



<u>Decision Ref:</u>	2020-0253
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Arrears handling - Mortgage Arrears Resolution Process
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered into a mortgage loan agreement in respect of an investment property with a financial services provider in **May 2007**. Their mortgage loan was subsequently sold to a third party and the Provider, against which this complaint is made, was appointed to service the loan. A special condition of the loan agreement was that repayments would be interest only for the first 120 months (10 years) and on the expiry of this period, repayments would revert to capital and interest. This was due to occur in **July 2017**, however, the Provider did not become aware of this until **December 2017** and notified the First Complainant of the change in monthly repayments by email in **January 2018**. This email was not received. The change in repayments was due to come into effect in **February 2018**. Further to this, the **February 2018** direct debit was not presented to the Complainants' account and this resulted in the missed payment being classified as arrears.

The Complainants' Case

The First Complainant explains that she first became aware in **February 2018** that the interest only repayment in respect of the mortgage loan had not been deducted from the Complainants' joint account. The First Complainant states that she emailed to Provider to request information as to what had happened. The First Complainant outlines that the Provider advised her that monthly repayments had increased from approximately €320.00 to €1,810.00 and that the Provider had informed her of this by email. The First Complainant maintains that she did not receive the Provider's email and *"... was extremely surprised that they would choose this method to advise me of the increase as [the Provider] were in the habit of writing to myself & my husband individually each month ..."*

The First Complainant states that the email address used in respect of the un-received email was "First Complainant@eircom.net" whereas previous email correspondence sent to the First Complainant was sent to 'First Complainant@eircom.net'. The distinction between the two being the use of inconsistent quotation marks: "and' as opposed to 'and'. The First Complainant explains that she wrote to the Provider expressing the view that it was "... most unprofessional to communicate in this regard with only 2 weeks notice of such a huge increase in the repayment."

The First Complainant advises that she requested a copy of the mortgage loan terms and conditions specifically with respect to notice periods required when repayments are changed from interest only to capital and interest. The First Complainant "... eventually received an inadequate response in December 2018 which I am dissatisfied with as they claim that the e-mail was not sent to the wrong address ..." The First Complainant also explains that although the arrears on the mortgage loan increased due to the Provider's error, the Provider is not offering any solution or assistance with this matter.

In resolution of this complaint, the Complainants suggest:

"I believe that the repayment for February 2018 should be capitalised onto the mortgage and not added to the arrears figure as they have agreed that this was their error and I would appreciate the ability to increase my mortgage repayments monthly to address the outstanding arrears figure which came about some years previously ... I am not in a position to clear the arrears in a lump sum but have continued to meet my full mortgage repayment monthly since last March ..."

The Provider's Case

Change in Repayments

The Provider refers to the Special Loan Offer Conditions contained in the Facility Letter which sets out that it was agreed that the Complainants would pay interest only on the mortgage loan for the first 120 months and after this period, repayments would revert to capital and interest repayments for the remaining term of the loan.

The Provider advises that the switch to capital and interest repayments was due to take place in **July 2017**, however, as explained below, this did not happen because the data received from the owner of the loan did not support this.

Notification of Change in Repayments

The Provider states that it is "... now aware that the Complainants did not receive the e-mail of 26 January 2018."

In the Final Response letter dated **7 December 2018**, the Provider states that it was satisfied that the email address used to send the email of **26 January 2018** was valid and correct as it had previously sent correspondence to the First Complainant by email. However, “... upon closer inspection of the e-mail ... we note that the e-mail address started with a double inverted comma (“) and finished with a [single] inverted comma (’).” The Provider explains that it tested this and determined that emails do not successfully deliver when sent in this format. However, the sender of the email has no record of receiving a notification that the email was undelivered.

The Provider states that it is:

“... extremely sorry for this oversight as despite inspection of the email address several times we did not see the inverted comma (“). This explains why we later apologised for this in our letter dated 31 May 2019.”

The Provider also acknowledges that consideration was not given to issuing a letter of the impending change in repayments and:

“... wholeheartedly accept that we should have done more in communicating the important change regarding the scheduled monthly repayment to the Complainants. We acknowledge that an email, 2 weeks in advance of the change, to only one party, was not fair to the Complainants. We are aware that we have fallen extremely short and we would like to reiterate our apologies for this.”

Unpaid Direct Debit

The Provider explains that on **19 February 2018**, it was notified that the direct debit did not present to the Complainants’ account during a telephone call with the First Complainant. Upon investigation, the Provider states that the Complainants’ repayment schedule was due to change from interest only repayments to capital and interest repayments in **February 2018**. However, due to human error, the Provider did not amend the Complainants’ direct debit on time and it failed to present to their account.

To resolve the issue, it was agreed that the Complainants would manually pay the outstanding amount and a letter was issued to the Complainants on **4 April 2018** which acknowledged the mistake and advised the Complainants that a manual payment would be required to bring the loan account up to date. The Complainants were provided with a telephone number to call to arrange this.

The Provider states:

“While the letter was sent in line with our procedure, on reflection, we acknowledge that a telephone call in advance of the letter issuing would have been more beneficial, to discuss the situation with regards to the error, the repayment increase, the arrears and the steps required to resolve this matter.”

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It is explained the above issue was compounded by the Complainants' loan facility not rolling off the interest only period in **July 2017**. The Provider advises that in **December 2017**, it reviewed the terms of the original loan Facility Letter dated **25 May 2007** and noted that the facility letter was incorrectly set up as interest only for the entire mortgage term. The error occurred because the loan product was incorrect when it was transferred from the original loan owner. To rectify this, the loan facility was updated to reflect the terms of the Facility Letter. The Provider states that it issued a letter dated **22 February 2018** to confirm these changes.

Treatment of Missed Payment

While the Provider accepts that the scheduled **February 2018** repayment was unpaid through no fault of the Complainants, it was considered a missed loan payment when the loan account was not brought up to date.

In an attempt to resolve matters, the Provider advises that in its apology letter of **4 April 2018** it requested that the Complainant contact the Provider so a manual payment could be taken. However, the Complainants did not contact the Provider. The Provider states that this repayment remained outstanding until it obtained consent from the loan owner in **May 2019** to capitalise the missed repayment.

The Provider explains that capitalisation of arrears is an alternative repayment arrangement afforded to some borrowers whereby arrears are added to the outstanding mortgage loan balance. The increased loan balance is then repaid over the remaining term of the loan. As stated in the Provider's letter dated **31 May 2019**, capitalisation resulted in the following:

- The arrears balance reduced from €12,533.26 to €10,723.24
- Monthly repayments increased from €1,810.32 to €1,817.15 with effect from **July 2019**.

Arrears

The Provider states that it will always endeavour to work with borrowers to see if a resolution can be reached regarding arrears. However, all commercial decisions including consideration of proposals regarding arrears rest with the loan owner.

With regard to the Complainants' historical arrears, the Provider explains that these accrued before its management of the loan and it is not aware of what engagement the Complainants may have had with the previous loan owner in respect of arrears.

The Provider outlines that as the security for the mortgage loan is an investment property, the options made available by the loan owner include paying the arrears, seeking to refinance elsewhere and voluntarily selling the secured property. Capitalisation of arrears is not an option the loan owner offers to borrowers who have mortgages on investment properties.

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The Provider states that to assist any borrower, it always endeavours to seek a proposal from borrowers regarding arrears and this requires completion of a Standard Financial Statement (SFS) and supporting documentation which the Provider requested by letter dated **22 February 2018**. However, as stated by the Complainants in correspondence to this Office, they do not see the benefit of this when they cannot obtain new finance and are not willing to sell the secured property.

The Provider states that although the Complainants have stated that they are committed to repaying the arrears but not in a lump sum, no payments have been received to reduce the outstanding arrears. The Provider issued regular correspondence to the Complainants regarding their arrears which advised the Complainants to contact the Provider to discuss their arrears. The Provider states that correspondence regarding arrears has not been acknowledged by the Complainants. The Provider also advises that the loan owner has not exercised its rights under the Facility Letter by demanding repayment of the loan or enforced its right to appoint a receiver over the secured property. Referring to the Final Response letter, the Provider points out that it indicated its willingness to engage with the Complainants regarding their arrears.

The Provider, in its response dated 5 March 2020 to this Office, also refers to discussions with the First Complainant subsequent to the date of the complaint to this Office, which took place on **26 February 2020** regarding a possible capitalisation of arrears and a term extension, and as at **5 March 2020**, the Provider was awaiting a response from the Complainants.

The Complaints for Adjudication

The complaints are that the Provider:

1. failed to notify and/or adequately notify the Complainants that their mortgage loan repayments were due to switch from interest only repayments to full capital and interest repayments in **February 2018**;
2. failed to present a direct debit to the Complainants' joint account in **February 2018** and failed to notify the Complainants of the unpaid direct debit;
3. wrongfully and/or unreasonably classified the missed direct debit payment as arrears;
4. furnished an *inadequate* response in the Final Response letter dated **7 December 2018** regarding the email of **26 January 2018**; and
5. failed and/or refused to offer any solution or assistance with respect to the Complainants' the arrears despite an increase in arrears caused by the Provider's error.

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Decision

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

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

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

A Preliminary Decision was issued to the parties on 6 July 2020, outlining preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

Loan Offer Letter

The Loan Offer Letter is dated **25 May 2007** and was signed by the Complainants on **29 May 2007**. The relevant part of the *Special Loan Offer Conditions* state:

"[The financial services provider] has agreed that the borrower(s) pay interest only for the first 120 months of this loan facility. Thereafter, repayments will revert to capital and interest for the remaining term of the loan."

Notification of Payment Change

The Provider's system notes indicate that one of its Case Managers tried to contact either or both of the Complainants on **26 January 2018**:

"Tried to contact borrower via phone to advise that the account has reverted to C&I and that the payments will be increasing significantly to €1,810.02 p/m. No response to phone call. ..."

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The Provider wrote to the First Complainant by email dated **26 January 2018** as follows:

“Following on from my email on the 20th of October 2017 can you please provide me with an update regarding your debt outstanding? I note that you were to look at your options regarding re-finance and you were to advise us of the outcome by the end of September 2017. It is vital that we get a proposal towards debt outstanding by the 8th of February 2018.

I also need to advise that the repayments on your account will be reverting to capital and interest payments, as per your original agreement the Interest only payments on the account were for the initial 10 years and would revert to capital and interest payments thereafter. This means that your new payment will be €1,810.02p/m and the direct debit will be amended starting from the 10th of February 2018. ...”

I note, as acknowledged and accepted by the Provider, the First Complainant’s email address begins with a double inverted comma and ends with single inverted comma, and the Complainants therefore, did not receive this email.

The Provider wrote to the Complainants by letter dated **22 February 2018** to advise that the interest only repayment period on their loan account had expired and that repayments would revert to capital and interest with the direct debit mandate changing to €1,810.02 from **10 March 2018**. The letter also advised the Complainants that the direct debit would change automatically and no further action was required from the Complainants.

February Direct Debit

The Complainants’ account statements show that a direct debit was not presented to the account for **February 2018**.

In a letter dated **4 April 2018**, the Provider wrote to the Complainants in respect of the **February 2018** direct debit payment. The Provider advised that this error occurred due to a change in the Complainants’ payment schedule and the reversion to capital and interest repayments. The Complainants were also advised that the total amount of the missed payment was €1,810.02 and that no additional charges were applied to their account in respect of this error.

By letter dated **31 May 2019**, the Provider advised that, as agreed, the missed payment from **February 2018** had been capitalised and thus reduced the Complainants’ arrears balance from €12,533.26 to €10,723.24. The Provider also acknowledged, for the first time, that the email of **26 January 2018** was not received due to the use of inverted commas.

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Arrears

By email dated **19 February 2018**, the Provider wrote to the First Complainant as follows:

“Following on from our discussion or (sic) client also requires a proposal towards the debt outstanding and a Statement of Affairs to be completed.

Please see attached Statement of Affairs.

We would require that this be completed and returned with your proposal towards the debt outstanding no later than 19th March 2018.”

During a telephone conversation which took place between the Provider and the First Complainant on **19 February 2018**, the First Complainant indicated to the Provider’s agent that she was unable to refinance the mortgage loan with a named financial services provider. She also indicated that she had *no intention of selling* the secured property. As such, the First Complainant saw her only remaining option as settling the arrears in a lump sum payment. The Provider’s agent explained why an SFS was needed. In essence, for the loan owner to consider any proposal received from the Complainants regarding how they intended to address the arrears, a formal proposal and an SFS together with supporting information was required. This was the case even if the proposal was a lump sum payment. The formal proposal, SFS and supporting documentation would be considered by the loan owner and a decision would be taken as to whether to accept the proposal or in certain circumstance, suggest an alternative method of clearing the arrears. The First Complainant expressed the view that she did not see the need for an SFS in light of the fact that the only option available to the Complainants was a lump sum payment. The First Complainant also informed the Provider’s agent that she had not received the email of **26 January 2018** and referred to by the Provider’s agent at the beginning of the call and that the February loan payment was not presented to the Complainants’ account.

The Provider wrote to the Complainants on **22 February 2018** advising:

“... we are committed to working with our customers who are experiencing financial difficulties.

Please find enclosed a Statement of Affairs ... The SOA is designed to provide full and clear details of a mortgage holder’s individual financial circumstances. Completing the SOA allows [the Provider] to assess your financial circumstances and identify the most appropriate solution for you.”

Responding to a letter received from the Provider in respect of her complaint (discussed in the following section), the First Complainant wrote to the Provider by email dated **12 March 2018**:

“I received your letter dated the 5th of March this morning and note that you have received your repayment of €1810 for March.

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I am disappointed to note that you have not addressed the increased arrears figure due to the February repayment not having been taken or requested or notified to me. I am unwilling to cooperate in completing your SFS until this issue has been dealt with as I was not notified of the due repayment for February nor did you request it by direct debit from my account therefore I cannot understand you adding this repayment to my arrears figure."

The Provider has furnished a number of letters issued to the Complainants regarding their arrears beginning from **10 April 2018**. The letters identify that arrears first accrued on the loan account in **December 2008** and at the date of the April letter, stood at over €10,000. These letters also contain a paragraph advising the Complainants to contact the Provider to discuss ways in which it could assist the Complainants.

In an email to this Office dated **18 January 2019**, the First Complainant states:

"I am unwilling to complete a Standard Financial Statement for [the Provider] as they are unwilling to offer any assistance in repaying these historical arrears, their attitude is that the arrears be paid in a lump sum, the property sold or repossessed. I cannot see the benefit to [the Provider] in obtaining a completed Standard Financial Statement as they are unwilling to enter into any negotiations with regard to repayment of the arrears balance (I am more than willing to repay the arrears outstanding but unable to do it in a lump sum)."

Investigation of Complaint

The First Complainant made a complaint to the Provider on **3 March 2018**. The complaint was acknowledged by the Provider by letter dated **5 March 2018** and again on **9 March 2018**. The Complainant received a number of regular updates regarding the investigation of the complaint until a Final Response letter was issued on **7 December 2018**. In the Final Response letter, as pointed out by the Complainants and accepted by the Provider, the Provider advised the First Complainant that it had *"... uncovered no evidence that [the Provider's] e-mail dated 26 January 2018 was sent to the wrong e-mail address."*

The First Complaint

The first complaint is that the Provider failed to notify and/or adequately notify the Complainants that their mortgage loan repayments were due to switch from interest only repayments to full capital and interest repayments in **February 2018**.

The *Special Conditions* of the loan agreement provide that repayments under the loan would be interest only for the first 120 months. As such, for the first 10 years of the loan the Complainants' monthly repayments were around €320.00. On the expiry of the interest only period, **July 2017**, the loan was due to revert to full capital and interest repayments. This did not occur as scheduled.

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The reason advanced for this was the incorrect recording of the loan's repayment details by the original loan owner. This error was not discovered by the Provider until **December 2017**. The system notes indicate that the Provider tried to contact at least one of the Complainants by telephone to advise them of the upcoming change in repayments but there was no answer. The Provider then wrote to the First Complainant by email dated **26 January 2018** to advise her of the upcoming change to repayments and that from **February 2018**, monthly repayments would revert to capital and interest, thus increasing to €1,810.02. While the Complainants did not receive this e-mail, there is no evidence to suggest that the Provider was or ought to have been aware that this email did not successfully send or that it was not received.

The evidence in this complaint indicates that the Provider corresponded with the Complainants predominantly by letter and in many instances by separate letters; not by email. The expiry of the interest only period and reversion to full capital and interest repayments was quite an important event and involved a substantial increase in monthly repayments of almost €1,500.00. The Provider was aware from **December 2017** and sought to inform only the First Complainant in **January 2018** that in two weeks' time, repayments under the loan would increase to €1,810.02.

Notification of Payment Change

In terms of the efforts made by the Provider to inform the Complainants of the change in repayments and the manner in which it sought to do so; I would make a number of observations.

It is not clear why the Provider only sought to inform the First Complainant. The Second Complainant is one of the borrowers and attempts should have been made to advise him of the upcoming change. It is not clear why this was not done especially as the Provider has written separately to the Complainants regarding the loan on several occasions.

Furthermore, it is not readily apparent why this means of communication was used, particularly given the history of written correspondence. In the circumstances of this complaint, the most appropriate means of communicating this information would have been by letter to both Complainants.

The primary purpose of the email in question was not to notify the First Complainant of the upcoming change in repayments. The email firstly discusses the Complainants' outstanding debts and the notification regarding the change in repayments is contained in the second paragraph. If email was the chosen method of communicating with the First Complainant, then the notification ought to have been contained in a stand-alone email.

The Provider attempted to make telephone contact with one of the Complainants on **26 January 2018**. This was unsuccessful. The Provider then emailed the First Complainant. It is clear that the first part of this email would require, however, no response was received.

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Therefore, the steps taken by the Provider comprise an unanswered and unreturned telephone call with no voice message and an email, to only one Complainant, that, while understood to have been successfully sent and assumed received, was not acknowledged.

Furthermore, the interest only period was due to last for 10 years. While I am satisfied that both parties are obliged to be familiar with the terms and conditions of the loan agreement, especially the atypical payment terms of this loan, given the passage of time, it is understandable that the parties may have forgotten or lost track of when the interest only period was due to expire.

However, the Provider was in fact aware of the change that was supposed to have occurred and sought to notify the Complainants of this and, in the absence of any awareness on the part of the Complainants and viewed in the context of the duration of the interest only period, I am not satisfied that the efforts made by the Provider were sufficient.

Further, I do not consider the Provider's efforts were appropriate in light of the significant jump in the amount of the monthly repayments and the potential impact this could have on the Complainants.

Notice

The Provider attempted to give the Complainants two weeks' notice of the change in their monthly repayments. There are no provisions contained in the Facility Letter or the terms and conditions attached to the loan explicitly stating the notice period required in this instance. Nonetheless, I am satisfied that it was reasonable to expect the Provider to inform the Complainants of the change in repayments and as is clearly the case, the Provider sought to do so by giving two weeks' notice. Equally, any period of notice must be sufficient and adequate in the circumstances.

In considering this aspect of the complaint, I note the following provisions of the **Consumer Protection Code 2012** (the **Code**):

"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

...

2.2 acts with due skill, care and diligence in the best interests of its customers;

...

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:

a) the urgency of the situation; and

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b) the time necessary for the consumer to absorb and react to the information provided.”

When determining an appropriate period of notice in this instance, it is important to bear in mind a number of factors, factors which the Provider should have considered when dealing with the Complainants. First, the duration of the interest only period; second, the increase in the monthly repayments; third, the impact the change would have on the Complainants; and fourth, affordability and the Complainants' financial circumstances (in particular any arrears). The central theme underpinning these factors, as referred to above, is the need for sufficient, adequate and reasonable notice.

Taking the foregoing factors into consideration and the circumstances of this complaint, I am not satisfied that two weeks' notice was appropriate. While the Provider only became aware of the precise payment terms of the Complainants' loan in **December 2017**, it appears that it was possible to notify the Complainants in advance of **26 January 2018** and nothing has been presented to me to contradict this conclusion.

The Second Complaint

The second complaint centres on the **February 2018** direct debit payment in that the Provider failed to present the direct debit for this month and also failed to notify the Complainants of this. It is accepted by the parties that the direct debit was not presented for **February 2018**. The Provider explains that the direct debit payment was due to change in February to the full capital and interest repayment amount. However, due to human error and no fault on the part of the Complainants, the Provider did not amend the Complainants' direct debit on time and it failed to present to their account.

While it is unfortunate that the direct debit was not presented in **February 2018**, I am not satisfied that this was the result of any unreasonable or wrongful conduct on the part of the Provider. It does appear to have been an error.

Moving on to the Provider's failure to notify the Complainants about the missed payment, I note that direct debits were scheduled to be presented to the Complainants' account on 9th day of each month. The First Complainant contacted the Provider on **19 February 2018** to advise that the February payment had not been debited and that correspondence is usually received in advance of an upcoming payment outlining the amount of the payment but no such correspondence was received. The Provider's agent did not seem to be aware that the payment was not presented. Additionally, the Provider's internal log contains an entry dated **19 February 2018** stating that *“Direct debit did not call on the borrowers account for February 2018.”* There is no evidence that the Provider was aware of the missed direct debit payment before **19 February 2018**. This was 10 days after it was scheduled to be presented to the Complainants' account.

I am satisfied that it was reasonable to expect the Provider to notify the Complainants that the direct debit payment was not presented as scheduled to allow them to address the issue.

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However, there is no evidence showing that the Provider notified or attempted to notify, the Complainants of the missed payment.

The Third Complaint

Leading on from the above, the third complaint concerns the Provider's handling of missed payment. The Provider states that it was treated as a missed payment when the loan account was not brought up to date.

It is not clear precisely when the missed payment was classified as arrears. From the arrears correspondence, I can see that in the **April 2018** arrears letter, the missed payment had not been added to the arrears balance. However, it had been added to the arrears balance on the **July 2018** arrears letter.

I am satisfied that the Provider gave the Complainants a reasonable opportunity to pay the missed direct debit payment and did not immediately treat it as arrears. Furthermore, the First Complainant was aware of the issue from **19 February 2018**, however, no efforts appear to have been made by the Complainants to make the missed payment whether in the interest only amount or the full capital and interest amount. Moreover, simply because the payment was not called for does not mean that the Provider was obliged to capitalise it. Once the Complainants were given a reasonable opportunity to make the payment, I accept that the Provider was entitled to treat it as arrears. Therefore, I am not satisfied that the Provider wrongfully and/or unreasonable classified the missed direct debit payment as arrears.

The Fourth Complaint

The Complainants are dissatisfied with the adequacy of the Provider's response regarding the position taken in respect of the un-received email in its Final Response letter.

Looking at the email address used, the First Complainant's email address is spelled correctly, contains an underscore in the right place and has the correct domain name. However, the cause of the email not being received is somewhat unusual and is attributable to the use of a double inverted comma at the beginning of the email address and a single inverted comma at the end.

This aspect of the complaint must be considered in the context of the above paragraph together with the fact that the Provider had no evidence to suggest the email was undelivered. Furthermore, while the First Complainant believes the Provider's final response was inadequate in this regard, she was unable to identify why the email was not received.

Therefore, based on the information available to the Provider and the unusual nature of the cause of the problem, I am not satisfied that the Provider's response as contained in the Final Response letter was unreasonable.

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I am satisfied of this conclusion notwithstanding the fact that Provider subsequently, through further investigations, determined the reason why the email was undelivered.

Separately, the First Complainant made a complaint to the Provider on **3 March 2018**. The Provider explained the cause of the missed direct debit payment by letter dated **4 April 2018**. However, a Final Response letter was not issued until **7 December 2018**. Having considered the nature complaint and the information available to the Provider at the time the complaint was made, I do not understand the reason why it took 9 months to issue its Final Response. As such, I am not satisfied that the Provider dealt with the complaint within a reasonable timeframe.

The Fifth 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 Complainant.

The Provider has set out the options it is willing to offer borrowers in respect of loans secured by investment properties. The Provider has also made clear to the Complainants the process that must be followed when proposals or arrangements are sought to be put in place to address arrears. I do not consider the requirement to provide an SFS to be unreasonable.

The First Complainant maintains the view that the only option available to her to address the arrears was to make a lump sum payment. This is because, as stated during the telephone conversation on **19 February 2018**, the First Complainant was unable to refinance the loan. The Provider's email of **26 January 2018** though not received, suggests that the Complainants were "... to look at your options regarding re-finance and you were to advise us of the outcome by the end of September 2017." However, no evidence beyond the financial services provider mentioned during the above call has been furnished by the Complainants to demonstrate that they are unable to refinance. Furthermore, the First Complainant unequivocally stated that she was unwilling to sell the secured property. Therefore, I do not accept that there was only one option available to the Complainants, particularly in light of the fact that no formal proposals were put to the Provider and the Provider had no opportunity to engage with them regarding any such proposal based on their financial circumstances.

The evidence in this complaint demonstrates a distinct unwillingness on the part of the Complainants to complete the SFS and engage with the Provider. As such, the Provider had no means of assessing the Complainants' financial position or ability to address the arrears.

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This would also have prevented Provider from engaging in any meaningful way with the Complainants regarding the suitability of any possible options.

There is no evidence of any formal proposals being put to the Provider prior to the Complainants making their complaint to this Office. There is also no evidence, from either the account statements or the arrears correspondence, to show that the Complainants made any payments towards their loan beyond the contracted monthly repayment or made any contribution towards their arrears even after the **February 2018** direct debit payment was capitalised. There is also nothing to suggest that the Provider sought to prevent the Complainants from doing this.

Therefore, I accept that the Provider is not obliged to offer a particular set of options to the Complainants regarding their arrears. I also do not consider it unreasonable for the Provider to require the Complainants to submit a formal proposal regarding their arrears. While the First Complainant does not see the utility in completing an SFS, it is also not unreasonable in circumstances where there are significant arrears on the mortgage loan account going back a number of years for the Provider to request an SFS irrespective of the proposal being put forward by the Complainants. Sufficient information must be made available to the Provider to enable it assess the feasibility and affordability of whatever proposal is being made and to allow it to meaningfully engage with the Complainants.

Finally, I do not accept that the Provider has failed to engage with the Complainants regarding their arrears. Quite to the contrary, the Provider has displayed a willingness to engage with the Complainants regarding their arrears.

Goodwill Gesture

The Provider states that:

"... in recognition of the disappointing customer service failings in our process [the Provider] would like to offer €1,000 in compensation. If the Complainant would like to accept this, in full and final settlement of this dispute, then we kindly ask that they confirm this in writing to your office together with details of their nominated personal bank account ... and we will facilitate payment."

The Provider has offered compensation to the Complainants in the sum €1,000.00 for the customer service failings it has identified in its submissions and also expressed its apologies.

Given the Provider's willingness to accept its shortcomings, apologise and offer €1,000 to the Complainants, I do not uphold this complaint.

/Cont'd...

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**

27 July 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.