



<u>Decision Ref:</u>	2020-0201
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Arrears handling - Mortgage Arrears Resolution Process Maladministration Errors in calculations
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant together with his wife, entered into a family home mortgage loan agreement with a financial services provider in **2004**. The Complainant then entered into a residential investment mortgage loan with the same financial services provider in his sole name in **2005**. In **2011**, both of these loans were transferred to the Provider, against which this complaint is made, and were subsequently sold by the Provider in **2014**. The Complainant has made a complaint in relation to his residential investment loan regarding of the conduct of the Provider once his loan account went into arrears in **April 2010**.

The Complainant's Case

The Complainant provided the following description of his complaint against the Provider in his Complaint Form:

“Repeated failure of institution to engage and respond to requests for a long term solution with respect to MARP – repeated requests were made to come to a long term arrangement with respect to the property and nothing was done by those who were allegedly in charge. Perpetual generation of MARPS paperwork with no output and no action taken, despite numerous letters to the firm expressing issues – no acknowledgement that the customer was complaining and no process to put the complaint through a mediation process to obtain a resolution. Additionally, no computations of arrears breaking down interest/fees element and capital repayments when arrears were communicated.”

In resolution of this complaint, the Complainant requests that this Office:

“Review the documentation provided and discern the remedy that [the former provider] and [the Provider] should have taken given the level of engagement by owner.

It is simply untenable that this level of engagement was not dealt with and the numerous requested (sic) for a long term solution were simply ignored.

Review the interest rates / fees applied – obtain detailed figures of computation of arrears with supporting calculations.”

The Provider’s Case

Chronology

The Provider, in its response to this Office, sets out a detailed chronology of contacts and events pertaining to the Complainant’s investment mortgage loan account from the time that arrears began to accrue on this account in **April 2010** until it was sold to a third party in **June 2014**. The Provider advises that as a result of this sale, hard copy files and records previously held by it were transferred to the purchaser of the Complainant’s loan. Consequently, the Provider is working from information that was retained on its Legacy Systems.

Repayment History

The Provider has enclosed a print-out of the Complainant’s loan account statements. The Provider points out that the first unpaid contractual capital and interest payment occurred on **10 January 2010** when a direct debit was returned unpaid. This incurred a fee of €25.39. The Provider advises that payment of the missed instalment was received on **25 January 2010** and contractual payments resumed in **February 2010** until the second missed payment on **10 April 2010** which incurred another unpaid fee of €25.39. The Provider states that no payments were made between **April 2010** and **November 2010**. A reduced payment of €100 was made in **December 2010** and **February 2011** but no payment was received in **January 2011**. The Provider explains that payments increased to €400 in **February 2011** and continued for the remainder of **2011** to **2014** ranging from €300 to €500 until the loan was sold.

Communication of Arrears

Referring to arrears correspondence, the Provider states that up to **December 2010**, correspondence appears to cover both the residential investment mortgage and the family home mortgage.

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The Provider states that it wrote to the Complainant on **26 August 2010** to advise him that arrears on the residential investment mortgage were €4,417.85 and the full monthly payments for that month were €883.57.

This communication contained the Consumer Credit Act warning on keeping up repayments on a mortgage loan. The Provider submits that the account statements show the monthly interest charge and fees debited to the account. In addition, the Provider points out that it also included the movement of arrears. As the Complainant was not making any payments on the loan between **April 2010** and the end of **November 2010**, the arrears would have comprised capital and interest and an amount for unpaid direct debit fees. The Provider states that the arrears on the loan continued to increase as the payments were less than the contractual amount required to clear the arrears.

Issuing of Account Statements

The Provider explains that its policy was to provide customers with statements on an annual basis. Statements were automatically system-generated and sent to all customers at the address provided. The Provider submits that the statements clearly set out the interest rate applying and any changes thereto during the lifetime of the loan account. It also shows the monthly interest rate being applied to the loan in accordance with the terms of the facility letter.

The Provider submits that it has no reason to believe that the Complainant was not included in this process nor does it have a record of a change of address for correspondence purposes. The Provider states that the address on the statements contains the same address for correspondence as the Complainant's address and the original Mortgage Loan Application from **2005**. The Provider points out that a copy of an account statement for the residential investment mortgage was attached to an email sent to this Office from the Complainant's adviser on **3 July 2018** which it says undermines the basis of this aspect of the complaint.

Adherence to the requirements of MARP

The Provider states that the ***Code of Conduct on Mortgage Arrears (CCMA)*** came into effect on **27 February 2009** and was subsequently amended in **March 2010, January 2011** and **June 2013**. The CCMA specifically applies to mortgages secured on a property that is the primary residence of a borrower. It does not apply to a residential investment property. The Provider submits that as the Complainant's mortgage loan account ending 483 was in relation to an investment property, it was not covered by the MARP process under the CCMA. Accordingly, it argues that *"... the core premise of this complaint as being in breach of MARP as outlined in the FSPO Complaint is misconstrued."*

Compliance with the Consumer Protection Code

The Provider submits that it has complied with the Consumer Protection Code (**Code**). The Provider states that there was frequent and on-going telephone and written correspondence between the parties which commenced following the Complainant's non-payment of his contractual payment in **April 2010** which continued until the loan was sold in **June 2014**.

The Provider states that from its file notes and correspondence, the initial correspondence between the parties covered the residential investment mortgage and the family home mortgage. The Provider advises that where copies of this documentation is available, it has been provided. Otherwise, the commentary is taken from the file notes retrieved from the Legacy System that was available.

On **9 April 2010**, a third party agency wrote to the Provider to advise that they had been approached by the Complainant and his wife for assistance in connection with the residential investment mortgage and the family home mortgage. The third party agency informed the Provider that they were waiting for documentation from the Complainant and his wife and would be in touch with the Provider when they received this information and the Complainant's proposal to clear the debt.

Separately, the Complainant and his wife applied for a 6 month moratorium on the residential investment mortgage and the family home mortgage through the Provider's branch. An internal memo dated **17 May 2010** was sent by the branch manager to the Provider's head office enclosing the moratorium request form, income and expenditure details and a copy of the social welfare payment. The file notes record that on **28 May 2010**, the Provider issued moratorium offer letters in respect of each of the loans offering the Complainant a reduced payment of €300 per month for 3 months for the residential investment loan.

On **15 June 2010**, the Provider wrote to the Complainant and his wife, in reply to a letter from the Complainant, advising that the Provider was waiting for their financial information from the third party agency as they had been authorised to represent the Complainant and his wife in their dealings with the Provider. The Provider states that the letter contained a Consumer Credit Act warning as to the risk of not keeping up repayments.

On **2 July 2010**, the Provider telephoned the Complainant as it has not received a reply to the offer of a moratorium on the loans. The Provider explained to the Complainant that it did not offer full moratoriums on investment properties and if the Complainant could not rent the investment property, it should be placed on the market for sale. The Provider advises that it subsequently contacted the third party agency to update them on the conversation and also spoke with its branch manager to inform him of the situation.

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The Provider states that it followed up with the branch manager on **19 July 2010** for an update, as the Provider had not heard from the Complainant. The Provider advises that it continued to correspond with the third party agency and in a letter dated **10 August 2010** noted that the Complainant and his wife were seeking a 6 month moratorium on both loan accounts but the Provider had not received a response to previous moratorium offers sent to them. The Provider submits that it also requested updated financial statements and a completed moratorium application form within 7 days. The letter contained a Consumer Credit Act warning as to the risk of not keeping up the repayments. The Provider states that the third party agency wrote to the Complainant and his wife on **17 August 2010** in connection with both accounts requesting an urgent response to the Provider's request for updated financial statements.

The Provider states that it wrote to the Complainant on **26 August 2010** to advise him as to the arrears outstanding on his account and the amount of the full monthly repayment for **August 2010**. The Provider requested a proposal on repayment to include the arrears and requested that the Complainant contact the writer of the letter on her direct telephone number. The letter contained a Consumer Credit Act warning as to the risk of not keeping up the repayments.

The Provider states that it continued contact with the third party agency during **October 2010**. On **17 November 2010**, the Provider telephoned the Complainant to discuss the income and expenditure form, current circumstances and also advised the Complainant that it wanted to work with him and his wife. The Complainant advised that his father was living in the property secured on the residential investment loan (the **Secured Property**) and he would have to broach the subject of renting the property with him.

The Provider states that the Complainant's file was passed to its solicitors as no response had been received to previous correspondence and no repayments had been made for 5 months.

The Provider explains that the first complaint from the Complainant was contained in a letter received on **19 November 2010** which was in response to a letter from the Provider's solicitors following the build up of arrears on the loan account, the failure to provide a proposal to clear the arrears and not accepting the Provider's offer of reduced payments. The Provider states that the file note records the Complainant was complaining that the Provider was in receipt of substantial aid from the State and that such aid was conditional on the Provider entering into negotiations and showing restraint to impaired borrowers.

The Provider states that it responded to the Complainant and his wife within 5 days of receipt of the Complainant's letter of complaint with an offer of a full 3 month moratorium of capital and interest on the family home loan and a letter of consent from the Complainant's father within 10 days consenting to the Secured Property being placed on the market for sale.

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The Provider advises that it was informed by the third party agency on **6 December 2010**, that they were not in a position to deal further with the case as there was an investment property involved.

On **9 December 2010**, the Complainant telephoned the Provider to advise that his father was ill and that through financial support from friends and family, the full normal monthly repayments on both loans would be maintained.

The Provider states that correspondence continued with the Complainant during **2011** and in a telephone conversation with the Complainant on **7 July 2011**, the Provider was informed that the Secured Property was damaged in a flood and would need to be repaired before being rented.

The Complainant wrote to the Provider by way of an undated letter received on **23 December 2011** requesting that the Provider correspond with his wife as he was unwell from the purported harassment from the Provider. The Provider states that it made a number of unsuccessful attempts to contact both the Complainant and/or his wife in **January 2012**. The Provider explains that the Complainant next wrote to it on **1 February 2012** informing it that the Secured Property had been rented and he would be lodging the rent of €100 per week to the loan account.

The Provider submits that it dealt with the Complainant with due care and professionalism. The loan account was in arrears due to the non-payment of the contractual payments and the balance outstanding on the account was increasing over time. The Provider advises that the Complainant was also in arrears on his family home loan which was adding a further layer of complexity to his financial situation. The Provider states that it did not press forward with court proceedings or appoint a receiver to take control of the Secured Property and force a sale. The Provider submits that its fair and professional approach was reflected in the early and initial offer of a reduced monthly payment on the residential investment loan and the ongoing frequent correspondence between the parties as the Provider sought to assist the Complainant and his wife with their financial situation. In so doing, the Provider stated that it attempted to act honestly, fairly and with due skill, care and diligence in seeking to provide the Complainant and his wife with suitable payment arrangements following an assessment of their financial situation throughout the period, which alternative arrangements were at variance to their contractual obligations originally entered into and consistent with the *General Principles* of the Code.

The Provider states that it sought to assist the Complainant with his financial challenges and resolve any complaints in an appropriate and meaningful way. It did so through the third party agency and also after the third party agency withdrew from providing support in **December 2010**. The Provider advises that it did not seek at any point to recklessly, negligently or deliberately mislead the Complainant in the course of its dealings and advised the Complainant of the consequences of not keeping up repayments on the residential investment loan. The Provider submits that this conduct was consistent with the Code.

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The Provider states that it is clear from the correspondence and file notes that almost immediately following the first missed scheduled payment on the investment property loan and the family home loan, the Provider responded on a timely basis to a request for assistance in accordance with the Money Advice and Budgeting Service (MABS) and Irish Banking Federation protocol by offering forbearance on both loans. However, the Complainant failed to respond to these offers. The Provider states that it contacted the Complainant by telephone on **2 July 2010** as the investment property loan was in arrears and, due to the Complainant's deteriorating financial position and mounting arrears on the family home loan, the Complainant was advised that the best offer available in respect of the investment property loan was interest only. The Complainant was further advised that in order to mitigate his mounting indebtedness on this loan he may need to consider selling the Secured Property if it could not be rented.

In a subsequent telephone call from the Complainant's wife on **23 August 2010**, the Provider was advised that the Secured Property was not rented and could not be sold as her father-in-law lived there and had a right of residence for life. The Provider states that it wrote to the Complainant on **28 August 2010** advising him as to the level of arrears outstanding and requesting firm proposals regarding the repayments and clearing the outstanding arrears.

The Provider states that, as previously outlined, it did not receive a response to the letter and the investment property loan was 5 months in arrears, the Provider passed the file to its solicitors who issued a letter before action. The Provider states it continued to liaise with the Complainant and sought the consent of the Complainant's father to a sale. The Provider advises that it was informed by the Complainant's wife in early **December 2010** of her father-in-law's unfortunate illness and the subsequent flood damage to the Secured Property. The Provider states that it also sought to liaise with the Complainant during **2011** regarding the repairs to the Secured Property, its rental/sale and assess the Complainant and his wife's financial situation. In **February 2012**, the Complainant wrote to the Provider to inform it that the Secured Property had been rented and he would be lodging the weekly rent to the investment property loan account. The Provider states that it continued to liaise with the Complainant and review his financial situation during **2012** and **2013** while payments on the investment property loan account were, although at a reduced level, being made. In **November 2013**, having considered the Complainant and his wife's financial position, the Provider concluded that the family home loan was unsustainable and while the Complainant and his wife qualified for the Mortgage to Rent Scheme, the Secured Property needed to be sold first. The Provider states that it agreed to provide 6 months' forbearance on the family home loan while the Secured Property was being marketed. The Provider states that it wrote to the Complainant in **February 2014**, outlining the outstanding balance and arrears and advised the Complainant that his proposal for repayment of the investment property loan was not a sustainable solution as the proposed repayment was less than the interest charge and would result in arrears increasing. The Provider advises that the Complainant subsequently wrote to it in **May 2014** requesting a reduction in the interest rate. The Provider explains that in **June 2014**, the Complainant's loan was sold. The Provider submits that throughout the period of arrears, it utilised its resources to review the Complainant's case under applicable internal policies and procedures, and compliance checks consisted with the *General Principles* of the Code.

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In relation to Chapter 10 of the Code and in particular *Complaints Handling* as it relates to the Complainant's complaint, it is quite clear that there was ongoing engagement throughout the period of arrears. It also states that it is clear that the Provider engaged with the Complainant in an effort to help alleviate the burdens faced by his household, particularly, by offering solutions on the family home loan pending an improvement in the Complainant's and his wife's financial situation.

The Provider submits that from a review of its file, the Complainant's ability to meet his repayment obligations in the investment property loan could not be limited to a review of this loan account in isolation as the Complainant also had significant joint indebtedness with his wife and arrears on the family home loan.

The Provider states that the servicing and repayment obligations in respect of that loan was a relevant factor in the overall deliberations by the Provider in dealing with potential solutions.

The Complaint(s) for Adjudication

The complaints are that the Provider:

1. repeatedly failed to respond to and/or engage with the Complainant's requests for a long-term solution with respect to MARP;
2. failed to act on the Complainant's repeated requests to come to a long-term arrangement with respect to *the property*;
3. sent excessive amounts of MARP correspondence to the Complainant;
4. failed to provide the Complainant with a breakdown of the arrears figure in terms of interest, fees and capital repayments;
5. failed to acknowledge that the Complainant was complaining and/or to acknowledge his complaint(s); and
6. failed to offer a mediation process to resolve complaints.

At the outset, I would point out that the Complainant's representative has raised a number of issues in relation to the role and conduct of auditors connected to matters related to this complaint.

In particular, the Complainant's representative, in a submission dated 21 January 2020, states:

"These documents have been reviewed and cause significant concerns in light of case law with auditors and liability of auditors".

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The jurisdiction of this Office extends to the conduct of financial service and pension providers as set out in the ***Financial Services and Pensions Ombudsman Act 2017***.

This Office has no jurisdiction to examine the conduct of auditors. Therefore, the conduct of the auditors will not be investigated as part of this investigation and adjudication.

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 25 May 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.

Following the issue of my Preliminary Decision, the Complainant's representative e-mailed this Office on 25 May 2020 in relation to a third party organisation. The content of that email had no bearing on this complaint or my Decision.

A copy of that e-mail was transmitted to the Provider for its consideration.

The Provider did not make any further submission.

Having considered all of the submissions and evidence furnished to this Office by the parties, I set out below my final determination.

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Analysis

Due to the sale of the Complainant's loan by the Provider **June 2014**, the Provider advises that it is no longer in possession of hard copy files and records. I note that the Provider has been able to furnish certain documentation but is also responding to this complaint on the basis of information retained on its Legacy Systems.

The First Complaint

The CCMA in effect when the Complainant's loan first entered into arrears has been revised and updated at various times during the period to which this complaint relates. However, a common requirement mandated by the various versions of the CCMA was that it only applied to a mortgage loan which was secured by a borrower's principal private residence and latterly, a borrower's primary residence.

The Complainant signed the loan agreement the subject of this complaint on **22 August 2005**. The purpose of this loan is stated to be "*To Purchase A Residential Investment Property*". This *Residential Investment Property* is the secured property as described above and was offered as security in respect of this loan. The Complainant did not reside in the secured property. This property was occupied by the Complainant's father, was vacant for a period of time and was subsequently rented out by the Complainant. During the period to which this complaint relates, it appears that the Complainant resided with his wife and children in their family home. Accordingly, I accept that the secured property is not the Complainant's principal primary residence/primary residence.

Therefore, as the mortgage loan the subject of this complaint is secured by a property which is not the Complainant's principal primary residence/primary residence, I find that the CCMA did not apply in this instance. Consequently, the Provider was not obliged to engage a MARP process when arrears began to accrue on this loan.

Given that the Provider was not obliged to engage a MARP process, I do not uphold this aspect of the complaint.

The Second Complaint

In the context of this aspect of the complaint, it is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the re-negotiation of the commercial terms of a mortgage loan or an alternative repayment arrangement which is a matter for the Provider and the Complainant and does not involve this Office whose role is 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 the Complainant.

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The Provider received a letter from the third party agency dated **9 April 2010** referring to both loan accounts advising that it had been approached by the Complainant's wife. The Provider was informed that the third party agency was in the process of gathering documentation from the Complainant's wife and following receipt of this documentation it would provide details of the proposals to clear the debt.

In an internal memo dated **17 May 2010**, the Provider noted in respect of the investment property loan that:

"... [The Complainant] is looking for a moratorium for 6 months on both loans. ... He is looking for a full moratorium but perhaps you could give him a moratorium with a small payment on each loan for the time being. ..."

The Provider wrote to the third party agency on **3 June 2010**, enclosing up to date arrears figures.

In the Provider's internal notes, there are two entries made on **15 June 2010**. The first records the receipt of a letter from the Complainant and his wife requesting an 8 to 12 month moratorium. However, it is not clear from this entry what account(s) are being referred to. The second entry records the Provider's reply. The entry in the notes system indicates that the Provider, referring to both loan accounts, advised that in order for it to consider a moratorium, the Complainant and his wife should complete and return the enclosed form. The Complainant and his wife submitted a *Moratorium Request Form* signed on **21 June 2010** in respect of both loan accounts requesting a full moratorium.

On **22 June 2010**, the third party agency wrote to the Provider in respect of its refusal of the Complainant's moratorium applications in respect of each of the loan accounts asking that the Provider revisit these requests.

In the Provider's internal notes, an entry is made on **2 July 2010** referring to a previously offered moratorium in respect of both loan accounts which states:

"... Reviewed notes in account diary & on 28.05.10 moratorium offer letters were sent out on both account. €262.89 to be maintained to the PDH ... and €300 to be maintained on [the investment property loan account] ..."

There is a further entry in respect of a telephone conversation between the Complainant and the Provider on **2 July 2010**. I note the following passage from this entry:

"... I explained that the [Provider] sent out an offer letter to them to be signed on the 28th May but have not yet received this back from them. [The Complainant] said that he specifically asked for a full moratorium to both the accounts & cannot afford the interest. I said that in relation to the [investment property loan], [the Provider] does not offer full moratoriums on investment properties. [The Complainant] said that the inv. prop is vacant. Suggested that they review whether inv. Prop should be placed on the market if they cant rent it. ... He asked that I review full morat request."

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Following this conversation, the Provider's internal notes for the same date indicate that the Provider then contacted the third party agency. The entry in respect of this conversation states in part:

"... Explained that the [Provider] did not refuse their morat request but that they cannot meet the interest repayment on the inv. Prop loan of €300 p/m nor can they manage reduction of €262.89 to the PDH loan as per conversation with [the Complainant] ..."

In the Provider's *Chronology of Events*, it is stated that on **2 July 2010** a call was placed to the Complainant. The following comments are made in respect of this conversation:

"[The Complainant] advised they only receive €415 weekly. [The Complainant] said he asked specifically for a full moratorium to both accounts and can't afford the interest. [The Provider] advised that in relation to the RIP property (investment property, Acc no. ...), [the Provider] does not offer full moratoriums on investment properties."

This chronology does not appear to be a contemporaneous record of events which took place on the Complainant's loan account. Rather, it was prepared as part of the Provider's response to this complaint. I find that the Provider's internal notes represent the most contemporaneous record of such events. Having perused the internal notes furnished by the Provider, I cannot see an entry in respect of this conversation. Curiously, though possibly unrelated, I note that the Provider has redacted two entries made in the internal notes on **2 July 2010** and no reason has been given as to why this was done. In light of the absence of any explanation and the Provider's obligation to co-operate with this Office in its investigation of complaints, I am disappointed that the Provider has made these redactions.

On **9 August 2010**, the third party agency asked that the Provider consider offering a 6 month moratorium in respect of both loan accounts. The Provider responded to this letter on **10 August 2010** acknowledging that the 6 month moratorium requests were received in respect of both accounts and also informed the third party agency that it had previously sent out moratorium offer letters and had yet to receive a response to those offers. The Provider stated that it was enclosing a moratorium application form to be completed and returned within 7 days. The Provider also requested an updated financial statement. The third party agency provided a response to the Provider's request on **17 August 2010**.

The Provider wrote to the Complainant on **26 August 2010**, advising him that the arrears on his account stood at €4,417.85 and his full monthly repayment for August was €883.57. The Provider also advised the Complainant that it required firm proposals to be put in place as to how the Complainant proposed to address the arrears on his account.

The Provider's internal notes indicate that a letter before action was sent by its solicitors to the Complainant on **22 September 2010**. The *Chronology of Events* indicate that an instruction was given in/or around **8 November 2010** *"... to proceed to civil bill."*

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However, the evidence in this complaint suggests that the Provider did not pursue legal proceedings with any great vigour prior to the sale of the Complainant's loan in **June 2014**.

The Complainant wrote to the Provider on **10 November 2010** in response to a letter received from the Provider dated **20 October 2010** stating:

"... You state that the [Provider] offered a 3 month capital moratorium on the home loan only. You are aware that we are unable to furnish this loan on an interest only basis. You continually look for Financial Statements, which you have been furnished with but don't appear to read as the position is unchanged. Unlike your institution we are unable to get State aid with respect of our loans. We approached [the Provider] in February and to date have received no help as regards deferment of loans or possible recapitalisation of same, you continually offer a 3 month capital moratorium, which we are unable to avail of. At no stage have you said that you would accept a lesser payment or offered structured assistance to us. ..."

The Provider wrote to the Complainant and his wife on **25 November 2010** in respect of both loan accounts advising that it was offering a 3 month moratorium on the family home loan and that it required a letter from the Complainant's father consenting to the sale of the secured property within 10 days.

The Provider's internal notes contain an entry for **28 October 2011**, which states:

"Mr replied to msg. Said cant lodge money in this month as he just doesnt have it. Asked why not and Mr said he cannot rent out this property as it effects his Welfare benefits. Mr said he is engaging [Auctioneer] to value property to put on market. Mr wanted to know his options to stop ars increasing while he is selling the property.

Told Mr we cannot assess options until we get SFS and docs back. Mr said he sent them back to us in mid Oct no receipt recorded here. Mr said this was second time he sent it back ... Told Mr i'd request a search for these documents. First time he sent back, it was returned to him so he re-addressed it as per our letter head. Told Mr we cannot assess options until we get the form but unless he can afford i/o etc and something is going to change for him in the future to service the full repayments. Told Mr a full moratorium on repayments is only granted in extreme cases and we need to know what sale price would be on property. ..."

The Complainant wrote to the Provider on **1 February 2012** in respect of his loan account to inform the Provider that he had successfully rented the secured property for €100 per week and he proposed to pay this money to the Provider. The Complainant concluded this letter by stating that he hoped to hear from the Provider in the near future in relation to restructuring his loan based on the above information.

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The Provider's internal notes record a call with the Complainant on **1 March 2012** as follows:

"Called and spoke with [the Complainant] ... Explained to mr we could look at a possible arr on the account and gave mr the IO fig €591.97, asked could mr afford to pay rent plus to this account., mr said no way he can afford this as he is on job seekers allowance and cannot pay his PDH on his current income. he struggles to pay €200 a month on that account ... asked mr to send in tenancy agreement and up to date DSW receipts so we could look at putting possible rent only arr* in place. confirmed arrears balance ..."*

As part of the documents submitted in response to this complaint, the Provider has enclosed a *Referral Form* dated **24 April 2012** and approved on **2 May 2012** approving an alternative repayment arrangement of a partial interest payment of €400 for 3 months.

The Provider's internal notes indicate that a forbearance letter was sent to the Complainant on **4 May 2012**. The precise terms of the proposed forbearance are not clear from this entry. Furthermore, a copy of the letter sent to the Complainant in respect of this forbearance does not appear to have been furnished by either part. In a follow-up telephone call on **14 May 2012**, the Provider's internal notes state:

"Spoke with Mr. Said he hasnt been well lately but thinks he got the offer for forbearance and will sign and return asap. ..."

The Complainant, not referring to a specific loan account, wrote to the Provider by letter dated **18 February 2013** in the following terms:

"Due to the recent hammering we have received in the budget we find ourselves only able to offer your institution €150/m going forward.

...

We wish for some concrete proposal from your institutions ... going forward i.e. re structure or whatever. ..."

In response to receiving notification from the Provider that his loan was being sold, the Complainant wrote to the Provider in **September 2013**, as follows:

"... I object in the strongest possible terms to the sale of my loan on two grounds.

(A) you the bank [Provider] have at no stage engaged with me on any level to resolve my [difficulty] with repayment of my loan. I have filled out financial statement after statements as requested by you yet no proposals have been forth coming from your side. ..."

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The Complainant wrote to the Provider in respect of the secured property on **5 November 2013** advising that he was in receipt of €100 rent per week from this property and requested that:

“... ye see some way [of] putting some formal arrangement in place to stop the ... rocketing of interest going forward. I have engaged [at] every stage but received no positive solutions indeed [any] solutions at all from yourselves. ...”

The Provider wrote to the Complainant on **17 February 2014** in response to a request (which does not appear in the documents provided to this Office) for an alternative monthly repayment amount. The Provider advised the Complainant as follows:

“The monthly payment amount which you have proposed is below the contractual payment required in your loan documentation and is also less than the monthly interest amount being charged in your account. If you were to make payment at the level you propose, this would result in arrears on your account continuing to increase. Your proposal does not represent a sustainable resolution for your mortgage and mortgage arrears. Accordingly, your proposal is not acceptable.”

This letter also sets out the balance outstanding on the Complainant’s loan, the amount of arrears and the monthly repayments.

The Complainant wrote to the Provider on **22 May 2014** in respect to a telephone call he received from the Provider that day. In this letter, the Complainant states:

“The property is let and I am paying 100% of rent to yourselves as I have done since I undertook to do so. ...

The property is for sale ... No interest in purchase to date. ... I again request that you review my case and look at some way of reducing the interest accruing on the loan. ...”

I note that standard financial statements were furnished to the Provider in **November 2011**, **April 2012** and **November 2013**.

Taking into consideration the evidence outlined above and the submissions of the parties, I accept that the Provider engaged with the Complainant once his loan account went into arrears in **April 2010** and gave adequate consideration to his requests. I also accept that there is sufficient evidence to demonstrate that the Provider offered forbearance to the Complainant though not in the manner desired by the Complainant. It appears that the Complainant wanted a full moratorium on his loan, something which the Provider was not willing to offer. I am satisfied that, from the correspondence outlined above, this was explained to, but not accepted by, the Complainant. Simply because the arrangements offered by the Provider were not satisfactory from the Complainant’s point of view does not mean that the Provider engaged in conduct contrary to the provisions of the **Financial Services and Pensions Ombudsman Act 2017**.

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I note that there is no evidence to suggest that the Complainant offered any alternative options or solutions to the Provider despite being asked for proposals on how to address his arrears and his obligations under the loan agreement. The Complainant's correspondence largely comprised unsupported requests for some form of arrangement to be put in place or that previous requests be revisited. In the *Moratorium Request Form*, in response to the question: "If your account has an outstanding arrears balance what are your proposals to repay the arrears?" The Complainant and his wife answer: "Capitalise the arrears, when we get back to work." Having informed the Provider that he proposed to lodge the rent monies to his loan account and having lodged the rent monies, the Complainant states that he awaited the Provider's proposal in light of this. I do not consider this sufficient to support a complaint that the Provider failed to act on the Complainant's requests for a long-term solution. I also note that while a large amount of correspondence has been received in respect of the Complainant's borrowings, this predominantly relates to the family home loan and not the Complainant's investment property loan. Therefore, I do not consider this correspondence to be relevant to this complaint as it does not contain any references to or requests relating to the investment property loan.

Therefore, I do not uphold this aspect of the complaint.

The Third Complaint

The loan the subject of this complaint is a residential investment mortgage loan secured on a property which is not the Complainant's primary residence and as such the CCMA did not apply. Furthermore, the Complainant has not identified any correspondence received under a MARP process in respect of this loan account. The correspondence submitted by the Complainant generated pursuant to a MARP process relates to the Complainant's family home loan. This loan account is not the subject of this complaint.

Therefore, I do not uphold this aspect of the complaint.

The Fourth Complaint

The Complainant states that the Provider failed to provide him with a breakdown of the arrears figure in terms of interest, fees and capital repayments. A number of handwritten letters sent by the Complainant to the Provider have been submitted by the Complainant. I have reviewed these letters and note that none of them seek the information which the Complainant now asserts was not provided to him. Furthermore, there is nothing contained in the *Chronology of Events*, the Provider's internal notes or the Complainant's notes of two telephone conversations with the Provider on **4 August 2012** or **8 May 2013**, to suggest that the Complainant requested this information.

The Provider advises that the Complainant received account statements on an annual basis outlining this information. Owing to the sale of the Complainant's loan, the Provider has been unable to furnish actual copies of the statements issued to the Complainant.

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However, in an email from the Complainant's representative to this Office dated **3 July 2018**, a copy of the account statement for the period **1 January 2009** to **31 December 2009** has been attached. This account statement sets out the monthly interest charge that was applied to the Complainant's account and the total payment due for a particular month. The statement sets out when a change in interest rate occurred and identifies the adjusted interest rate being applied. The statement also contains details of the amount being charged in respect of an unpaid direct debit. It further contains a column on the right-hand detailing the amount outstanding in respect of arrears. Finally, an account summary as at **31 December 2009** is displayed at the bottom of the first page of the statement. There is nothing to suggest that the format of the Provider's account statements changed in the years that followed. Finally, the correspondence outlined above indicates that the Provider made the Complainant aware of the arrears on his account at various points between **April 2010** and **June 2014**.

Therefore, I do not uphold this aspect of the complaint.

The Fifth Complaint

As outlined above, the Complainant states that:

"... despite numerous letters to the firm expressing issues – no acknowledgement that the customer was complaining and no process to put the complaint through a mediation process to obtain a resolution. ..."

The Provider explains that the first complaint received by the Complainant was recorded in a letter received on **19 November 2010** which was in response to a letter from the Provider's solicitors.

The Provider sent a letter to the Complainant on **11 November 2010** in respect of the application of legal costs to the family home loan account. I note that no reference is made to the investment property loan. The Complainant responded to the Provider on **18 November 2010** expressing dissatisfaction at this course of action, stating:

"I note your letter of 11th November 2010. You are attempting to attach a fee to my account of costs incurred by you engaging the services of [the Provider's solicitors]. ..."

The account number reference at the top of the Complainant's letter is the family home loan account. I note that there is no reference in any of this correspondence to the investment property loan account. It is the Complainant's investment property loan that is the subject of this complaint and not his family home loan.

I am not satisfied that the Complainant has identified the specific issues/complaints brought to the Provider's attention during their relationship nor am I satisfied that the Complainant has identified the date(s) on which he made the Provider aware of the various issues/complaints alluded to in his complaint.

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While there were communications between the Complainant and the Provider, some of which I have outlined above, these predominantly relate to the Complainant expressing an inability to make repayments, his personal and family circumstances, requests for a moratorium or some form of alternative arrangement, or that the Provider revisit previous requests. Having considered the evidence in this complaint, I am not satisfied that these communications amounted to a complaint such that would have required the Provider to engage its formal complaints process.

Therefore, I do not uphold this aspect of the complaint.

The Sixth Complaint

As I am not satisfied that the Complainant made a formal complaint to the Provider in respect of his investment property loan, I do not intend to consider whether the Provider was obliged to offer any form of mediation process to resolve the alleged complaints. In any event, even if a complaint had been made to the Provider, I am not satisfied that the Provider would have been obliged to resolve any such complaint through mediation or give the Complainant the option of a mediation process.

Therefore, I do not uphold this aspect of the complaint.

For the reasons outlined above, I do not uphold any aspect of 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**

11 June 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.

