	BTL	PDH
Arrangement	Reduced Repayment	Reduced Repayment	Reduced Repayment	Reduced Repayment
Amount	€450	€300	€450	€1,000
Start Date	10/08/2015	10/07/2017	10/08/2015	10/02/2016
End Date	10/02/2018	10/02/2018	10/02/2018	10/01/2018
Pre-Expiry Letter	18/12/2017	18/12/2017	18/12/2017	16/11/2017

In respect of the above ARAs, the Provider submits that pre-expiry letters were issued to the Complainants in respect of each of the four mortgage loan accounts, earlier than the 30 calendar days required under Provision 43 of the **Code of Conduct on Mortgage Arrears 2013** (the "CCMA 2013").

The Provider states that following the expiry of the ARAs (referred to in Table 2), subsequent ARAs were placed on each of the Complainants' four mortgage loan accounts and that pre-expiry letters issued in advance of the 30 calendar days required by the CCMA. It states that the ARAs were agreed for a period of 6 months to allow the Complainants' time to sell the three BTL properties. The subsequent ARAs were as follows, (and referred to as 'Table 3' in the Provider's submissions):

Table 3

Account Number	****9904	****9917	****9920	****9933
Type of property	BTL	BTL	BTL	PDH
Arrangement	Reduced Repayment	Reduced Repayment	Reduced Repayment	Reduced Repayment
Amount	€450.00	€300	€450.00	€1,831.06
Start Date	10/03/2018	10/03/2018	10/03/2018	10/03/2018
End Date	10/08/2018	10/08/2018	10/08/2018	10/08/2018
Pre-Expiry Letter	18/06/2018	18/06/2018	18/06/2018	18/06/2018

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The Provider submits that it issued letters to the Complainants dated **11 March 2018** (in respect of the PDH) and **13 March 2018** (in respect of the BTL properties), outlining the terms of the arrangements offered and also the Complainants' right to appeal the ARA offered (in line with Provision 42 of the CCMA and Section 8.11 of **the Consumer Protection Code (CPC) 2012 (as amended) (the "CPC 2012")**).

The Provider states that following the expiry of the ARAs mentioned in Table 3 above, subsequent Temporary Alternative Repayment Arrangements (TARAs) were placed on each of the Complainants' four mortgage loan accounts. It states that these TARA's were agreed following receipt of a letter from the Complainants' estate agent confirming the properties were for sale. The TARAs were as follows (and referred to as 'Table 4' in the Provider's submissions:

Table 4

Account Number	****9904	****9917	****9920	****9933
Type of property	BTL	BTL	BTL	PDH
Arrangement	TARA	TARA	TARA	TARA
Amount	€450	€300	€450	€1,831.00
Start Date	10/10/2018	10/10/2018	10/10/2018	10/10/2018
End Date	10/12/2018	10/12/2018	10/12/2018	10/12/2018

The Provider submits that it acted in line with Provision 42 of the CCMA 2013 in relation to the PDH and Section 8.11 of the CPC 2012 (as amended) in relation to the BTL properties. It states that the Complainants received letters each time an ARA was applied to their mortgage loan accounts, confirming the details of the ARA offered to the Complainants. It states that these letters also advised the Complainants' timeline for accepting / declining the offer and their right to appeal within 20 business days of receipt of the letters.

In respect of the complaint about the Provider not engaging with borrowers on an ARA until 60 days prior to the end of their existing ARA, the Provider states that they are required to notify borrowers of the expiry of the ARA at least 30 calendar days before the expiration of the ARA and that Pre-Expiry letters are issued to customers. It states that the Pre-Expiry letters asks customers to contact them if circumstances have changed since the ARA was put in place or since the last financial assessment was conducted.

In respect of the complaint that the offer of the 12 month ARA of Interest Only payment in respect of the PDH was withdrawn, the Provider submits that the Complainants were advised by their case manager that a 12 month Interest Only ARA was agreed in relation to the PDH mortgage loan account on **4 January 2018**, which was later rescinded.

It explains that this was rescinded following receipt of the Complainants' email dated **12 January 2018**, as the Complainants' circumstances had changed due to the fact that he now advised that their management company confirmed that extra rental income would be generated to allow the Complainants to pay full capital and interest repayments on their BTL properties. It states that this information was passed to its underwriting department which re-assessed the Complainants' accounts and offered ARA on all four mortgage loan accounts, which the Complainants appealed.

The Provider states that an appeal was submitted by the Complainants on **28 March 2018**, which was heard at Appeals Board on **16 May 2018**. It states that the appeal was declined and a letter issued to them to advise them of this decision on **16 May 2018**.

In respect of the complaint about the delays on the part of the Provider, the Provider states that *"it is evident that there were delays in engaging with the customer following receipt of their email dated 22/08/2018, 01/10/2017 and 12/10/2017. However...the customers email of 23/10/2017 was acknowledged by email on 26/10/2017 and again on 07/11/2017, following unsuccessful telephone contact attempts on these dates. We again attempted to contact the complainants by telephone and email on 23/11/2017. The [Provider] received the Standard Financial Statement from the customer on 27/11/2017, however did not attempt to contact the complainant until 15/12/2017, which was unsuccessful. Successful contact was made with the complainant by telephone on 18/12/2017 with a follow up call agreed for 02/01/2018. This follow up call took place 2 days later than agreed on 04/01/2018.*

The complainants email of 23/10/2017 and 23/11/2017 requested a complaint to be raised on their behalf. We also acknowledge the complainants wrote to [the Provider's CEO] on 08/12/2017 and 05/01/2017, however the request to raise a complaint was not followed up until the complaint was acknowledged by letter on 12/01/2018 from [the office of the Provider's CEO]".

The Provider states that it investigated the issues raised by the Complainants and upheld the complaint with regards to the customer service experienced by the Complainants. The Provider apologised for the service and offered the Complainants the sum of €500 in the resolution letter. It states in its submissions to this office that this offer remains open for the Complainants to accept at any time.

The Provider submits that the three BTL mortgage loan accounts were to be included in the sale of mortgage loans to a third party. The PDH mortgage loan account was not to be included in the sale. The Provider submits that it has acted in line with the Terms and Conditions for each of the three BTL mortgage loan accounts, which allowed it to sell them to a third party. It states that letters issued to the Complainants with regards to the transfer of their BTL properties to a third party.

The Complaints for Adjudication

The complaints for adjudication are that the Provider:

- a) From **August 2017 to November 2017**, has engaged in a deliberate policy of refusing to process standard financial statements (SFS) in respect of applications for alternative repayment arrangements (ARA), until 60 days prior to the expiration of any existing ARA.
- b) Failed to respond adequately to the Complainants' complaints made between **August 2017 and January 2018**.
- c) Offered an ARA of 12 months Interest Only payment in or around **January 2017** on the PDH mortgage loan account, but immediately withdrew this offer and increased the amount as a "*punishment*", because the Complainants did not agree to their three BTL properties being transferred to a third party entity.
- d) Failed to deal with the Complainants' appeal submitted in **March 2018** in respect of the ARA offer within the required timeframe.
- e) Wrongfully sold the Complainants' BTL mortgage loan accounts to a third party fund without their consent in around **August 2018**.

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.

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A Preliminary Decision was issued to the parties on 17 April 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 below my final determination.

Background

By way of background to the complaint, the Complainants held four mortgage loan accounts with the Provider.

One of the mortgage loan accounts (Account number ****9933) relates to the Complainants' PDH. The remaining three mortgage loan accounts (Account numbers ****9904, ****9917 and ****9920) relate to the Complainants' BTL properties.

Each of the Complainants' mortgage loan accounts drew down on a tracker rate and have remained on a tracker rate while ARAs have been applied. I note that one of the BTL mortgage loan accounts (Account number ****9920) has two sub accounts. At the time of the complaint to the Provider (**23 October 2017**), ARAs were in place in respect of each of the mortgage loan accounts (as detailed in Table 2 above).

I will deal with each individual element to this complaint in turn.

Refusal to process SFS' until 60 days prior to the expiration of any existing ARA

The ARA on the PDH mortgage loan account was due to expire on **10 January 2018** and the ARAs on the BTL mortgage loan accounts were due to expire on **10 February 2018**.

I have been furnished with copies of all correspondence between the Complainants and the Provider in evidence. The First Complainant emailed the Provider on **22 August 2017** and again on **1 October 2017**, to initiate efforts to complete an up to date SFS in order to set up a new ARA with the Provider. I note that this was around five months in advance of the expiration of the ARA on the PDH mortgage loan account and around six months in advance of the expiration of the ARAs on the BTL mortgage loan accounts. I note from a review of the Complainants' correspondence between **22 August 2017** and **5 January 2018** that they were seeking to renew the ARAs on the same or "*similar*" terms, as the ones that were due to expire.

It is clear from a review of the correspondence that the First Complainant made numerous attempts to contact the Provider between **22 August 2017** and **23 October 2017**, when they raised a complaint with the Provider by way of email.

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It was only when a complaint was raised, that the Complainants' relationship manager responded to the Complainants (in respect of their previous correspondence) on **25 October 2017**. In this email, the relationship manager apologised for the delay in reverting and asked the Complainants to gather financial documents to discuss the proposal. The Complainants promptly dealt with this request and provided the completed SFS together with the supporting documents to the Provider on **31 October 2017**. I note that the First Complainant received an automatic reply from the relationship manager that he was out of the office until **22 November 2017**. Upon receipt of the automatic reply, the First Complainant emailed the Provider's ASU to establish who to send the documentation to and they requested an alternative relationship manager.

The Provider responded by email to the First Complainant on **7 November 2011** and stated as follows:

"I understand that you are seeking information in relation to a new arrangement on your mortgages.

Your present arrangements are in place until February 2018; so a new arrangement will be required for March 2018. We normally begin contact 60 days prior to the arrangement end date. In order to prepare a proposal for credit in relation to these mortgages, we will require the following information....

If you can [sic] prepare this information and provide in January 2018, [the relationship manager] will be in contact upon receipt of same".

The Complainants raised a second complaint on **23 November 2017** with the Provider. They stated in this complaint that *"any reasonable person would agree that our responsible attempts to contact the High Value Dept at [the Provider] in [sic] to renew our current Agreed Repayment Arrangement have been deliberately evaded and avoided for some hidden reason"*.

The Complainants raised a third complaint on **8 December 2017** and again requested a new relationship manager. The Complainants raised similar concerns in a letter to the Provider dated **5 January 2018** about the *"excessive delays of over 4 months"* in attempting to communicate with their relationship manager.

The issue is whether the Provider was obliged to process the SFS when initially requested by the Complainants, some 5 and 6 months in advance of the expiration of their ARAs.

The ***Code of Conduct on Mortgage Arrears 2013*** (the ***"CCMA 2013"***) was the prevailing Code at the time of the conduct complained of under this complaint, applies only to the PDH mortgage loan account. This Code sets out the framework that lenders must use when dealing with borrowers in arrears or pre-arrears. The ***Consumer Protection Code 2012 as amended*** (the ***"CPC 2012"***) was the prevailing Code at the time of the conduct of this complaint in respect of the BTL mortgage loan accounts.

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Provision 43 of the CCMA 2013 states:

*'A lender must review an alternative repayment arrangement at intervals that are appropriate to the type and duration of the arrangement, including at least 30 calendar days in advance of an alternative repayment arrangement coming to an end. As part of the review, the lender must check with the **borrower** whether there has been any change in his/her circumstances in the period since the alternative repayment arrangement was put in place, or since the last review was conducted. Where there has been a change in that **borrower's** circumstances, the lender must request an updated **standard financial statement** from the **borrower** and must consider the appropriateness of that arrangement for the **borrower**'.*

In respect of the PDH mortgage loan account, the Provider submits that it acted in accordance with this provision and that pre-expiry letters were provided to the Complainants more than 30 days in advance of the expiry of the ARAs.

I have reviewed the pre-expiry letter dated **16 November 2017** in respect of the PDH mortgage loan account and I accept that the Provider acted in accordance with Provision 43 of the CCMA 2013, in that it wrote to the Complainants at least 30 calendar days in advance of the ARA coming to an end. I also note that the Provider engaged with the Complainants in **November 2017** in respect of the assessment of the SFS. In this regard, I note the email from the Provider to the Complainants dated **23 November 2017** where it confirmed that the proposal from the Complainants and supporting documents had been reviewed. However, it is most disappointing that the Provider delayed in responding to the Complainants' correspondence when they raised this issue in **August 2017**. I note that it took the Provider over two months to respond to the Complainants and that it only did so on **25 October 2017** after a complaint was raised by the Complainants on **23 October 2017**. I accept that the Provider's delay in engaging with the Complainants meant that the Complainants had to chase the Provider on numerous occasions. Whilst I consider these to be customer service failings on the part of the Provider, I accept that the Provider did not breach Provision 43 of the CCMA 2013. I note that the Provider accepts in its letter dated **15 February 2018** that there was a delay in respect of the amount of time it took for the ASU to engage with the Complainants since 2017, and it apologised for the difficulties they encountered and for the "*poor impression this has created*". The Provider accepts that the Complainants have not "*experienced the level of service we expect our customers to receive*".

Provision 44 of the CCMA 2013 states:

*"A lender must carry out a review of an alternative repayment arrangement at any time, if requested by the **borrower**".*

I do not consider that the Provider breached Provision 44 of the CCMA 2013, as it did carry out a review of the ARA, albeit there was a delay in doing so. In this respect I note that the relationship manager asked for "*required information to review the accounts*" in its email dated **25 October 2017** and that by **23 November 2017**, the Provider confirmed that the proposal from the Complainants and supporting documents had been reviewed.

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However, in any event, I am of the view that Provision 43 is more applicable to this complaint, as it relates to ARAs which are due to expire. It is clear from a review of the Complainants' correspondence to the Provider that they were not asking for a review of their ongoing ARAs, but that they were asking for the terms of the ARAs to be renewed once they expired.

In respect of the BTL mortgage loan accounts, there is no evidence before me that the Provider breached the CPC 2012 (as amended). There is no equivalent provision of Provision 43 or 44 of the CCMA 2013 in the CPC 2012 (as amended). Whilst there was no requirement for the Provider to do so, I note that it sent pre-expiry letters to the Complainants in respect of the three BTL mortgage loan accounts more than 30 days in advance of the ARAs expiring.

I do however accept (as I have outlined above), that there were customer service failings on the part of the Provider as they were unreasonably slow in responding to the Complainants' correspondence and as such there was a delay in implementing the new arrangement.

Communication

I accept that there were other customer service shortcomings, which added to the Complainants' overall frustrations. I note that whilst the Provider sent an email to the First Complainant on **6 November 2017** confirming that a new relationship manager would be arranged, the Complainants had to request this on numerous occasions. It is clear from a review of the correspondence and from the content of the telephone call recordings provided in evidence that the First Complainant had to speak to numerous staff members over the course of a few months. In addition, as the Provider failed to respond adequately to the Complainants' correspondence, the Complainants had to send the SFS and the supporting documents to the Provider on more than one occasion (having initially sent them on **31 October 2017**). I also accept that the Provider gave inaccurate information to the First Complainant in its email dated **7 November 2017**, as it stated that the arrangements were in place until **February 2018**, when the ARA in respect of the PDH was due to expire in **January 2018**. Whilst I accept that there were customer service failings on the part of the Provider, there is no evidence before me which supports that this was "*deliberate*" or a way of "*intimidating*" the Complainants to give up their tracker mortgages, as suggested by the Complainants.

In respect of the complaint raised with the Provider on **23 October 2017**, the Complainants submit that the Provider failed to acknowledge the complaint within 5 working days and that it failed to provide a 'final response' within 40 working days. The Complainants have raised the same complaint about their email dated **23 November 2017**, and letters dated **8 December 2017** and **5 January 2018**. It is clear that the Complainants had to follow up on their complaint multiple times, before they received a Final Response letter dated **15 February 2018**.

Whilst other departments communicated with the Complainants during this time, I accept that the Provider did not adequately respond to the complaint until **15 February 2018** (nearly four months after the initial complaint was made). The Provider accepts in its submissions that the complaint was not acknowledged until its letter dated **12 January 2018**. In this regard **Provision 2.8** of the **general principles of the CPC 2012** (as amended) obliges regulated entities to handle "*complaints speedily, efficiently and fairly*". I do not believe that the Provider in this case complied with provision 2.8 of the CPC 2012.

ARA Offer

It is important to set out the limitations of the jurisdiction of this office in relation to complaints of this kind. In relation to MARP complaints, where issues of sustainability/repayment capacity are in dispute, the Financial Services and Pensions Ombudsman is only in a position to investigate whether the Provider, in handling the mortgage arrears issue, correctly adhered to its obligations pursuant to the Central Bank's Code of Conduct on Mortgage Arrears (CCMA).

This office may investigate the procedures undertaken by the Provider regarding the MARP, but will not investigate the details of any re-negotiation of the commercial terms of a mortgage which is a matter between the Provider and the customer, and does not involve this office, as an impartial adjudicator of complaints. This office 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)(b) of the Financial Services and Pensions Ombudsman Act 2017**.

As I have outlined above, the Complainants submit that the Provider offered a 12 month ARA of Interest Only payment of €294 per month on the PDH mortgage loan account, but that it immediately withdrew this offer and increased the amount to €1,831 per month as a "*punishment*", because the Complainants did not agree to their three BTL properties being transferred to a third party entity.

The Provider submits that the Complainants were advised by their case manager that a 12 month Interest Only ARA was agreed in relation to the PDH mortgage loan account on **4 January 2018**, which was later rescinded. It explains that this was rescinded following receipt of the Complainants' email dated **12 January 2018**, as the Complainants' circumstances had changed due to the fact that he now advised that their management company confirmed that extra rental income would be generated to allow the Complainants to pay full capital and interest repayments on their BTL properties. It states that this information was passed to its underwriting department which re-assessed the Complainants' accounts and offered ARAs on all four mortgage loan accounts, which the Complainants appealed.

I will now set out some of the events relevant to this aspect of the complaint based on the evidence, including the recordings of telephone calls, submitted.

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4 January 2018: Telephone call from the Provider to the First Complainant. The Provider informed the First Complainant that their ARA proposal was not accepted. The Provider outlined that the Complainants' proposal was for €450 reduced payment on one mortgage loan account, €300 reduced payment on two mortgage loan accounts and €1,000 on the PDH mortgage loan account, all for a period of 36 months. The Provider stated that it was willing to offer the Complainants an ARA of 12 months Interest Only on the PDH mortgage loan account at a rate of €294 per month, and that the BTL mortgage loan accounts would be passed to a third party entity. The Provider stated that it was "*not in a position to offer forbearance on BTL properties*" and when questioned whether the Provider's strategy going forward in respect of BTL properties was that they would be transferred to a third party entity or full capital and interest would have to be paid, the Provider confirmed that this was the case.

- **4 January 2018:** Email from the Provider to the First Complainant outlining the remaining terms on the mortgages. The email states that the Provider's "*strategy is to transfer Buy To Let mortgages to [third party entity] where clients are not in a position to meet full capital and interest repayments*".
- **9 January 2018:** The Provider's '*Timeline of Events*' states "*UW Decision – "/>*
- **12 January 2018:** Email from the Provider to the First Complainant at 13.05 states that "*the new arrangement has been applied to the mortgage on your family [sic]. As discussed the mortgages pertaining to you Buy to Let properties are being transferred to [third party entity] for their management of same*".
- **12 January 2018:** Email from the First Complainant to the Provider at 14.52. The First Complainant confirmed that they did not agree to the BTL properties being transferred. They stated that "*We have spoken to our management company for our BTL properties and they have confirmed that they will be able to generate the extra rental income necessary from our BTL properties to pay the full capital & interest while we try to sell them as discussed...please confirm by reply our agreement for our BTL mortgages below and that these mortgages will NOT be transferred to [third party entity] while we pay full capital & interest from 10/3/18 as agreed...*"
- **12 January 2018:** Email from the Provider to the First Complainant at 16.30 states as follows:

"Upon receipt of this email I discussed your proposal with our credit department.

The previous proposal will need to be reassessed so the acceptance terms are no longer valid.

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As your financial circumstances have changed we will require your new financial information in the form of a Standard Financial Statement either on paper format or over the phone.

We will also require written confirmation from your management company of your updated rental income".

- **31 January 2018:** The Provider's 'Timeline of Events' states "*Approved by FST" – Approved 6 months Reduced Repayment on all accounts on strict condition that BTL's are placed on the market. If further forbearance is sought after this time and we have no proof of BTL's on the market they will be passed to [third party entity]. Granted on exception due to complaint raised"*.
- **31 January 2018:** Telephone call from the Provider to the First Complainant advising of the ARA offer (as referred to in the bullet point above and in Table 3 above).
- **2 February 2018:** The Provider's 'Timeline of Events' states "*Call to customer – advised customer that as he declined the FST proposal case would be sent back to them for review. If any changes he'd be notified and if not deal letters would be sent to him outlining deal and appeals process"*.
- **5 February 2018:** The Provider's 'Timeline of Events' states "*FST defer – Case deferred by underwriting as no new information provided. If customer declined deals then decline letter to be sent to customer"*.
- **8 February 2018:** The Provider's 'Timeline of Events' states "*Call to customer – advised FST declined a review, original decision stands and deals with be applied which customer can appeal"*.
- **15 February 2018:** Response letter from the Provider to the Complainants in respect of their complaint. In this letter the Provider states as follows:

" With regards to putting an arrangement in place on your account, I can confirm that on assessment of your financial information provided, our Underwriting Department have agreed the following alternative repayment arrangements on your account:

*****9904 (BTL) → A 6 months amortising reduced repayment of €450*

*****9917 (BTL) → A 6 month amortising reduced repayment of €300*

*****9920 (BTL) → A 6 month amortising reduced repayment of €450*

*****9933 (PDH) → A 6 months amortising reduced repayment of €1,831*

I note from our records that you have declined the above agreements, however as explained to you by [staff member] of our Arrears Support Unit the arrangements will now be applied to your accounts and you have the right to appeal this decision as outlined in the arrangement [sic] letters which will be issued to you in the coming days.

These arrangements have been agreed on your accounts by our Underwriting Team to allow for the sale of the Buy To Let properties during this time. This is deemed to be the most suitable option for your specific circumstances".

- **11 March 2018:** ARA offer letter from the Provider to the Complainants in relation of their PDH mortgage loan account.
- **13 March 2018:** ARA offer letters from the Provider to the Complainants in relation to the BTL mortgage loan accounts.
- **22 March 2018:** Letter from the Complainants to the Provider submitting their appeal in respect of the ARA offers on the four mortgage loan accounts.
- **29 March 2018:** Letter from the Provider to the Complainants stating that their appeal is "*being reviewed*". The letter states that "*if we have not reached a final decision on your appeal within 20 business days, we will write to you to give you an update*".
- **25 April 2018:** Letter from the Provider to the Complainants providing an "*update*" in relation to the appeal. The letter states that "*we are still investigating it and it will then be assessed by our independent Appeals Board. We will write to you with a final decision within 20 business days from the date of this letter*".
- **16 May 2018:** Letter from the Provider to the Complainants confirming that their appeal was unsuccessful.

I again note that the CCMA 2013 relates only to the PDH mortgage loan account. The CPC 2012 (as amended) applies to the BTL mortgage loan accounts.

I will firstly deal with the BTL mortgage loan accounts. In this regard, it is important to note that this Office will not interfere with commercial decisions taken by the Provider in respect of its strategy regarding BTL mortgage loan accounts. I accept that on each occasion that an ARA was offered to the Complainants, the Provider wrote to the Complainants outlining the terms of the arrangements offered, in line with Provision 8.11 of the CPC 2012 (as amended). However, it is most disappointing that the Provider only wrote to the Complainants about its decision in relation to the ARA offer on **13 March 2018**, given that it decided upon this on **5 February 2018**.

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I do note that the Provider set out the details of the ARA in its letter to the Complainants dated **15 February 2018**, however this was provided to the Complainants in the context of their complaint. In this regard Provision 8.11 of the CPC 2012 (as amended) obliges regulated entities to write to borrowers where it reaches an agreement on a revised repayment arrangement "*with a clear explanation of the revised repayment arrangement*" within 5 days. Whilst the Complainants were not in agreement with the arrangement, the Provider agreed upon this revised repayment arrangement. On this basis, I do not believe that the Provider in this case complied with Provision 8.11 of the Code.

I will secondly deal with the PDH mortgage loan account. In this regard, this Office can investigate the procedures undertaken by the Provider regarding the CCMA 2013 and its associated MARP, but will not investigate the details of any re-negotiation of the commercial terms of mortgage loan accounts which is a matter between the Provider and the Complainants, and does not involve this Office, as an impartial adjudicator of complaints.

I must point out that the Provider is not obliged to provide the Complainants with an ARA. The Complainants have a contractual obligation to repay the mortgage in full and in the terms originally agreed. I appreciate that the Complainants have had ARAs on their mortgage loan accounts for a long period of time, however the Complainants have a contractual obligation to repay the monies borrowed to the Provider.

This was agreed when they originally entered into the mortgage agreement with the Provider. There is no regulatory requirement for financial institutions to agree to a particular demand from a borrower regarding changes to agreed mortgage repayments.

It is clear that the Provider initially offered an ARA of 12 month Interest Only on the PDH mortgage loan account on **4 January 2018** and that the BTL mortgage loan accounts would be sold to a third party entity. The Complainants stressed that they did not agree to this offer as they did not consent to the BTL mortgage loan accounts being transferred to a third party entity. The Provider submits that the change in the ARA offer was due to the information contained within the First Complainant's email dated **12 January 2018**, where they referred to extra rental income. While this Office will not interfere with the commercial discretion of the Provider in respect of its offer of an ARA, it will investigate whether it has complied with the CCMA 2013.

Provision 40 of the CCMA 2013 states:

*"A lender must document its considerations of each option examined under Provision 39 including the reasons why the option(s) offered to the **borrower** is/are appropriate and sustainable for his/her individual circumstances and why the option(s) considered are not offered to the **borrower** is/are not appropriate and not sustainable for the **borrower's** individual circumstances".*

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The Provider has submitted '*Debt Manager Notes*' in respect of the PDH mortgage loan account. I accept that the Provider has carried out an assessment in line with Provision 37 of the CCMA 2013, however there is no evidence before me which shows that the Provider complied with the requirements of Provision 40. The Debt Manager Notes do not document each ARA option considered by the Provider and they do not document why the options considered and not offered were not appropriate and not sustainable for the Complainants' individual circumstances. I also note that the reason given by the Provider in its submissions to this Office as to why the offer was rescinded, is not contained within the Debt Manger Notes. The Provider has not submitted documentation which shows that it complied with the requirements of this provision of the CCMA 2013.

As I have outlined above, it is most disappointing that the Complainants were not written to until **11 March 2018** in respect of the ARA offer, despite it being agreed by the Provider on **5 February 2018** and communicated to the Complainants by telephone on **8 February 2018**. Whilst I note that the CCMA 2013 does not set out any specific time period to write to customers about ARA offers, I consider this to be an unacceptable delay on the part of the Provider. I also accept that the Complainants should have been told earlier (that is prior to **January 2018**) about the Provider's policy in respect of BTL mortgage loan accounts.

In respect of the appeal submitted by the Complainants, Provision 51 (e) of the CCMA 2013 states that the "*lender must consider and adjudicate on an appeal within 40 **business days** of having received the appeal*". I accept that the Provider did not comply with this provision, as the appeal was heard some 57 days following the submission of the appeal.

I accept that these shortcomings on the part of the Provider will have added to the Complainants' overall frustration in respect of the delay they experienced.

Sale of the mortgage loan accounts without consent

I have been provided with copies of the four loan offers for the three BTL properties. As I outlined above, I note that one of the BTL mortgage loan accounts (Account number ****9920) has two sub accounts.

The PDH mortgage loan account was not included in the sale to the third party fund, and therefore is not relevant to this aspect of the complaint.

In respect of the BTL mortgage loan account (Account number ****9904 – previous *****/9406), the Complainants accepted the loan offer dated **8 June 2006** on **12 June 2006**.

In respect of the BTL mortgage loan account (Account number ****9917 – previous *****/9407), the Complainants accepted the loan offer dated **13 June 2006** on **16 June 2006**.

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In respect of the BTL mortgage loan account (Account number ****9920, Sub account 1 – previous *****/9404), the Complainants accepted the loan offer dated **11 July 2005** on **27 July 2005**.

In respect of the BTL mortgage loan account (Account number ****9920, Sub account 2 – previous *****/9201), the Complainants accepted the top-up loan offer dated **20 June 2007** on **20 June 2007**.

The Provider states in its submissions that for the BTL mortgage loan accounts (Account numbers ****9904, ****9917 and ****9920 (sub account 2), the '*GMS1 Terms and Conditions* apply'. It also states that for the BTL mortgage loan account (Account number ****9920 (sub account 1), the '*RFS6 Terms and Conditions* apply'. The Provider has submitted copies of these terms and conditions.

In respect of the complaint regarding the inclusion of the BTL mortgage loan accounts in the sale to the third party fund, the following terms and conditions of the mortgage loan accounts which were accepted by the Complainants are relevant:

Standard Mortgage General Terms & Conditions (GMS1)

"12. Securitisation

This Lender may at any time and from time to time transfer, assign, mortgage and/or charge the benefit of all or any part of the Mortgage and all of the rights and interests of the Lender in and to any life assurance assigned to or charged unto the Lender and all other contracts and policies of insurance relating to the Property on such terms as the Lender may think fit. Information on securitisation is available at your local branch.
..."

Standard Mortgage General Terms & Conditions (RFS 6)

"12. Securitisation

... may at any time and from time to time transfer, assign, mortgage and/or charge the benefit of all or any part of the Mortgage and all of the rights and interests of [the Lender] in and to any life assurance assigned to, or charged unto, [the Lender] and all other contracts and policies of insurance relating to the Property on such terms as [the Lender] may think fit. Information on securitisation is available at your local Branch.
..."

The Complainants accepted the loan offers for the BTL mortgage loan accounts (Account numbers ****9904, ****9917 and ****9920 (sub account 1) on the following terms:

"(a) I/We acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/we fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible..."

The Complainants accepted the top up loan offer (Account number ****9920 (sub account 2)) on the following terms:

"I/We have read and understand the terms and conditions set out above and overleaf and HEEREBY ACCEPT the loan offered on those terms and conditions and agree to be bound by them".

The Complainants submit that their BTL mortgage loan accounts were to be transferred or sold off by the Provider to a third party fund. They submit that this was without their consent. The Complainants state that they had not missed any repayments in over seven years and only had small historical technical arrears on two of their BTL mortgage loan accounts.

The Provider submits that it has acted in line with the Terms and Conditions for each of the BTL mortgage loan accounts, which allowed it to sell them to a third party fund.

While the Complainants' concern in this regard is understandable, I accept that that they agreed to be bound by the relevant terms and conditions of the mortgage loans. The terms and conditions included the ability of the Provider to sell the mortgage loan accounts to a third party. The terms and conditions do not set out an obligation to obtain the Complainants' consent to any proposed transfer. I accept that the Provider did notify the Complainants that the mortgage loan accounts were to be transferred to a third party fund by way of letter (in respect of each BTL mortgage loan account) dated **27 August 2018**. Further, the letters dated **27 August 2018** advised under a sub-heading of "*If you wish to repay your mortgage loan prior to the transfer date*" that the Complainants could repay all amounts owing under the facilities at any time.

The Complainants are aggrieved that the mortgage loan accounts were to be sold in circumstances where there were only historical arrears on two of the BTL properties and he had not missed any repayments in the last seven years. The Complainants were informed by the Provider by way of email dated **4 January 2018**, that the Provider's "*strategy is to transfer Buy To Let mortgages to [third party entity] where clients are not in a position to meet full capital and interest repayments*". The Provider confirmed in an email to the Complainants dated **12 January 2018** that "*the mortgages pertaining to you [sic] Buy to Let properties are being transferred to [third party entity] for their management of same*".

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In an email from the Complainants to the Provider dated **12 January 2018**, they stated that "*we do NOT want the tracker mortgages for our BTL properties transferred over to [third party entity]*". I note that ARAs of reduced payments were applied to the BTL mortgage loan accounts from **February 2018**, to "*allow for the sale of the Buy to Let properties*".

While I acknowledge the Complainants' disappointment at the transfer of their mortgage loan accounts, this does not undermine the Provider's entitlement to transfer the mortgage loan accounts in accordance with the terms and conditions of the loan agreements. The Provider was entitled to exercise its commercial discretion to include the relevant mortgage loan accounts within the portfolio of loan and mortgage assets being sole to the third party fund.

In conclusion, I accept that on the basis of the evidence before me, the main complaints against the Provider cannot be substantiated. However, as there were shortcomings on the part of the Provider in respect of its compliance with the CCMA 2013 (in respect of the PDH mortgage loan account) and the CPC 2012 (as amended) (in respect of the BTL mortgage loan accounts), and as there were customer service failings, I partially uphold the complaint and direct that the Provider pay the Complainants a sum of €3,500. For the avoidance of doubt, this sum includes the €500 offered by the Provider.

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 include the €500 offered by the Provider), 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

12 May 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.