



<b><u>Decision Ref:</u></b>	2020-0203
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Mortgage
<b><u>Conduct(s) complained of:</u></b>	Arrears handling - Mortgage Arrears Resolution Process Failure to provide accurate account/balance information
<b><u>Outcome:</u></b>	Rejected

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

##### **Background**

The Complainants entered into a family home mortgage loan agreement with a financial service provider in **2004**. The First Complainant then entered into a residential investment mortgage loan with the same financial service 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 Complainants have made a complaint in relation to their family home loan regarding of the conduct of the Provider once their loan account went into arrears in **April 2010**.

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

The Complainants provide the following description of their complaint against the Provider.

*“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. No statement to understand if TRS had/had been processed for the term and no communication of TRS reductions.”*

In resolution of this complaint, the Complainants request 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 home owners.*

*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.*

*Review the documentation provided and ascertain the TRS that should have been applied to the mortgage account for their family home.”*

## **The Provider’s Case**

### ***Chronology***

The Provider sets out in its response to this Office a detailed chronology of contacts and events pertaining to the Complainants’ mortgage loan account from the time 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 Complainants’ loan. Consequently, the Provider is working from information that was retained on its Legacy Systems.

### ***Repayment History***

The Provider has furnished a print-out of the Complainants’ loan account statements. The Provider states that it appears the Complainants were making their scheduled repayments on the loan account until **December 2009**. The Provider advises that on **10 January 2010** a direct debit was returned unpaid but was subsequently paid on **25 January 2010**. The Provider points out that the **April 2010** direct debit payment was returned unpaid. The Provider states it was not until after this missed payment that the first correspondence was received from a third party agency on the Complainants’ behalf on **19 May 2010**. This was followed by a letter dated **4 June 2010** from the Complainants seeking a moratorium on their repayments. The Provider advises that it responded on **15 June 2010** enclosing its response to the third party agency and requesting that the Complainants sign certain forms in respect of their moratorium request. The Provider states that this was duly done by the Complainants and an initial moratorium for a 3 month period was approved on capital

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repayments for the period **10 June 2010 to 10 August 2010** inclusive. The Provider submits that no further payments were made until **December 2010**.

The Provider states that the account statements demonstrate that payments continued in **2011** although payments were missed in February, May and June. The Provider states that from **December 2011**, the level of repayments received were substantially reduced and with exception of **December 2012**, were maintained until the loan was sold.

### ***Communication of Arrears***

The Provider has furnished a schedule of correspondence in respect of the arrears on the Complainants' loan. Referring to this correspondence, the Provider states that it commenced correspondence with the Complainants and their representatives in **April 2010**. The Provider advises that it wrote to the Complainants on **26 August 2010** and continued to do so on a regular basis. The Provider submits that it advised the Complainants as to the amount of arrears and the number of months their account was in arrears. The Provider advises that it would not have been policy to provide a breakdown of the arrears amount between capital, interest and fees in those letters.

The Provider states that account statements show the monthly interest charge and fees debited to the Complainants' account. In addition, the last column on the right-hand side of the statement shows the movement on arrears.

The Provider explains that as the Complainants were not making any payments between **April 2010** and the end of **November 2010**, the arrears on their account would mainly have comprised of capital and interest, and a small amount for fees for unpaid direct debits. When payments resumed, the arrears started to decline until **November 2011** when they began to increase again due to a reduction in the monthly payments being made.

### ***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. The Provider states there is evidence in the correspondence provided of a *Notice of Interest Rate Variation* being issued to the Complainants in respect of their loan. It states that this statement clearly sets out the interest rate applying and any changes thereto during the life of the loan.

The Provider submits that it has no reason to believe that the Complainants were 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 Complainants' address and the original Mortgage Loan Application from **2004**.

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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 argues undermines the basis of this aspect of the complaint.

#### ***Failure to Provide Information on TRS***

The Provider explains that a lender grants tax relief for a qualifying mortgage loan directly through the Tax Relief at Source (**TRS**) scheme. The TRS system applies to secured home loans – loans that are secured by the mortgage of freehold or leasehold estates or interests in a principal private residence. The lender gives the relief either by reducing the monthly mortgage payment or a credit back into the loan account.

The Provider states that the tax relief on the amount of interest actually paid can be claimed within a tax year on a qualifying home loan. The relief is subject to rates and thresholds depending on the year of purchase of the property. As set out in the Revenue Commissioner's guidance on the operation of TRS, any missed or late payments results in a reduced or non-payment of tax relief.

The Provider submits that from reviewing the Complainants' account statements, tax relief was first applied in **December 2004** and continued on a monthly basis until **December 2009**. Since the Complainants' scheduled payment for **January 2010** was returned unpaid but subsequently paid and the payments ceased in **April 2010**, the Provider followed the Revenue guidance in the matter and did not apply TRS to the account.

The Provider states that the Complainants could have applied for tax relief on the amount of interest actually paid as part of their annual tax returns.

#### ***Adherence to the requirements of MARP***

The Provider states that there was frequent and on-going correspondence between the parties which commenced following the Complainants' non-payment of their contractual mortgage obligations in **April 2010** and continued until their loan was sold in **June 2014**. It has provided copies of this correspondence.

The Provider does not accept that there was a *repeated failure* to put in place a long-term solution. The Provider advises that the Complainants first requested a long-term solution in their letter of **21 January 2013**. Prior to this, the Provider states, citing a passage from a letter dated **9 August 2010** that communications on behalf of the Complainants from the third party agency indicated that the Complainants were "... *'confident that their current dilemma is short term and they expect to resume employment and consequently commence to re-address their above liability.'*"

The Provider explains that consistent with this, in **2010**, offers of a capital moratorium from **June 2010** to **August 2010** were not accepted and/or repayments on an interest only or reduced basis were not made. This led the Provider to initially pass this matter to its solicitors. The Provider submits that it offered the maximum possible assistance to the Complainants by offering a 3 month full moratorium in **November 2010** on both capital and interest repayments.

The Provider states that the Complainants were advised in **June 2011** that their case had formally entered its MARP process and an assessment was subsequently made that repayment capacity existed to meet monthly payments due on the account in **October 2011**. The Complainants were advised of their right to appeal this decision to the Provider's Appeals Board concerning:

1. The decision of the Provider that the Complainants should continue on a full repayments basis;
2. The Provider's treatment of their case under MARP; and
3. The Provider's compliance with the Code of Conduct on Mortgage Arrears (the **CCMA**).

The Provider submits that for various months throughout **2011**, the Complainants were able to meet their repayment obligations at a level in or about the required contractual repayment amount.

The Provider states that several interactions took place during the first three months of **2012** with the Complainants seeking forbearance and the Provider, having assessed the Complainants' financial situation, ultimately concluded (referring to a letter dated **14 March 2012**) that repayment capacity existed to make reduced monthly repayments of €324.63 towards their loan. The Provider advises that this was approved for a 3 month period. The Provider states that the Complainants were again advised of their right to appeal this decision and that they should seek legal advice in relation to the arrangement offered. The Provider explains the Complainants failed to accept this and a lesser sum of €207 per month was paid in the period that followed.

The Provider states that in accordance with its obligations under the CCMA, it continued to write to the Complainants on a monthly basis in **2012** noting and informing them of the mounting arrears on their account, the date the arrears commenced, the number of missed payments and the balance of the arrears. The Provider explains that it also advised the Complainants that their account continued to be handled under MARP and of the consequences of non-cooperation during the MARP process.

The Provider states that it continued to attempt to work with the Complainants to offer a suitable solution and by letter dated **24 April 2012**, it offered to accept a reduced monthly repayment of €215 for a period of 3 months.

This offer was accepted by the Complainants on **7 May 2012**. The Provider states that it wrote to the Complainants on **27 July 2012** noting that an alternative repayment arrangement had been entered into from **June 2012**, however, it was also noted that the Provider was receiving payments below the agreed amount leading to increased arrears. The Provider submits the correspondence demonstrates there was ongoing communication towards the expiry of reduced payment period which sought to consider the amount that could be serviced thereafter as the full monthly contractual repayment was due to apply from **September 2012**.

The Provider explains that a further 3 month arrangement was entered into on **10 October 2012** pursuant to which the Provider agreed and the Complainants accepted that the mortgage payments be reduced to €305.81 per month. The Provider submits that it was not until the end of this moratorium period that the Complainants sought a long-term solution to their indebtedness and mounting arrears. The Provider refers to a mis-dated letter dated **21 January 2012**. The Provider states that, in correspondence after this request, the Complainants sought to make limited payments no greater than €150 per month.

The Provider advises that it engaged with the Complainants during **February 2013** to assess their ability to make repayments. The Provider states that it continued to communicate with the Complainants regarding their financial position and submits that it is clear from the Complainants' notes of a call dated **8 May 2013** that the Provider was attempting to assess the level of income that the Complainants required for expenditure in order to assess their repayment capacity. The Provider advises that the Complainants did not want interactions by telephone and this resulted in a series of further requests for information in writing and clarifications being provided to complete the Standard Financial Statements (**SFS**) assessment in the months that followed, in particular, information pertaining to an account held with another financial services provider which continued until **November 2013**.

Following its assessment of the financial information provided by the Complainants and the various alternative repayment arrangements available, the Provider offered a moratorium on the loan in **February 2014** on a full capital and part interest basis for a period of 6 months at an agreed rate of €150 per month for the period of **March 2014 to August 2014**. The Provider advises that the Complainants paid this amount throughout the moratorium period. The Provider explains that there was also a series of communications from **August 2013** concerning the sale of the Provider's assets.

The Provider submits that based on its records and the information available, it complied with its obligations to operate a MARP process under the provisions of the CCMA. The Provider states that it assisted the Complainants over the period of their relationship and this is reflected in the number of forbearances offered at different levels which was reflective of the means of the Complainants at the relevant times.

### ***Generation of MARP Paperwork***

The Provider explains that there was frequent and ongoing correspondence between the parties over an extended period of time. As part of the MARP process, in order to consider the Complainants' requests for assistance, it was necessary for the Provider to review the

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Complainants' ongoing financial position as set out in the SFSs which were completed over the period of **2010** to **2014**. The Provider advises that it reviewed the SFSs and at times sought additional information and clarification on the information contained therein as part of its assessment process and in compliance with the MARP process.

The Provider submits that it is not correct to assert that, as a result of the MARP process, it did not take any action. It points out that it offered the Complainants a number of forbearance options in accordance with MARP.

### ***Compliance with the CPC***

The Provider submits that it is satisfied that in its dealings with the Complainants in relation to the subject of this complaint that it has complied with General Provisions 2.1 to 2.4 and Chapter 10 of the Consumer Protections Code (**CPC**).

Over the period of **2010** to **2014** when the Complainants were in arrears, the Provider states that it acted with due skill, care and professionalism to understand the financial challenges the Complainants were experiencing and offer them assistance while dealing with the very challenging financial and real estate markets. The Provider states that its fair and professional approach is reflected in the number of forbearance measures offered throughout the period in order to assist the Complainants with their financial circumstances.

The Provider outlines that its internal notes and memoranda provide reasons for the basis of the moratoriums offered. The Provider submits that it is quite clear upon a review of these documents that the recommendations for continuing with moratoriums were made in an effort to assist the Complainants and their family. In doing so, the Provider submits that it was attempting to act honestly, fairly and professionally in the best interests of the Complainants, and with due skill, care and diligence in seeking to provide suitable payment arrangements which were at variance with the contractual obligations originally entered into and consistent with General Principles 2.1 and 2.2 of the CPC 2012.

The Provider advises that there was concern that the Complainants were not prioritising their payments to it above, for example, unsecured debt such as credit cards and other expenditure. The Provider states it considered that certain levels of indebtedness could be serviced but the Complainants at times failed to achieve and adhere to this notwithstanding the forbearance being provided. In this regard, the Provider identifies Arrears Support Unit assessments relating to moratoriums of **13 March 2012** and **30 August 2012**.

As outlined above, the Provider explains there was frequent and ongoing correspondence between the parties which commenced following the Complainants' non-payment of their contractual loan obligations in **April 2010** and continued until the loan was sold in **June 2014**. During this period, the Provider sought to assist the Complainants with their financial challenges and resolve any complaints from the Complainants in a substantive and responsive manner while under the MARP process. The Provider submits that it has not sought at any point to recklessly, negligently or deliberately mislead the Complainants in the course of its dealings and informed the Complainants throughout the period on a monthly

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basis as to the extent of the mounting arrears on their account, the date the arrears commenced, the number of missed payments, the arrears balance, that the account was being handled under MARP and the consequences of non-cooperation during MARP or non-payment. The Provider submits that this conduct was consistent with the CPC 2012.

The Provider states that it is clear from the correspondence that almost immediately following the first missed payment on the Complainants' loan account, the Provider took action and liaised with the Complainants in accordance with the Irish Banking Federation (IBF) and Money Advice and Budgeting Service (MABS) protocols and offered the Complainants an initial moratorium on their loan in **July 2010**. Subsequently, the Complainants' account went into and was handled under MARP. The Provider explains that the Complainants' financial status was reviewed on an ongoing basis throughout this period and assessments were made as to the nature of repayments that could be made or sustained by the Complainants. The Provider submits that it utilised its resources to review the Complainants' case under applicable internal policies and procedures consistent with General Principle 2.4 of the CPC.

In relation to Chapter 10 of the CPC and in particular, to complainants handling, the Provider submits that it is quite incorrect to suggest for the reasons outlined above, that there was a failure to engage with and respond to requests for a long-term solution with respect to MARP. The Provider states that it is clear that there was ongoing engagement throughout the period of arrears. It is also clear that the Provider engaged with the Complainants to seek to alleviate the burdens they faced and offered solutions pending improvement in their financial situation and the moratoriums offered demonstrates this.

Furthermore, as outlined above, the Provider submits that it was not until the Complainants' letter of **21 January 2013** that a long-term solution was first sought with respect to their loan. The Provider also wishes to point out that in this letter, the Complainants requested that the Provider *"... reinstate the moratorium or make some sort of a long term solution/gesture towards this ongoing problem."* The Provider states that it continued to communicate with the Complainants regarding their financial position and put in place a further longer-term moratorium.

The Provider states it is clear from a review of its files that as part of the review process a series of alternative financial arrangements were considered. The Provider further states that it was clear that the Complainants' ability to meet their repayments obligations to it alone could not be limited to a review of the Complainants' family home loan as the First Complainant also had significant indebtedness including arrears, to the Provider in relation to a residential investment property.

The Provider submits that the servicing and repayment obligations under that loan and/or the shortfall on any potential realisation values was a relevant factor in the overall deliberations of the Provider in considering potential solutions for the Complainants' family home loan. The Provider explains that pending resolution of those issues, a 6 month moratorium was deemed appropriate.

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Referring to the Complainants' letter of **21 January 2013**, the Provider states that the Complainants refer to interest being added to arrears as a result of their inability to service their loan obligations in full. The Provider submits that this was not raised as a complaint but as an issue that could be resolved as part of an arrangement being reached in relation to their loan repayments. The Provider explains that a similar sentiment is conveyed in the Complainants' letter of **5 November 2013**.

The Provider explains that at no stage was it asked to substantiate the interest applying to the Complainants' account. The Provider states that the issues regarding a breakdown of arrears between interest and fees, and the issues of TRS processing only appears to have arisen in the complaint to this Office and not beforehand. The Provider submits that the provisions of Chapter 10.7 to 10.10 of the CPC were never engaged.

### **The Complaints for Adjudication**

The complaints are that the Provider:

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

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

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

*"These documents have been reviewed and have caused 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 or 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 Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on 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 Complainants' loan in **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 responding to this complaint on the basis of information retained on its Legacy Systems.

## **Correspondence**

The Provider received a letter from the Complainants' third party agency dated **9 April 2010** referring to both loan accounts advising that it had been approached by the Second Complainant.

The Provider was informed that the third party agency was in the process of gathering documentation and following receipt of this documentation it would provide details of proposals to clear the debts.

In an internal memo dated **17 May 2010** and drafted by one of the Provider's agents, it states:

*"... [the First Complainant] is looking for a moratorium for 6 months on both loans. He believes that he will have work in a few months time ... 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. ..."*

A *Moratorium Request Form* bearing a date stamp of **18 May 2010** was completed requesting a full moratorium on both loan accounts.

The Provider wrote to the third party agency on **3 June 2010** in respect of both loan accounts and furnished up to date arrears figures.

The Complainants wrote to the Provider by letter dated **7 June 2010** requesting a moratorium on both loan accounts for an 8 to 12 month period in response to a letter received from the Provider dated **28 May 2010**.

The Provider furnished the Complainants with a *Moratorium Request Form* under cover of letter dated **15 June 2010**. The Complainants returned a completed *Moratorium Request Form* to the Provider dated **21 June 2010** seeking a 12 month full moratorium on both loan accounts. The Provider wrote to the Complainants on **2 July 2010** advising them that it was consenting to a capital moratorium for the period of **10 June 2010** to **10 August 2010** inclusive of their family home loan.

On **9 August 2010**, the third party agency explained to the Provider that the Complainants were confident that their financial dilemma was short term and they expected to resume employment. In light of this and other information conveyed in this correspondence, the third party agency asked that the Provider consider offering a 6 month moratorium in respect of both loan accounts. On **17 August 2010**, the third party agency wrote to the

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Provider enclosing a request for a moratorium on both loan accounts. The Provider informed the Complainants on **26 August 2010** of the outstanding arrears balance on their loan account and the full monthly repayment for August. The Provider further advised that it was willing to offer a 3 month capital moratorium on the family home loan. The Provider informed the Complainants that it had reviewed their income and expenditure statement and was of the view that the Complainants were in a position to maintain the interest repayments on their loan.

Solicitors acting on behalf of the Provider sent a letter before action to the Complainants on **22 September 2010** demanding possession of the family home unless the arrears were discharged.

In a letter dated **13 October 2010**, the third party agency requested that any further legal proceedings be adjourned until after the **December 2010** budget. Responding to this letter, on **20 October 2010** the Provider advised the third party agency that it had made an appointment with the Complainants for **27 September 2010** at its Tipperary branch but this was cancelled by the Complainants as the Second Complainant had to attend hospital. The Provider explained to the third party agency that this meeting had not been re-scheduled. The Provider further advised MABS that it had offered a 3 month capital moratorium on the Complainants' family home loan but this was not accepted. The Complainants replied to this letter on **10 November 2010**, in the following terms:

*"... You state 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 dont 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 loan 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 offer structured assistance to us. ..."*

On **25 November 2010**, the Provider wrote to the Complainants in respect of their loan accounts and a conversation with the First Complainant the previous day. The Provider advised that it was offering a 3 month full moratorium on the Complainants' family home loan and a separate letter would be sent to the Complainants in respect of the acceptance of this arrangement.

The Provider wrote to the Complainants on **29 November 2010** advising them that it was consenting to a capital and interest moratorium on the family home loan from **10 December 2010** to **10 February 2011** inclusive. The Complainants appear to have returned their signed acceptance of this moratorium under cover of letter dated **7 December 2010**. I note that there appears to be a gap in communication between the parties from **December 2010** to **June 2011**. This is further evidenced by the *Chronology of Events* furnished by the Provider in its Schedule of Evidence.

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The Provider wrote to the Complainants on **20 June 2011** to advise them as to their arrears balance, loan balance and the amount of their monthly repayments. The Complainants were also informed that the Provider was handling their case under MARP. The Provider requested that the Complainants complete the enclosed income and expenditure schedule and advised that on receipt of this document it would complete a full review of the Complainants' financial circumstances.

An SFS dated **25 August 2011** was received by the Provider in **September 2010**. The Provider wrote to the Complainants on **27 October 2011** updating them as to the arrears balance and the balance outstanding on their loan.

The Provider advised the Complainants that their loan was being dealt with under MARP. The primary purpose of the correspondence, however, was to inform the Complainants that the Provider had carried out an assessment of their SFS. The Provider advised the Complainants that having assessed their application it concluded that repayment capacity existed to maintain the current full repayment on their family home loan. The Provider advised that consideration would be given to capitalising the Complainants' arrears on receipt of 3 further consecutive monthly repayments. The Provider also advised the Complainants that they were entitled to appeal this decision to its Appeals Board.

The Complainants appear to have responded to this letter on **1 February 2012**, stating:

*"... We are in receipt of €402 Job Seekers allowance per week for ourselves and our three children. Our Mortgage Interest Supplement has been cut to €1.79/week to be paid monthly.*

*Our circumstances are straightened. Your recent correspondence indicated that your company believes that we can meet our full mortgage payment of €630/month. This in my view is not possible we can endeavor (sic) to pay you the full Mortgage Interest Supplement of €1.79 per week and €10 per head for each member of the household. This amounts to €51.79/week from our income of €402 + €1.79.*

*I hope that you may look favourably on this proposal. ..."*

The Provider responded to this letter on **7 February 2012**, requesting that the Complainants complete the enclosed SFS along with certain supporting documentation and on receipt of a completed form, it would carry out a review of their financial circumstances. I note this letter also advised the Complainants as to the arrears balance and the balance outstanding on their loan. The Complainants returned a completed SFS under cover of letter dated **13 February 2012**, stating as follows:

*"... You requested Proposals on repayment. I hope to restructure to €200/mt if you look favourably on it. ..."*

The Provider returned the SFS to the Complainants on **15 February 2012** as it required the signature of both Complainants. The Provider also sought personal bank account statements and confirmation whether any other of the Complainants' borrowings had been

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renegotiated/restructured. The Complainants responded to this letter on **5 March 2012**. The Provider wrote to the Complainants on **14 March 2012**, advising that a review of the Complainants' financial circumstances and the information contained in the SFS had been carried out with the Provider concluding that repayment capacity existed for the making of a monthly repayment on €324.63. The Provider was prepared to accept payment of this amount for a 3 month period. The Complainants were further advised of their right to lodge an appeal of this decision with the Provider's Appeals Board. This letter also updated the Complainants as to the arrears balance and the balance outstanding on their loan.

A response was sent by the Complainants to the Provider on **2 April 2012** outlining that:

*"... we note that you say we can pay €324.63 towards our mortgage. We have offered what in our current circumstances is realistic €207.20. We offer this again and request you look favourably on it. It is as much as we can afford. Realism needs to be brought to bear on this matter."*

On **24 April 2012**, the Provider wrote to the Complainants advising that it had carried out a review of their financial circumstance and the information contained in their SFS. The Provider informed the Complainants that having assessed their position it concluded that repayment capacity existed to make a monthly repayment of €215 in respect of the family home loan. The Provider explained that it was prepared to accept this amount for a 3 month period. The Provider also informed the Complainants of their entitlement to appeal this decision to its Appeals Board.

The Provider has also furnished the signature page of an acceptance form signed by the Complainants on **7 May 2012** in respect of a 3 month capital and part interest moratorium to commence on **10 May 2012** with monthly repayments during that period of €215.

On **25 July 2012**, the Provider informed the Complainants that on **5 July 2012**, the European Central Bank announced a reduction in interest rate of 0.25% and of their revised monthly repayments with effect from **1 September 2012**.

The Provider wrote to the Complainants on **27 July 2012** updating them as to their arrears balance and their outstanding loan balance. The letter also referred to an alternative repayment arrangement (**ARA**) entered into with the Complainants which commenced in **June 2012** for a 3 month period, noting that the Complainants had defaulted on the agreed monthly payment of €215 by paying a lesser amount of €207.20.

A note of a telephone conversation with the Provider taken by the First Complainant and dated **4 August 2012** has been submitted by the parties. This note states, in part:

*"... [the Provider] requested €316/mt. Saying there was room for repayment on financial statement. ... Told em we could only struggle to pay €200 per mt. ..."*

*I asked [the Provider's agent] to present our case with a human face to her supervisors. Again we offered €200 ..."*

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The Provider wrote to the Complainants on **13 August 2012** advising them of the arrears balance and outstanding balance on their loan. The Provider also set out the current monthly repayment amount of €215 and that full repayments were due to resume from **10 September 2012**. The Provider enclosed an SFS and asked that this be completed with the relevant supporting documentation. Once this was received by the Provider, a full review of the Complainants' financial circumstances would be carried out and it would contact the Complainants to discuss any repayments options that may be available to them.

The Complainants returned a completed SFS under cover of letter dated **27 August 2012** in which the Complainants conveyed certain information relating to their financial situation. The Provider notified the Complainants by letter dated **28 August 2012** that their moratorium had expired and full monthly repayments of €672.75 would resume from **10 September 2012**.

The Complainants signed a 3 month capital moratorium arrangement on **20 September 2012**, covering the period **10 October 2012** to **10 December 2012**, during which the monthly repayments would be €305.81. A notification was sent to the Complainants on **14 December 2012** informing them that this moratorium had expired and the full monthly repayments would resume from **10 January 2013**.

The Complainants wrote to the Provider in **January 2012** by letter dated **21 January 2012** requesting a long-term solution in respect of their loan:

*"... We are formally requesting that you reinstate the moratorium or make some sort of a long-term solution/gesture towards this ongoing problem. Your own advisers/economists agreed that we were not in a position to pay the full amount whilst the current situation continues, so it seems ludicrous (sic) to us that you keep adding interest to arrears whilst failing to address this as an ongoing problem. ..."*

By letter dated **18 February 2013**, while not citing a specific loan account, the Complainants wrote to the Provider as follows:

*"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 proposals on your institutions behalf going forward i.e. re structure or whatever. Our maximum poss payment to you we state is €150/mt. We await your proposals. ..."*

The Provider received an SFS from the Complainants on **25 February 2013**. The Provider wrote to the Complainants on **27 February 2013**, in relation to the SFS requesting bank statements and utility bills. This letter also outlined the Complainants' arrears balance, the balance outstanding on their loan and the full monthly repayment amount. I note that a similar request was made by the Provider on **31 May 2013**. On **12 March 2013**, the Complainants advised the Provider that they were not in a position to furnish account

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statements from an account held with another financial services provider as it was no longer in use. The Complainants also expressed the difficulty experienced in providing utility bills. The Complainants again requested a long-term solution.

The Provider received an SFS on **25 June 2013** signed by the Complainants on **14 June 2013**. The Provider wrote to the Complainants on **25 June 2013**, in relation to the SFS requesting bank statements, utility bills and evidence of child benefit.

This letter also outlined the Complainants' arrears balance, the balance outstanding on their loan account and the full monthly repayment amount. The Complainants responded to this letter on **1 July 2013**.

In response to a notification from the Provider on **28 August 2013** in respect of the sale of the Complainants' loan, an unsigned letter was written to the Provider in **September 2013**, stating 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 financial statement as requested by you yet no proposals have been forth coming from your side. As a result you now propose to sell my loan with a hyper inflated arrears figure & interest amount that has arisen solely from the fact of your inaction.*

*...*

*It would be much simple & more beneficial for my mental health & my physical health for you the bank to have reached some sort of agreement with me & then to discuss possible sale of said loan with me ..."*

The Provider wrote to the Complainants on **23 September 2013**, in respect of their recently completed SFS requesting certain supporting documentation and outlined the Complainants' arrears balance, the balance outstanding on their loan and the full monthly repayment amount. A letter in similar terms was sent to the Complainants on **15 October 2013**. The Complainants responded to the Provider on **21 October 2013**.

The Provider wrote to the Complainants on **20 February 2014**, in respect of a recent request for a moratorium on their repayments and enclosed a *Confirmation Letter* for the Complainants to sign in order to implement the moratorium. The Provider wrote to the Complainant on **31 March 2014** acknowledging receipt of the Complainants' signed acceptance of a 6 month capital and part interest moratorium and indicated that the repayments for **March 2014** to **August 2014** would be €150 per month.

Finally, while I have not set out details of this correspondence out above, I note that the Provider sent the Complainants a number of letters on a regular basis between **June 2011**

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and **March 2014** pursuant to its obligations under MARP. These letters contained for example, information surrounding MARP, the most recently missed repayment, when arrears first accrued, the arrears amount, number of missed repayments, the outstanding loan balance, the required monthly repayment amount and information regarding fees.

### ***Additional Submissions***

The Complainants' representative has made a number of submissions in a letter dated **7 October 2018**. It is stated that the Complainants have been denied access to their annual loan account statements, interest rate notifications and telephone records. These matters are raised in the context of a data subject access request. These matters, insofar as they relate to the application of the relevant data protection legislation, are more properly matters that should be raised with the Office of the Data Protection Commissioner.

The Complainants' representative further states that:

*"The emoluments paid to the various parties have not been disclosed.*

*There has been no transparency as to who the attorney who it is alleged had authority to replace the regulated person (attorney in the mortgage contract) and interfere with the property register without transparency to the consumers."*

I am not satisfied that the remuneration or emoluments paid to the Provider or any of its servants or agents is relevant to my determination of this complaint.

Furthermore, as to the "... attorney in the mortgage contract", I am not satisfied this forms part of the complaint for investigation. Moreover, it is asserted that there was "... [interference] with the property register without transparency to the consumers." I am not satisfied that this is a matter that comes within the investigative jurisdiction of this Office and is more properly a matter for a court of law and/or the Property Registration Authority.

### ***The First and Second Complaints***

The essence of the first and second complaints is that the Provider failed to engage with the Complainants in reaching a long-term arrangement in respect of the repayment of their loan. In the context of these aspects 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 Complainants 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 services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants.

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The Complainants' loan first entered arrears in or around **April 2010**. Following this, the Complainants made several requests for forbearance and/or a long-term solution. In light of the correspondence outlined above and the submissions of the parties, I accept that the Provider engaged with the Complainants in respect of the arrears on their account and their financial circumstances.

It is clear that the Provider sought to assess the Complainants' financial position on a number of occasions and on foot of this, offered differing types of moratoriums and/or accepted various forms of reduced repayments over 3 to 6 month periods.

While the Provider was required, under the MARP process and the various versions of the CCMA that were in place during the course of their relationship, to consider various options for a distressed borrower, it was not obliged to offer any or all of those options and neither was it obliged to do so on a long-term basis.

The Provider's assessment of the Complainants' position and its communications with the Complainants under MARP can be seen from the correspondence contained in the complaint file, the Provider's submissions and also the *ASU Case Summary* for **October 2011**, **March 2012** and **August 2012**, and the *Credit Committee Proposal* from **November 2013**.

Therefore, I accept that the Provider engaged with the Complainants once their loan account went into arrears in **April 2010** and gave adequate consideration to their requests. I also accept that the Provider offered reasonable forbearance to the Complainants, though not in the manner desired by them. However, simply because the options offered by the Provider are not satisfactory from the Complainants' perspective does not mean that the Provider engaged in conduct contrary to the provisions of the *Financial Services and Pensions Ombudsman Act 2017*.

Furthermore, I note that there is no evidence to suggest that the Complainants offered any reasonable or sustainable alternatives or solutions to the Provider. The Complainants' correspondence largely comprised requests for some form of arrangement to be put in place or that previous requests be revisited. Furthermore, when offering the various forbearance options, the Provider informed the Complainants of their right to appeal the offers to its Appeals Board. There is no evidence to suggest, despite the Complainants' dissatisfaction with these offers, that they ever sought to invoke this appeals process. Therefore, I do not consider there to be sufficient evidence to support the first and second aspect of the complaint that the Provider failed to act on the Complainants' requests for a long-term solution

Therefore, I do not uphold either the first and/or second aspect of this complaint.

### ***The Third Complaint***

The Complainants assert that the Provider sent excessive amounts of MARP correspondence to them. Under the MARP process as set out in the various versions of the CCMA that were in effect during the period to which this complaint relates, communications from financial service providers to borrowers were required to be proportionate and not excessive.

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However, where arrears arose on a borrower's loan account and remained outstanding for more than 31 calendar days, a financial service provider was obliged to write to a borrower within 3 working days outlining certain information concerning their arrears.

It is not disputed that the Complainants' account first entered arrears in **April 2010**. The evidence in this complaint indicates that the Provider first wrote to the Complainants to advise them that their loan was being handled under MARP by letter dated **20 June 2011**. I have reviewed the correspondence sent by the Provider to the Complainants pursuant to MARP following the initial letter of **20 June 2011**. I note that the correspondence required to be furnished to the Complainants under the CCMA in the context of MARP was sent to the Complainants for certain periods during **2011 to 2014** but no more frequently than on a monthly basis.

Furthermore, I note that a large amount of correspondence was sent to the Complainants following the accrual of arrears on their loan account some of which I have set out above. I am satisfied that, as can be seen from this correspondence, it was generated in a different context to the MARP correspondence and related to other aspects of the Complainants' loan account.

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

#### ***The Fourth Complaint***

The Complainants state that the Provider failed to furnish them with a breakdown of the arrears figure in terms of interest, fees and capital repayments. The Provider advises that the Complainants 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 Complainants. The Provider has also offered an explanation as to the format of the annual statements. I note that the Complainants have not denied receiving annual account statements during the course of their relationship with the Provider up to when their loan was sold nor have they disputed the format of these statements. Furthermore, the correspondence in this complaint indicates that the Provider made the Complainants aware of the arrears on their account at various points between **April 2010** and **June 2014**. This correspondence set out the arrears balance on the Complainants' loan, the number of missed payments, the total outstanding loan balance and the required monthly repayment amount.

A number of handwritten letters sent by the Complainants to the Provider have been furnished by the Complainants in support of their complaint. I have reviewed these letters and note that none of them seek the information which the Complainants now assert was not provided to them. Furthermore, there is nothing contained in the *Chronology of Events*, the Provider's internal notes or the Complainant's notes of the telephone conversations with the Provider, to suggest that the Complainants requested the information on which this aspect of the complaint is based.

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

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### ***The Fifth Complaint***

The Complainants state that the Provider failed to furnish statements and/or information regarding TRS deductions. The Complainants now ask this Office to:

*“Review the documentation provided and ascertain the TRS that should have been applied to the mortgage account for their family home”*

The Provider submits that TRS was applied to the Complainants’ account until **December 2009**. As the Complainants began to miss their schedule repayments from **January 2010**, the Provider explains that, in accordance with the guidance from the Office of the Revenue Commissioners, it did not apply TRS to the Complainants’ account. The Provider further submits that the Complainants could have applied for tax relief on the amount of interest actually paid as part of their annual tax returns.

I note that the Complainants have not challenged the Provider’s submission in relation to TRS. Furthermore, the evidence indicates that the Complainants did not seek or request any information from the Provider regarding TRS and its application to their account following the accrual of arrears in **April 2010**. Since TRS was no longer being applied to the Complainants’ loan account in **2010**, it was not possible for it to feature in their account statements. In light of the above, I am not satisfied that the Provider failed to provide statements and/or information regarding TRS deductions.

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

### ***The Sixth Complaint***

As outlined above, the Complainants state 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. ...”*

I have not been provided with evidence that the Complainants brought the specific issues/complaints to the Provider’s attention during their relationship nor have I been provided with evidence that they have identified the date(s) on which they made the Provider aware of the various issues/complaints alluded to in their complaint to this Office. While there were communications between the Complainants and the Provider, some of which I have outlined above, these predominantly relate to the Complainants expressing an inability to make repayments, their personal 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 required the Provider to engage its formal complaints process.

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

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### ***The Seventh Complaint***

As I have no evidence that the Complainants made a formal complaint to the Provider in respect of their loan, I do not believe it appropriate 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 Complainants 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

Pursuant to **Section 62** of the ***Financial Services and Pensions Ombudsman Act 2017***, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

**(a) ensures that—**

- (i) a complainant shall not be identified by name, address or otherwise,**
  - (ii) a provider shall not be identified by name or address,**
- and**

**(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**

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