Decision Ref:	2020-0292
Sector:	Banking
Product / Service:	Investment/buy to Let Mortgage
Conduct(s) complained of:	Arrears handling - buy-to-let
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered into a loan agreement with the Provider to buy a residential investment property (**RIP**) in Dublin. They defaulted on the repayment of the mortgage loan in June 2011.

The Complainants' Case

The Complainants argue that when they defaulted on the repayment of their mortgage loan in June 2011, they had been made redundant from their employment. The Complainants argue that they made a number of proposals to sell or surrender the secured property to the Provider over a period of years dating back 2013. The Complainants say that the Provider refused to engage with them in this regard. The Complainants sold the secured property with a shortfall remaining on the loan and the loan was ultimately sold to a third party entity.

The Complainants submit that in late 2013 and early 2014, the first Complainant had discussions with one of the Provider's mortgage managers, Mr D. The Complainants were initially told to go to the local branch where the first Complainant met with Ms K. The first Complainant submits that he made a proposal to the Provider through Mr D and reached a verbal agreement with it in relation to the voluntary sale and write-off of any outstanding balance on the loan. He contends that the Provider later reneged on the agreement.

In February 2014, further to receipt of a letter in relation to his home loan mortgage, the first Complainant states that he spoke to the arrears unit legal adviser and was told that the legal adviser's notes show that the first Complainant had refused the Provider's offer to restructure the loan.

He says that he informed the legal adviser that he had not received any formal offer of any kind from Mr D or the Provider in relation to the loan. He says that he also informed the legal adviser that he had been in touch with Mr D regularly since September 2013 about restructuring the loan but received nothing in writing. He states that he informed the legal adviser that he did not believe that this conduct was in compliance with the Provider's MARP process.

The Complainants sent a written proposal in relation to their loans to the Provider by letter in February 2015. In a letter to the Provider dated 25 June 2015, the first Complainant indicated that he visited the branch on 3 June 2015 for an update on the situation having received no word back from the Provider on his proposal. The first Complainant states that the mortgage adviser in question requested proof of income from him. The first Complainant states that he was surprised by the request and the adviser in question expressed surprise that there was no requirement or request for proof of income communicated to him prior to this. When he returned on 15 June 2015 with proof of income, the first Complainant states that he was advised that it was not possible to discuss restructuring options and the Provider's arrears unit would be in contact. The first Complainant contacted the Provider on 25 June 2015 as no one had been in contact about his proposals. The Provider stated by letter dated 25 June 2015 that the Complainants' case was sent for review on 23 June 2015.

The first Complainant states that when he secured contract work in another European country in 2016, the Complainants were offered a restructure agreement on their home loan and another buy to let loan for three years but were never offered any sort of agreement in relation to the RIP at issue in this complaint. The first Complainant submits that there was no response from the Provider to his proposals until February 2018 when the Complainants received a letter granting them permission to sell the property on a voluntary basis, but on the basis that they would be liable for the residual debt. The Complainants state that the RIP was sold on 1 August 2018 as part of their agreement but contend that the parties had not reached agreement in respect of the residual debt which, as of 13 August 2018, was €227,438. The Complainants argue that the majority of the shortfall is comprised of accrued interest and would have been considerably less if their proposals were accepted back in 2013. The Complainants further contend that the Provider sold their debt to a third party Provider despite the agreement in relation to the voluntary sale and no agreement being reached on the residual debt. They question why the Provider would not write down their loan to the value for which it was subsequently sold to the third party Provider in question.

The first Complainant submits that the Provider's letter dated 5 September 2018 did not address his contention in respect of ignoring his proposals for six years and that it did not address his contention in respect of the residual debt. The Complainants further contend that the Provider mishandled the complaint. They argue that the first Complainant understood from a conversation on 9 August 2018 that a complaint had been logged on their behalf but no confirmation of this was received. The Complainants reject the Provider's goodwill gesture of €200 in recognition of the fact that not all issues flagged in the email of 13 August 2018 were addressed in the letter of response dated 5 September 2018.

/Cont'd…

The first Complainant further contends that the Provider excluded them from a scheme which offered debt write-down for landlords willing to sell the property. They argue that they cannot accept the explanation that the scheme was only offered to landlords who did not have any loan security.

The Complainants argue that despite their efforts to resolve the difficult financial situation they found themselves in, the Provider has left them in a worse position financially and caused the residual debt to increase by over €100,000 due to a high interest rate charge on arrears.

The Complainants do not accept the statement made by the Provider that they did not provide information pertaining to their income. The Complainants point to the number of phone calls made by them in response to letters and queries, indicating that they were in constant contact with the Provider, which was well informed of their situation. The Complainants in particular draw attention to two calls (identified as calls 12 and 15) which they feel represent the recurring theme experienced by them in dealing with the Provider. The Complainants state that they are not interested in the increased €3,000 compensation offer for what they deem the "*deplorable behaviour*" of the Provider that has left them "*severely impaired*" oved the last nine years.

In a later submission, the Complainants argue that when they first approached the Provider in June 2011 after the first Complainant was made redundant, they were assigned Mr P as their account manager. The Complainants argue that they met Mr P twice during the summer of 2011, explaining that they could not meet full repayments on their rental property. The Complainants state that Mr P advised them to sell the property and following his instructions, they attempted to sell the property. The Complainants argue that after nearly 6 months without any interest or offers in July 2012, Mr P advised the Complainant to take the property off the market and to rent it out again and again they followed his instructions.

The Complainants argue that over the next couple of months, Mr P was no longer reachable and in April 2013, the Complainants were assigned a new account manager, Mr O. The Complainants argue that they met with Mr O in April 2013 and he instructed them to sell the property immediately and that the shortfall could be warehoused for 20 years. The first Complainant confirmed their agreement to this proposal to Mr O several days later and requested some clarification in writing on the proposal but this never materialised. The Complainants claim they never heard from Mr O again. Over the following months, the Complainants argue that they dealt with three other individuals in the collection and recoveries unit. In September 2013, they were then advised to contact a new account manager, Mr D, to whom they related their experiences and made a proposal. Mr D instructed them to contact the branch manager to complete a new SFS which was done on 25 September 2013. The Complainants argue that between June 2011 and February 2018, they never received any form of correspondence from their assigned account managers with details of their options or any proposals available to them. The only letters they received were debt reminders and legal notices demanding payment.

/Cont'd…

The Complainants are requesting that the Provider remove all the interest and charges applied to the arrears on the loan account dating back to September 2013 when they had a verbal agreement with the then- assigned portfolio manager Mr D for a voluntary sale and debt write-off, which was later reneged on by the Provider.

The Provider's Case

The Provider states that the Provider's residential investment property (**RIP**) mortgage account, the subject of the present complaint, was transferred to a third party Provider on 1 February 2019. At that date, the Complainant outstanding mortgage balance was €241,722.43 which included an arrears balance of €12,866.80.

The Provider rejects the assertion that it failed to engage with the Complainants as regards the mortgage loan. The Provider states the Complainants have not made a payment to the mortgage account since 26 April 2011. While the Provider states that it appreciates that the Complainants entered into financial difficulty in 2011, it argues that the Complainants are contractually obligated to repay the mortgage in full together with interest. The Provider argues that at all times it attempted to communicate with the Complainants in an effort to address the arrears on the account.

On 25 January 2013, the Provider states that it issued a capitalisation of arrears and three years interest only restructure arrangement to the Complainants with restructure payments of €1,760.50 per month for three years. It states that the Complainants did not accept this offer and therefore the restructure could not be applied to the account at that time. As a result, arrears continued to accrue on the account as no repayments were being made by the Complainants. Subsequently the Provider argues that the Complainants were requested to complete a standard financial statement (**SFS**) on numerous occasions so that their financial circumstances could be fully assessed with a view to putting an alternative repayment arrangement (**ARA**) in place on the account.

The Provider states that the Complainants submitted an SFS on 21 March 2013 but the first Complainant declined to submit income confirmation for assessment, despite the Provider's repeated requests for this. As a result, the Provider states that it was unable to complete an assessment or offer an ARA on the account at that time. Similarly, on 3 December 2013, the Provider states that it received a completed SFS dated 13 September 2013 from the Complainants but no proof of income documentation was included for assessment. As a result, the Provider was unable to complete an assessment or offer an ARA on the account. Due to the level of arrears on the account, with no ARA in place, the Provider states that the account was passed to the Provider's legal representatives to commence possession proceedings for repossession of the mortgaged property.

The Provider states that on 23 February 2015, the Complainants submitted an SFS for assessment together with the proposal to sell the mortgaged property and have any remaining residual debt to be written off by the Provider, but no supporting documentation was provided by the Complainants.

/Cont'd…

In June 2015, the first Complainant submitted a letter from his employer confirming employment but no other proof of income documents were provided. As a result, the Provider ordered property valuations and attempted to assess the Complainants' circumstances based on the information to hand. Following an assessment, the Provider states that it deemed the Complainants' account to be unsustainable as there was insufficient affordability present to service mortgage repayments on any of the ARAs offered by the Provider. The Provider states that it advised the Complainants of this decision on 28 September 2015.

On 18 May 2017, the Provider states that it received a further completed SFS from the Complainants but again no supporting documentation was provided. The Provider states that it requested this by writing and by telephone in an effort to continue with the assessment process. On 19 October 2017, the Complainants submitted a further completed SFS but did not provide the required supporting documentation. In an effort to progress the assessment, the Provider states that the SFS was passed to senior management for review. Following an assessment of the information to hand, the Provider states that it deemed the Complainants' mortgage account to be unsustainable as there was insufficient affordability present to service mortgage repayments on any of the ARAs on offer by the Provider. The Provider states that its legal representatives advised the Complainants of this on 8 December 2017.

On 16 March 2018, the Provider states that the first Complainant contacted it to request consent to sell the mortgaged property. The Provider argues that it continued to engage with the Complainants throughout this process. It states that the Complainants requested any residual debt to be discharged by the Provider following the sale of the property but argues that the Provider was clear in advising that the Complainants would remain liable for any outstanding mortgage balance. On 18 May 2018, the Provider states that it issued correspondence to the Complainants outlining the Provider's consent to sell the mortgage property, subject to several conditions, including that the Complainants would remain liable for any residual debt following the sale of the property.

On 2 August 2018, the Provider states that the sale proceeds were credited to the Complainants' mortgage account but it continued to hold the Complainants liable for the outstanding mortgage balance in the amount of €235,467.35. The Provider states that it issued an SFS to the Complainants on 3 September 2018 in an effort to address the outstanding balance but the Complainants did not engage in the process and did not make any further payments on the mortgage account. On 1 February 2019, the Complainants' mortgage account was transferred to a third party Provider.

The Provider accepts that the first Complainant discussed the possibility of surrendering the mortgaged property on several different occasions from 2013 onwards. The Provider also has records of the first Complainant's requests for the Provider to write off any residual balance following the sale of the property. The Provider argues, however, that it is not obliged to write off any sums owing at the request of the Complainants or any other customer.

/Cont'd…

The Provider argues that it held the Complainants liable for the full outstanding mortgage account balance at all times, in accordance with the mortgage contract. Furthermore, when an account holder requests the voluntary surrender of a property, the Provider requests that an SFS is submitted to ascertain if there is affordability present to service any possible residual debt or to service the mortgage account under any of the ARAs offered by the Provider.

On a call on 29 January 2013, the first Complainant raised the possibility of surrendering the mortgaged property and an appointment was made for him to discuss this option but he did not attend the branch as arranged. The Provider states that it issued correspondence to the Complainants on 20 February 2013 outlining the requirements to be met in order for the Provider to enter into vacant possession of the property. The correspondence outlined that the Complainants would remain liable for all monies owing and that they would be liable for any shortfall if the property was sold at a loss.

In February 2014, the Provider states that the first Complainant proposed surrendering the mortgaged property during communications with portfolio manager, Mr D. The Provider notes that the first Complainant requested that the Provider write off any residual debt following the sale of the property. During the call on 4 February 2014, the first Complainant was advised that a write-off would not be offered but that the Provider would engage with the Complainants to address any residual debt.

On 13 February 2015, the Provider states that the Complainants submitted a proposal, completed SFS in respect of three properties which included a proposal to sell the mortgaged property, the subject of this complaint in full and final settlement. The Provider argues that despite no proof of income documentation being provided, it assessed the Complainants' circumstances based on the information to hand and on 29 September 2015, the Provider offered an ARA on two of the Complainants' mortgage accounts but deemed the mortgage account in question to be unsustainable. The Complainant accepted the ARAs offered on the other mortgage accounts and on 23 December 2016, the first Complainant advised that he intended to sell the secured property in question. The Provider states that it received correspondence from the Complainants dated 18 April 2018 enclosing a property valuation and details of a purchase offer which was required in order for the Provider to consent to the sale of the mortgaged property. In the letter, the Complainants indicated that they expected a write off of the shortfall. On 18 May 2018, the Provider issued correspondence to the Complainants outlining the Provider's consent to sell the property but subject to the condition that the Complainants would remain jointly and severally liable for the resultant shortfall. The Provider argues that it is not obliged to accept the proposal submitted by mortgage account holder and is not obliged to write off any amount of mortgage account.

The Provider states that the RIP mortgage account in question has been treated under the Code of Conduct on Mortgage Arrears 2013 (**CCMA**) as the mortgage is secured on the RIP but is also cross secured on the Complainants' family home. The Provider highlights that the Complainants did not submit supporting documentation with the completed SFS on 21 March 2013 or 3 December 2013 so an assessment could not be completed in accordance with the CCMA on those occasions.

/Cont'd…

The Provider states that following a full assessment of the SFS submitted into February 2015, the RIP mortgage was deemed to be unsustainable. The Provider argues that while it informed the Complainants of the decision by telephone on 28 September 2015, the decision was not provided to the Complainant in writing in accordance with Provision 45 CCMA.

In response to the claim that its representative, Mr D, agreed to a write-off of the residual debt in 2013, the Provider rejects the assertion that a verbal agreement was in place in relation to the voluntary sale or any write-off of the outstanding balance. The Provider refers to a call note by its representative Mr D from a call on 4 February 2014 wherein the first Complainant sought a write-down of the shortfall from the sale. The call note indicates that Mr D reiterated that he had previously said that any shortfall would be assessed by the Provider to see if there was any scope for recovery and the Provider would not give anyone a full write-off. The Provider states that it is not its policy to put a verbal agreement in place for a mortgage account and that any formal ARA offered by it would be done in writing and would require acceptance in writing before it could be applied to an account. The Provider also refers to correspondence it sent to the Complainants dated 14 February 2013, 20 February 2013, 4 July 2013, and 5 February 2014 in which it advised the Complainants that if the property was sold at a loss, they would still be liable for the shortfall. The Provider also points to correspondence issued to the Complainants from its legal representatives on 25 March 2014, 4 December 2014, and 30 May 2017 and 8 December 2017 which indicates that they would be liable for any outstanding balance after the sale of the property. Further correspondence from its legal representatives dated 8 December 2018, 8 August 2018, and the Provider itself dated 8 May 2018 restated the position. The Provider argues that a write-off was not offered to the Complainants at any time.

The Provider argues that while it does not offer full debt forgiveness to a borrower (that is, where sums are fully discharged by the Provider without any loss to a borrower), in circumstances where a borrower surrenders all mortgaged assets, it on occasion considers discharging a portion of the outstanding balance. It states that it had such a voluntary surrender scheme in 2017 under which, on a case-by-case basis, it would consider writing off residual debt following the sale of the property, on condition that all securities/mortgaged properties were surrendered to the Provider in return. The Provider argues that the Complainants' RIP mortgage account was secured on the investment property ultimately sold but was cross charged on their family home. In order for the Complainants to qualify for the scheme, therefore, they would have been required to surrender both properties before any write-down could be applied. The Provider confirms that following the sale of the RIP property, the remaining residual mortgage balance continued to be secured on the family home. The Provider argues that it did not publicly advertise the scheme and it was not generally available to its mortgage customers but rather that it invited a number of borrowers to apply for the initiative. The Provider states it was not possible for a mortgage customer to apply for the scheme directly. Further the Provider argues that it did not apply to an RIP mortgage loan that was cross charged with the family home as with the Complainants.

/Cont'd…

The Provider argues it relied on the terms and conditions of the Complainants' mortgage account when transferring the loan to a third party and specifically condition 1.15 of its General Mortgage Loan Approval Conditions and condition 6.7 of its Mortgage Conditions. The Provider argues that the loan was transferred as part of the cachet of Non-Performing Loans in an effort to reduce its overall stock in accordance with directions received from the Central Bank of Ireland. The Provider states that it advised the Complainants on 2 August 2018 that the account would be transferred to the third party and the transfer was completed on 1 February 2019. The Provider states that it issued further correspondence to the Complainants on 1 February 2019 notifying this. The Provider further argues that the Complainants did not engage with it to address the remaining shortfall after the sale of secured property. It further argues that the Provider's decision to transfer the loan to a third party had no impact on the Complainants' agreement to sell the mortgage property on a voluntary basis. The Provider argues that it issued its consent to sell the property on 18 May 2018 and the sale proceeds were credited to the mortgage account on 2 August 2018. It states that on 2 August 2018, it issued correspondence to the Complainants advising of the intention to sell the loan to the third-party and the transfer was completed on 1 February 2019.

In response to the Complainants' allegation that the majority of the shortfall after the voluntary sale of the property is comprised of accrued interest, the Provider argues that it is entitled to charge interest on the mortgage account and the Complainants are contractually obligated to pay interest in accordance with the terms and conditions of the account specifically condition 1.6 of the General Mortgage Loan Approval Conditions and conditions 2 and 4 of the Provider's Mortgage Conditions. The Provider submits that it charged interest of between €20,847.03 and €26,756.79 per year between 2013 and 2018 pursuant to the mortgage contract.

The Provider disputes the assertion that it failed to log a formal complaint following the telephone call with a representative, Mr S, on 9 August 2018. It argues that a formal complaint was immediately logged and an acknowledgement letter sent to the Complainants on 15 August 2018 within five business days in accordance with the CPC. The Provider argues that on the call of 9 August 2018, the first Complainant expressed dissatisfaction at its decision to transfer the mortgage loan to a third party. It argues that on 17 August 2018 when the Complainant emailed its customer resolution centre, further issues were raised regarding his dissatisfaction at being excluded from the voluntary surrender scheme. The Provider accepts that when it issued a final response to the Complainants on 4 September 2018, the issues raised in relation to the surrender initiative were not addressed and as a result of the oversight, the Provider issued a further final response letter on 10 April 2019 and offered a gesture of €200 for the oversight. The Provider argues that it complied with Provision 10.7 of the CPC by attempting to resolve the complaint and immediately logged the complaint in accordance with provision 10.8. It also responded to the complaint within the time limits set down in provision 10.9.

In response to the Complainants' submissions on the lack of engagement by the account managers between 2011 and 2018, the Provider states that it is not obliged to offer any form of debt forgiveness to the Complainants or any other customer at their request.

/Cont'd…

The Provider argues that the Complainants had a contractual obligation to repay the outstanding mortgage account in full, together with interest.

Having reviewed the matter, the Provider accepts that it has identified some service issues. Although it reiterates that it could not complete an assessment following the submission of the SFS om 13 February 2015 in the absence of the supporting documentation, it states that its procedure is to follow up with a borrower in an effort to retrieve required documentation but in this case, it accepts that more of an effort could have been made in this regard. Furthermore, while it advised the Complainants that their mortgage loan was deemed unsustainable in September 2015 following a full review, the Provider accepts that a written response to the February proposal should have been issued at that time. The Provider also accepts that some CCMA regulatory letters were not issued to the Complainants for a period prior to December 2016 and apologised for the oversight. The Provider notes that there was some confusion regarding the receipt of the sale proceeds cheque in August 2018, and that although it had to request a duplicate cheque, receipt of funds was backdated to 2 August 2018 as the initial cheque which was mislaid was received by it on that date. Finally the Provider accepts that in its final response letter 4 September 2018, it did not address all the issues raised by the first Complainant in the complaint and that a further final response letter had to be sent on 10 April 2019. In light of the service issues, the Provider offered compensation to the Complainants in the sum of €3,000 in recognition of its failings.

The Complaints for Adjudication

The complaints for investigation and adjudication are that:

1. The Provider failed to engage with and respond to the Complainants in respect of their proposals to sell/surrender the secured property securing the loan and work out an arrangement for the shortfall;

2. The Provider furnished confusing and conflicting information to the first Complainant about the restructuring agreement;

3. The Provider excluded the Complainants from a 2017 scheme for landlords;

4. The Provider wrongfully sold the Complainants' loan to a third party entity despite the Complainants' agreement on the voluntary sale of the secured property securing the loan and without agreement being reached on the residual debt; and

5. The Provider proffered poor customer service and mishandled the Complainants' complaint.

/Cont'd…

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

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

It is important to note at the outset that this Office does not investigate the details of any renegotiation of the commercial terms of a mortgage as this is a matter between a provider and a customer and does not involve this Office, as an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a complainant, within the meaning of section ***60(2) of the Financial Services and Pensions Ombudsman Act 2017***.

Pursuant to a letter of approval dated 1 December 2003, a loan in the sum of €346,000 was offered to the Complainants to purchase the secured property as a residential investment property (**RIP**). The special conditions provided that the property to be purchased was to be mortgaged/charged in addition to an identified property which is the Complainants' principal private residence (**PPR**). The RIP mortgage loan at issue was therefore cross charged against the family home. The terms and conditions applicable to the mortgage loan included an obligation on the Complainants to repay the loan, including interest thereon and that all monies to be advanced would be secured against the identified properties.

/Cont'd…

Condition 2.11 of the Mortgage Conditions provides that:

> *"If on the sale of the property by the Mortgagor with the consent of [the Provider] the net proceeds are insufficient to discharge the Total Debt the Mortgagor will immediately pay the amount of deficiency with interest until fully discharged. . . ."*

The loan offer and conditions attaching to the loan were accepted by the Complainants on 15 March 2004 (though in error of the acceptance indicates 15 March 2003). According to statements of account from 2011, 2014, and 2017, the last payment made by the Complainants on the account was in April 2011. Since that date, interest continued to accrue on the loan balance until the application sale proceeds in 2018 on the sale of the RIP.

It is necessary to go through the written and telephone correspondence in some detail in respect of the complaints regarding the alleged provision of confusing information and the Provider's failure to properly respond to proposals in respect of the debt. In this regard, I note that a large number of call recordings have been made available from the relevant period but the Provider has failed to label the call recordings with the dates of the individual calls or even to provide a schedule of the dates of calls that it submitted into evidence. This is most unhelpful to both the Complainants and this Office in considering the content of these calls. In any event, I have sought to establish the relevant dates where possible by reference to the available evidence.

Documentary and Audio Evidence

The first record of the Complainants contacting the Provider in relation to arrears is an in-branch meeting on 1 July 2011 with the first Complainant where he advised he would be redundant from later that month and would not be a position to pay anything off the mortgage accounts until he obtained social welfare or got a new job. Direct debits were cancelled on the accounts. He requested a meeting with senior management to discuss the situation. It appears that the first Complainant called the Provider on 11 August 2011 to indicate that he had not yet received an SFS for signing and that the RIP was currently vacant. It appears that the accounts were left to be reviewed in several months' time as there was very little ability to repay indicated at that time. An internal note from 14 December 2011 indicated that the first Complainant had called the previous week looking for contact from his portfolio manager, Mr P, but there was no answer from the first Complainant when the Provider returned the call. A further note from 15 December 2011 indicates that the first Complainant rang the Provider and indicated that his circumstances had not changed since he last spoke with Mr P, with the RIP still vacant. The note indicates that the Provider told the first Complainant it would contact him the following month.

An internal note indicates that an SFS was sent to the Complainants to be signed in January 2012 with a duplicate sent in March 2012 when the initial one had not been received. There seem to have been difficulties experienced by the Provider in making contact with the Complainants in June 2012. Internal notes from 25 July 2012 indicate that an SFS was received from the Complainants at that time but this has not been submitted in evidence.

/Cont'd…

Further attempts to contact the Complainants over the coming months appear to have been unsuccessful. There appears to have been a call on 14 November 2012 with the first Complainant indicating that the July SFS was never assessed and the Provider committed to ensuring that the assessment was made. The Provider made two follow up calls in December 2012 to discuss the reason for the arrears on the accounts, even though the Provider had not yet assessed the July SFS.

By letters dated 4 October 2012 and 14 February 2013, the Provider requested contact from the Complainants in respect of the arrears accumulating on the loan account and stated that:

> "*Please note where a property is repossessed and in the event the Company sells the property at a loss, ALL parties to the mortgage will be liable for the shortfall due and owing to the Company after sale proceeds have been lodged to the Mortgage account and all costs in respect of the sale are paid*."

By letter dated 25 January 2013, an alternative repayment arrangement (**ARA**) was offered to the Complainants in respect of the RIP by way of capitalisation of arrears and three years interest only payments but this was not accepted by them. I am not sure if this is the offer made to the Complainants that was referred to on the call in February 2014 in the Complainants' submissions but it seems likely that the Provider's representative was referring to this ARA. It is not disputed by the parties that this offer was not accepted by the Complainants. No evidence of any assessment of the July 2012 SFS, upon which this offer was presumably based, has been submitted. An internal note indicated that an in-branch appointment was made for the Complainants on 30 January 2013 but they did not attend it. A note of a telephone call from the first Complainant dated 20 February 2013 indicates that the first Complainant advised that, on the basis of legal advice, he was declining the ARA offered as he could not afford to lodge anything and did not wish to capitalize the arrears as a result. He agreed to meet with a portfolio manager to discuss all options. By letter dated 20 February 2013, the Provider referred to the recent telephone call in which the Complainants advised that they wished to return the property to the Provider and noted that "*all parties to the mortgage will be still liable for all monies owing and interest accruing on the loan until it has been repaid in full including any costs that are incurred in relation to the sale of the property*" and that "*in the event the Company sell the property at a loss, you will be liable for the shortfall due and owing to the Company*".

It appears that portfolio manager Mr O tried to ring the first Complainant in February 2013 and in March 2013 the first Complainant rang the Provider advising he was still awaiting a call from Mr O. The mobile number of Mr O was provided to the first Complainant. An appointment was set for the parties to meet on 21 March 2013. A note from Mr O dated 15 March 2013 indicates that the first Complainant was inquiring about the option of parking the debt as he was not accepting the interest only offer. A note of the meeting from 21 March 2013 from Mr O indicates that the first Complainant was advised of the possibilities of a split mortgage, repossession, and interest only arrangements and was told that it was unacceptable that the two residential investment properties were empty for 18 months.

/Cont'd…

A copy of an unsigned SFS dated 25 March 2013 has been provided which indicates a monthly deficit of €1,096 per month. By letter dated 5 April 2013, the Provider wrote to the Complainants at their home address indicating that it was awaiting receipt of a completed SFS and listed supporting documentation required by it in respect of income.

There is no evidence of any assessment of this unsigned SFS. This documentation requirement appears to have been confirmed on a call on 8 April 2013. It appears that the first Complainant rang the Provider on 30 April 2013 advising that his wife could not obtain written proof of her earnings as her employment was 'not on the books'.

On 23 May 2013, the first Complainant contacted the Provider by telephone in relation to a visit from a third party debt collector. He explained that his wife could not obtain proof of income from her employer and was signing on to social welfare in about 5 weeks' time. He was told that the Provider was unable to assess the SFS he had submitted in March without proof of income so it might be better to review the situation when she had signed on and could obtain proof of that income. The representative also advised that the SFS could be updated in relation to rental income if appropriate when the proof of income was available.

By letter dated 26 June 2013, the Provider wrote to the Complainants in respect of the outstanding arrears and requested that the Complainants make contact with it, failing which legal proceedings may be instituted or a rent receiver appointed. A 30 day demand for payment and vacant possession was sent by letter dated 4 July 2013.

On two calls from 9 July 2013, the first Complainant expressed frustration that he had received a 30 day demand letter even though he had informed the Provider that his wife's employer was refusing to declare her income and that proof of income would be provided in support of an SFS submitted by them in March 2013 once they were both in receipt of social welfare. The first Complainant indicated that he had been told by portfolio manager Mr O that the Provider would consider several options, including "*parking the debt*", but he had not received any formal offers. The Provider's representative (Mr M) highlighted that no payments were being made on the account and that the Provider was still awaiting the proof of income requested and hence was not in a position to offer any arrangement. When asked whether there was any benefit to the Complainants surrendering the property to the Provider, Mr M informed him that it was a matter that he should seek independent advice in relation to but that the Complainants would be liable for any residual debt after the sale of the property. In a follow up call with Mr M's manager, Mr L, the first Complainant indicated that Mr O informed him that the Provider could "*look into*" writing down the debt to a more sustainable level. The first Complainant expressed frustration that the 30-day demand letter was sent when he understood that he was to send in the proof of income which was still awaited. Mr L explained that he had not been in touch with the ASU in the meantime and no payments were being made so the case had to be progressed. In relation to voluntary sale, he was told that the Provider's policy was that no write-down would be offered. It is apparent from these calls that the first Complainant wanted to have one point of contact for discussions with the Provider but he was struggling to contact various individuals, the relevant individuals were changing, and the advice to rent or sell the properties was changing.

/Cont'd…

The Provider's representative indicated that no proposal could be assessed until proof of income was provided and the first Complainant was encouraged to contact Mr O again, especially to see if the mortgage could be split to warehouse or park part of the debt.

On a call dated 16 September 2013, the first Complainant was informed that there was a potential split mortgage available for the RIP. He was informed that he would need to fill in an SFS to progress the application. The first Complainant said he had previously been told that a split mortgage would not be available and was informed that the Provider was constantly updating its available options. The first Complainant stated that he was not interested in a split mortgage for the RIP and wanted to "*wash his hands of it*". He indicated that he was only interested in his PPR. An appointment was made for him to attend a branch to complete an SFS and he was informed he was required to provide proof of income by way of wage slips or social welfare payments.

The first Complainant appears to have contacted Mr D on 18 September 2013 but no recording of this call has been provided. It appears that the first Complainant attended in branch on 25 September 2013 with a view to completing the SFS but this was not completed as there was no income but there was a job on the horizon so it was agreed that the first Complainant would contact the Provider when he returned to employment.

In an internal email from 16 October 2013, Mr D referred to a call with the first Complainant the previous week. The internal note provides that the Complainants had no income at present so there are no current options available for them for a split mortgage or otherwise due to the lack of income. On a call on 25 October 2013, the first Complainant stated that he had not received a response to a proposal he made to Mr D on 18 September that the RIP be sold with the residual debt written off. He indicated that Mr D had told him he would revert within 2 weeks but failed to do so. The first Complainant accepted that Mr D had indicated that he did not think the proposal "*was a flyer*" but he would put it to his colleagues. The first Complainant confirmed that the property had not been rented in several years and that, on the Provider's advice, he had been attempting to sell the property over the previous years. The first Complainant indicated that it needed to be refurbished before it was rented or placed on the market again and that he had no way to meet repayments on the RIP. The Provider's representative informed him that the Provider would not be in a position to write-off the debt. The first Complainant indicated that he would rather apply for bankruptcy than take a new job in January and pay everything over to the Provider. He further indicated that he could not access the property as he owed money to the management company and had no key. A follow up call from Mr D was requested.

There is a call note dated 4 February 2014 from Mr D indicating that the first Complainant contacted him and indicates that he had no intention of signing for a job if he was going to be indebted to the Provider with any shortfall from the sale of the RIP. The note indicates that the first Complainant was looking for a full write-off of the shortfall from the sale.

/Cont'd…

The notes states that:

> "*I told as I have said previously that any shortfall would be reassessed by the bank to see if there was any scope for recovery of the residual debt and that the bank were not giving anyone a full write-off. Not at all happy with this and said he would prefer to go the Legal route on the properties rather than signing up for something that he couldn't control. Told him we can only work with the figures he supplied and couldn't look for repayment if not available. No no no was the answer*."

In an undated call recording from around February 2014, the first Complainant indicated that Mr D had phoned him 8 or 9 weeks after he made his proposal to inform him that it "*was not a runner*" but he has not received a response in writing. He stated that Mr D has suggested the proposal was "*looking good*" on a number of occasions but that he had come back in January 2014 to state that the proposal had been rejected. The first Complainant complained that under MARP, he should have received written notification of the decision and the rationale behind it. He informed the Provider that he did not have a new job yet. The Provider indicated that he needed to complete a new SFS and would organise a branch appointment to do so, in addition to providing supporting documentation in respect of income. A 10-day demand letter was sent to the Complainants on 5 February 2014 which called upon them to repay the debt in full and deliver up vacant possession of the property. The letter further indicated that the Complainants would remain liable for the outstanding amount if the sale of the property failed to pay the total amount outstanding. The Provider requested by letter dated 25 February 2014 that the Complainants attend their local branch to complete an SFS and they were required to bring proof of income to that appointment. A letter of demand dated 5 March 2014 was sent by solicitors appointed on behalf of the Provider. The solicitors wrote further to the Complainant dated 25 March 2014 demanding vacant possession and stating that if the net proceeds of sale were insufficient to discharge the balance outstanding on the account, the Provider could demand repayment from the Complainants of the debt remaining unpaid.

On 17 July 2014, the Provider sent an email to the first Complainant referring to a call indicating that the accounts would move to the legal department shortly unless the Complainants completed an SFS and provided proof of income. Calls to the Complainants the following week were unsuccessful. By email dated 24 July 2014, the first Complainant indicated that he was compiling the SFS and documentation. Further calls were made by the Provider to the first Complainant on 18, 20, and 22 August 2014. The call notes indicate that the first Complainant returned the call on 22 August and indicated that his employer would not provide any income confirmation and that the maternity benefit of the second Complainant had ceased and she would need to go back to the social welfare office to see what she was entitled to. The note indicates that the Complainants were unwilling to provide the requested information.

By letter dated 4 February 2015, the Provider requested that the Complainants make an appointment with their branch to complete an SFS and to bring proof of income with them to attend an appointment. In a call on 4 February 2015, the first Complainant rang the Provider in response to a request to complete an SFS.

/Cont'd…

He indicated he that he had commenced employment and booked an appointment in branch for 13 February 2015. He was advised that he needed to bring proof of income in support of the SFS. It appears that the first Complainant attended at the relevant branch on 13 February 2015 but the SFS had to be signed by the second Complainant before it could be submitted. The signed SFS was then submitted by the Complainants on 25 February 2015.

A copy of the SFS completed in branch on 13 February 2015 has been provided in evidence. This SFS was submitted with a written proposal from the Complainants in relation to their three mortgages.

In respect of the RIP at issue in this complaint, the Complainants indicated that they would like to sell the property and that the proceeds of sale less selling expenses would be paid to the Provider of the final settlement payment in respect of the account. The SFS indicated a surplus income of €1,375 per month.

The first Complainant called the Provider on 3 June 2015 and indicated that he had made a proposal to restructure his three mortgage accounts in February and he had heard nothing since. He said he had been informed in branch that morning that they were awaiting proof of income but claims it was never requested. The first Complainant stated that he was told a message had been left on his house phone but as there is no messaging service on his house phone, this is impossible. No letter was sent requesting the proof of income. The representative apologised for the lack of contact. The first Complainant requested a meeting with a portfolio manager and indicated he was getting confusing information about who was responsible for assessing it. He indicated that the RIP was still vacant as there were outstanding service charges, he could not get access, it required refurbishment and rental payments would not, in any event, cover the mortgage payments. He indicated that he wanted feedback on his proposal and was told that while it would be considered, ultimately any restructure offered would be used on the ASU's decision-making process and was subject to appeal. He was told he would be updated within a number of weeks from submission of the proof of income and that the decision would be communicated in writing. In a second call on the same day, he was again informed that the underwriters would make the ultimate decision and there was no guarantee that any particular proposal would be accepted. A letter from his employer was requested to confirm his employment status and income, and this was submitted to the branch on 15 June 2015.

It appears that the accounts were assessed on 13 July 2015 and valuations were ordered in respect of the three properties. The assessment at that time was that both the RIP and PPR were unsustainable and closure options were recommended. The valuation reports were obtained on 13 August 2015. By 21 August 2015, the Provider sought to reassess the mortgages to see if it was possible to save the family home. The new assessment was that the PPR was sustainable but the RIP continued to be assessed as unsustainable. An internal email indicates that the SFS was with the underwriters for review in September 2015. An internal note dated 21 September 2015 indicates that the underwriter had assessed the SFS and that there was no sustainable treatment to be offered in respect of the RIP with the only option being an assisted voluntary sale.

/Cont'd…

The first Complainant called the Provider on 28 September 2015 and stated that he was told in a letter dated 21 September 2015 (not submitted in evidence) that he would be contacted to discuss his options but no call was made. He wanted to discuss his options before he decided whether to appeal. The Provider's representative noted that the proposal was declined for affordability. He was informed that a portfolio manager would be assigned shortly to contact him and meet him but they were experiencing high volumes. He was also informed that he could drop into the branch for assistance with his appeal. He was encouraged to pay as much as he could towards the mortgage. He indicated that he was happy to sell the two RIPs but needed to arrange something for his PPR.

The Provider's representative told him to write a letter of appeal outlining this. She encouraged him to meet with a portfolio manager in the meantime if possible. The first Complainant indicated that he felt he was attempting to come to an arrangement with the Provider but was getting nowhere, despite the fact that he had current affordability.

The first Complainant called the Provider on 13 October 2015 having missed a call from an underwriter. A restructure had been offered on his two other mortgage accounts but he indicated that the restructure offered on his PPR would not be suitable as it only lasted for 6 months. The Provider explained that if he met the repayments for 6 months, a long-term arrangement in the same terms would be offered and the first Complainant was happy with this. He indicated that he had not heard anything in relation to the RIP and was informed that the underwriter wanted this property sold with the Complainants' consent. The loan was considered unsustainable so the best course was the sale of the property. He was told that the letter confirming this should have been sent to him from the Provider's solicitors. The Provider informed him that once there was an offer on the property, affordability would be reviewed on the basis of an SFS and after assessment, they could "*come to an agreement*" on any residual debt.

In a call on 27 October 2015, after seeking clarification on the restructure of the other two properties that had been offered to him, the first Complainant asked for more information on agreeing a payment plan in respect of the residual debt after the sale of the RIP as a shortfall was anticipated. He indicated that the Complainants would look to come to an arrangement in respect of the shortfall by way of monthly payment.

There is little evidence of contact between the parties in respect of the RIP during 2016. The first Complainant phoned the Provider on 23 December 2016 in relation to a letter received about the arrears balance on the RIP. He stated that he was awaiting correspondence from the Provider confirming that he had the Provider's permission to sell the property. He stated that he was happy to sell the RIP but wanted a commitment in writing that he had the Provider's permission to sell it. The first Complainant indicated that he wanted to come to a deal in relation to the balance after the sale of the property. The Provider indicated that the loan had been transferred to the legal department due to the level of arrears. The first Complainant stated that he was more than happy to engage with the Provider but he had not heard anything from the Provider in relation to the loan for over a year. He states he requested a commitment from the Provider in relation to the sale and agreeing how to deal with a residual balance but had heard nothing.

/Cont'd…

The Provider recommended that he go to his branch to meet with a financial adviser. The Provider's representative spoke to her manager and stated that the loan had been outsourced to an identified external legal firm and he should contact them or they would contact him.

By letter dated 26 April 2017, solicitors on behalf of the Provider wrote to the Complainants offering a further opportunity to engage with the Provider in respect of the RIP and requesting that they attend a branch to complete an SFS. In a follow-up letter dated 3 May 2017, solicitors referred to an appointment booked for 4 May 2017 and enclosed an SFS to be completed ahead of the appointment.

The letter indicated that supporting documentation should also be brought to include proof of income. I have been provided with a copy of the SFS dated 4 May 2017. By letter dated 16 June 2017, the Provider wrote to the Complainants at their RIP address and not their correspondence address indicating that it was unable to assess the application until outstanding documentation was submitted in relation to proof of income. As is clear from the above, the Provider was repeatedly advised in phone calls over a number of years that the Complainants had no access to the RIP address due to arrears with the management company and so there was no way that correspondence sent to that address could have been received by them. A call note dated 28 June 2017 indicates that the first Complainant rang to inquire about the assessment of his SFS. The note records that the first Complainant was advised that up-to-date payslips were required in order to assess the SFS and if that was not possible the Provider would need a letter from his employer to confirm the earnings. The Provider sent a receiver warning letter dated 28 August 2017 in respect of the RIP. The call note recorded a call on 30 August 2017 in which the first Complainant advised he had completed an SFS but heard nothing and was told once again that outstanding income support documentation had yet to be received. The note indicates that the first Complainant was informed that while proof of income documentation was outstanding, the Provider could not discuss the SFS submitted in May.

On a call on 11 September 2017, the first Complainant contacted the Provider to indicate that he intended to submit his income details shortly and inquired about the Provider's voluntary surrender scheme that he had seen advertised. He was informed that the scheme was available to only a limited number of accounts. The first Complainant stated that he wished to be considered for the scheme. He explained that he met with the branch manager in February and offered to sell the property if the Provider was willing to work with him on the residual debt. The Provider' representative indicated that it had requested proof of income in respect of his most recent SFS and this is where they now were. The Provider stated that it posted a letter seeking proof of income in June but the first Complainant explained that the letter had gone to the RIP address which he has no access to rather than his home address. They confirmed his correspondence address and the representative explained that there had been no progress because the Provider was awaiting proof of income. His interest in the scheme was noted on the account.

/Cont'd…

By letter dated 20 September 2017, the Provider indicated that it was unable to assess the Complainants' application until it received a fully completed SFS (to include an incomplete section A6 correspondence address) and two pay slips in respect of the first Complainant. The letter had been provided from the Complainant's employer indicating annual salary dated 30 August 2017, a comparable letter of which was acceptable to the Provider on a previous occasion as the first Complainant was engaged as a consultant rather than an employee. The Provider's representative indicated to the first Complainant on the call of 11 September 2017 that such a letter would be acceptable. A call note from 13 October 2017 indicates that the Complainant advised that they would fill out the missing section but that the first Complainant did not receive payslips and has already sent a letter from his employer confirming his income.

In a follow-up letter dated 1 November 2017, the Provider indicated that the payslips continued to be outstanding and the Provider could not assess the application until it was received. An account note dated 21 November 2017 indicates that the SFS had been assessed and sent the underwriters for a decision.

By letter dated 8 December 2017, solicitors acting on behalf of the Provider indicated that the most recent SFS had been fully assessed and that the Provider was unable to offer an ARA as there was "*insufficient disposable income available to service payments on your mortgage under any of the alternative repayment options offered*". The letter indicated that an option available was the voluntary surrender of the property and further information in relation to the process was given. The letter confirmed that the parties to the mortgage would be liable for any shortfall between the debt and the proceeds of sale of the property. The letter requested contact within seven days if the Complainants wished to discuss the voluntary surrender of the property and recommended that they seek independent legal advice. The letter further indicated that legal proceedings would be issued if there was no contact. An internal email and call note indicates that a phone call was received from the first Complainant on 11 December 2017 in which he stated that he wished to sell the RIP himself and work something out in relation to the shortfall as he had been informed that there was no ARA available.

The Provider wrote to the Complainants at the correspondence address on 8 February 2018 referring to the proposed sale of the RIP and confirming that the Provider would not accept a lower sum settlement of the debt on the basis that there would be a shortfall on the final redemption figure. The Provider stated that it would be seeking repayment of the full amount outstanding of the loan and no waiver of debt could be given in circumstances where the outstanding mortgage balance was not repaid in full. A redemption figure for the loan was provided. The Provider indicated that it would consider discharging the property from the mortgage to allow the sale of the property but only in circumstances where the Complainants will continue to be liable for the shortfall. The Provider requested a full valuation of property be carried out by identified valuer and also requested further details, including a written proposal confirming how the Complainants intended to repay the remaining shortfall on the sale of the property. The Provider wrote to the Complainants by letter dated 27 February 2018 requesting that they attend the branch to complete a financial statement and requesting that they bring proof of income to that appointment.

/Cont'd…

In phone calls on 16 and 27 March 2018, call notes indicate that the first Complainant was advised that he needed to contact the shortfalls department in relation to the expected residual balance on the loan and would need to submit an updated SFS.

In reply to the letter of 8 February 2018, the Complainants wrote to the Provider by letter dated 18 April and provided information about the proposed sale, enclosed a valuation report and set out the outstanding charges applied to the property. The letter indicated that the Complainants "*expected*" the Provider to write off the shortfall of the debt if the property was sold as they were unlikely to be in a position to do anything about the shortfall. The letter requested confirmation from the Provider to proceed with the sale.

By letter dated 18 May 2018, the Provider wrote to the Complainants indicating its agreement to the sale of the property for the price offered and confirmed that it would complete a discharge in relation to the loan on receipt of sale proceeds less the costs indicated by the Complainants. The letter indicated that the approval was subject to various terms and conditions, including that "*all parties to the mortgage will remain jointly & severally liable for the shortfall of €227,438.08 and the account will continue to bill on a monthly basis*" and that the Complainants "*immediately engage with the [Provider's] Recoveries team to discuss payment of the resultant shortfall*".

By letter dated 1 August 2018, solicitors on behalf of the Complainants wrote to the Provider enclosing the proceeds of sale by cheque dated 1 August and requesting confirmation of sale proceeds and a deed of discharge. A reminder letter dated 13 August 2018 requested confirmation of safe receipt and the deed of discharge. By letter dated 8 August 2018, solicitors on behalf of the Provider wrote to the Complainants demanding payment of the total debt outstanding reference to receipt of the sales proceeds. By letter dated 16 August 2018, the Provider wrote to solicitors on behalf of the Complainants indicating that they had not received the cheque outlined in the letter dated 13 August and requested electronic transfer of funds. By email dated 3 September 2018, the first Complainant wrote to the Provider expressing frustration about the loss of the cheque and requesting that the transaction be backdated to 1 August. He indicated that he had been on a call with the Provider seeking an explanation that morning and was placed on hold for 19 minutes before being told that no explanation could be offered for an incorrect letter received referring to an unrelated lump sum payment. By letter dated 4 September 2018, the Provider wrote to the Complainants accepting that it had mislaid the cheque but that a replacement cheque had been received and this was lodged to the account and backdated to 2 August 2018. The Provider apologised for the inconvenience caused.

On a date in mid to late-2018, the first Complainant rang the Provider to express his frustration that he had not received a payment plan or any other correspondence from the Provider in relation to the post-sale shortfall on the account. He expressed willingness to engage with the Provider but stated that he was unwilling to remain on hold for a long period and asked that the Provider contact him in writing or to arrange a meeting. The Provider's representative insisted that it was the Complainants' obligation to liaise with the Provider in respect of repayments and that he had to speak to the relevant department.

/Cont'd…

After the first Complainant agreed to be transferred, he was then left on hold for 28 minutes before the call disconnected by one of the parties. By letter dated 26 September 2018, the Provider requested the Complainants' completed SFS in relation to the arrears on the mortgage account. Further letters were sent in October, November and December 2018 encouraging the Complainants to contact the Provider in respect of arrears.

Analysis

Restructuring Proposals

There are two aspects to the complaint in respect of restructuring proposals; first, that the Provider failed to engage with and respond to the Complainants in respect of their proposals to sell/surrender the secured property and work out an arrangement for the shortfall; and second, that the Provider furnished confusing and conflicting information to the first Complainant about the restructuring agreement.

The Complainants assert that in late 2013/early 2014, the first Complainant made a proposal to a representative of the Provider, Mr D that the residual debt on their loan would be written off by the Provider if they sold the secured property. The Complainants claim that Mr D agreed to this proposal but that the Provider subsequently reneged on it. The Provider claims that no such commitment was given to the Complainants. No statement has been provided by Mr D (who no longer works for the Provider) but a call note dated 4 February 2014 from Mr D has been submitted which indicates that he had always been clear with the first Complainant that no write-off would be offered. I accept that there is therefore a conflict of fact between the parties on this point but I am of the view that I can make a determination on this point on the basis of the available evidence.

As is clear from the evidence set out above, there is a huge amount of documentation available to me in which the Provider expressly notifies the Complainants that they will be liable for the residual debt upon the sale of the secured property. Further, my consideration of the available phone call recordings does not support an argument that any commitment was made to the Complainants that the residual debt would be written off. Rather, in phone calls over the years, the first Complainant was expressly informed that no write-off of the shortfall would be offered any time this suggestion was raised by the first Complainant. In saying this, I accept that the Provider has not submitted recordings of every phone call that took place between the parties in evidence so there were conversations that I have not had the opportunity to consider. I further accept that meetings took place between the first Complainant and various portfolio managers in 2012, 2013, and 2014. There is no evidence before me, however, of any commitment being made to the Complainants in respect of a write-off of the shortfall. In terms of the contemporaneous audio evidence, the first Complainant acknowledged in an October 2013 phone call that Mr D had told him that he did not think the proposal "*was a flyer*". In a February 2014 phone call, he accepted that Mr D told him that the proposal "*was not a runner*". The first Complainant stated that Mr D has suggested the proposal was "*looking good*" on a number of occasions but that he had come back in January 2014 to state that the proposal had been rejected.

/Cont'd…

The furthest that the first Complainant goes in contemporaneous call recordings, therefore, is to suggest that Mr D had indicated that his proposal was looking good for a period before confirming that no write-off could be offered. This could not be construed as any commitment by the Provider that a write-off would be offered. Further, the Complainants made various requests after 2014 for a right off of the residual debt but no reference was ever made by them to any previous commitment having been made in that regard by the Provider, as one might have expected, until the present complaint.

In the light of the available documentation and audio recordings, including the contemporaneous note of Mr D from 4 February 2014 indicating that he had repeatedly told the first Complainant that there would be no write-off of the residual debt, I am unable to accept that the Complainants have established that any binding commitment was made to them that the residual debt would be written off in 2013/2014. From the evidence before me, the Provider has made it clear to the Complainants at all times that the Complainants would remain liable for the entirety of the debt. Further, the first Complainant made commitments at various junctures that he would agree a restructure or repayment plan with the Provider in respect of repayment of the residual debt.

In respect of the complaint that the Provider failed to respond to proposals in respect of the restructuring, the evidence establishes that there were failings on the part of the Provider in this regard. I will set these out later. I would note more generally, however, that many requests were made by the Provider over the years for the Complainants to submit updated SFSs and to submit supporting documentation in respect of income that were not complied with. I am not purporting to ascribe any blame to the Complainants in this regard but I am of the view that their failure to comply with relevant requests at certain times meant that the Provider was not in a position to progress proposals for alternative arrangements so the delays experienced by the Complainants in progressing matters were not wholly the responsibility of the Provider. In particular, in regard to the repeated requests by the Provider that the Complainants submit supporting documentation in respect of income, Provision 33 of the Code of Conduct for Mortgage Arrears 2013 (**CCMA**) states that "*The lender may require the borrower to provide supporting documentation to corroborate the information provided in the standard financial statement*." I appreciate that at various times, the first Complainant informed the Provider that he and the second Complainant were unable to provide supporting documentation for a variety of reasons including a refusal by certain employers to provide any proof of income and delays in receipt of social welfare benefits. While I have no reason to doubt that this was the case, it was also the obligation of the Complainants to provide proof of income and so I cannot find the Provider's failure to assess any SFS submitted without supporting documentation to be unreasonable.

Moving to the failings of the Provider to promptly respond to proposals, the following provisions of the CCMA are relevant:

> "35. A completed ***standard financial statement*** must be assessed in a timely manner by the lender's ASU.

/Cont'd…

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

45. If a lender does not offer a ***borrower*** an alternative repayment arrangement, for example, where it is concluded that the mortgage is not sustainable and an alternative repayment arrangement is unlikely to be appropriate, the lender must provide the reasons, on paper or another ***durable medium,*** to the ***borrower***. In these circumstances, the lender must inform the ***borrower*** of the following:

a) other options available to the ***borrower,*** such as ***voluntary surrender***, ***trading down***, ***mortgage to rent*** or ***voluntary sale*** and the implications of each option for the ***borrower***; and his/her mortgage loan account including:

(i) an estimate of associated costs or charges where known and, where not known, a list of the associated costs or charges;
(ii) the requirement to repay outstanding ***arrears,*** if this is the case,
(iii) the anticipated impact on the ***borrower***'s credit rating, and
(iv) the importance of seeking independent advice in relation to these options;

b) the ***borrower***'s right to appeal the decision of the lender not to offer an alternative repayment arrangement to the lender's Appeals Board;

c) that the ***borrower*** is now outside the ***MARP*** and that the protections of the ***MARP*** no longer apply;

d) that legal proceedings may commence three months from the date the letter is issued or eight months from the date the ***arrears*** arose, whichever date is later, and that, irrespective of how the property is repossessed and disposed of, the ***borrower*** will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case;

e) that the ***borrower*** should notify the lender if his/her circumstances improve;

f) the importance of seeking independent legal and/or financial advice;

g) the ***borrower***'s right to consult with a ***Personal Insolvency Practitioner***;

h) the address of any website operated by the Insolvency Service of Ireland which provides information to ***borrower***s on the processes under the Personal Insolvency Act 2012; and

/Cont'd…

i) that a copy of the most recent ***standard financial statement*** completed by the ***borrower*** is available on request."

It is useful to break down the various service failings of the Provider as follows:

(A) The Complainants appear to have submitted an SFS in July 2012 but this has not been submitted in evidence. While it is apparent that there must have been an assessment of this SFS at some point prior to January 2013 when the offer of an ARA was made to the Complainants, no proof of such an assessment has been submitted. This constitutes a breach of Provision 40 CCMA. It would also appear that the SFS in question was not assessed in a timely manner in breach of Provision 35 CCMA.

(B) After an SFS was submitted by the Complainants in February 2015 in addition to a proposal for the write-off of the residual debt on the RIP, the Complainants were not informed that the Provider was awaiting proof of income documentation before it could progress the assessment of their SFS. This only became clear when the first Complainant attended the branch in June 2015 and thereafter relevant documentation was submitted. In my view, this constitutes a breach of Provision 35 CCMA in that the SFS in question was not assessed in a timely manner.

(C) There is no evidence of any formal notification under Provision 45 from the Provider to the Complainants in respect of their RIP loan after the February 2015 SFS was belatedly assessed. I appreciate that it appears that the Complainants were informed by telephone in September 2015 that the loan in question was deemed unsustainable but the Provider was obliged to document both its decision in relation to the loan in question and its rationale, in addition to the other matters set out in Provision 45. I am therefore of the view that Provision 45 was breached in this case.

(D) Although there is no express regulatory requirement on a provider to respond in writing to proposals submitted by borrowers, I am of the view that it is unreasonable for the Provider not to respond in writing to formal written proposals. I accept the submissions of the Provider that it is not obliged to accede to any specific request made by borrowers in respect of the particular arrangement, such as a write-down of debt, but I am of the view that a written proposal should be responded to in writing. There is no evidence that any written response was received to the February 2015 proposal of the Complainants that the residual debt on their RIP loan be written down after the voluntary sale of the property and I consider the Provider's failure to so respond to be unreasonable.

(E) After ARAs were agreed with the Complainants in late 2015 in respect of their PPR and their second RIP, there is little or no evidence of attempts by the Provider to contact the Complainants in respect of the RIP at issue in the present complaint with a view to progressing the voluntary sale. I appreciate that the Complainants had been informed (albeit orally) that no ARA could be offered to them on this account and that the question of voluntary sale had been discussed between them.

/Cont'd…

Further, no specific proposal was made to the Provider in respect of the sale of the RIP in 2016.

Despite this, I am of the view that the Provider ought to have followed up more diligently with the Complainants in respect of the RIP loan as arrears were continuing to mount on the account. I am not holding the Provider responsible for those arrears as I accept that it is the obligation of the Complainants to meet their mortgage repayments, including interest accruing thereon. Rather, in light of the level of arrears and the fact that no ARA was to be offered to the Complainants, I am of the view that the Provider ought to have made some attempts during 2016 to progress the question of the voluntary sale when the Complainants had, at various points, including a phone call in October 2015, indicated their willingness to sell the RIP. I am of the view that the conduct of the Provider in this regard was unreasonable.

(F) In respect of the SFS submitted in May 2017, I am of the view that there was a breach of Provision 35 CCMA in that the SFS in question was not assessed promptly. First, there was a delay in informing the Complainants that outstanding documentation was required and it appears that it was not until the end of June that this was communicated to the first Complainant on a call. I have already noted that the letter which was sent in early June 2017 highlighting the lack of documentation was sent to an address which, to the Provider's own knowledge, was not accessible by the Complainants, so I do not consider this to have been sufficient notification. It does not appear that the first Complainant submitted a letter from his employer confirming his salary until September 2017 but thereafter, the Provider appears to have written several letters insisting on the provision of payslips which it had already been informed were not available. This further delay between September and November 2017 was unreasonable in light of the fact that the Complainant's representative had indicated to the first Complainant in a call in September 2017 that a letter from his employer would be sufficient due to his employment circumstances and that a letter from his employer was deemed sufficient to assess the SFS in 2015.

In light of the above findings, I partially uphold the aspect of the complaint relating to delays by the Provider in responding to proposals made by the Complainants in respect of their RIP loan. I do not however, uphold the aspect of the complaint that any commitment was made to the Complainants in respect of writing-off the residual of their mortgage loan following the voluntary sale of the property in question. I appreciate that in a global sense, the Complainants are of the view that they made huge efforts to engage with the Provider in relation to their arrears and are disappointed that the Provider did not offer any options in respect of this residual debt. As was made clear earlier in this decision, however, this Office is not in a position to interfere with the details of commercial negotiations between the parties. Further, after the Complainants had agreed to the voluntary sale of the property in December 2017, there were repeated requests by the Provider in 2018 for the Complainants to liaise with it in respect of an agreement to repay the residual debt and there is no evidence before me to suggest that the Complainants made any efforts in that regard to submit an SFS as requested.

/Cont'd…

They were fully aware from dealings with the Provider over the years that an SFS with proof of income was required by the Provider to allow it to offer any repayment arrangement.

The Complainants were, or ought to have been aware that the Provider was unable to offer a repayment plan on the residual debt without an updated SFS, accompanied by other supporting documentation. Other than in relation to the failings identified above, the evidence submitted indicates that the Provider engaged regularly with the Complainants in respect of their arrears. Further, I am of the view that the representatives who dealt with the first Complainant in the audio recordings submitted to me were clear and helpful and there is no evidence before me that confusing information was provided to the Complainants.

Exclusion from 2017 Scheme

It appears that the Provider introduced a scheme in 2017 for landlords willing to sell their properties. According to certain reports at the time, the Provider was writing to certain buy-to-let investors in arrears and informing them that if they sold their properties, the Provider would write off any residual debt. The article also indicated that the offer was restricted to certain buy-to-let mortgages following a detailed review of the loan accounts by the Provider. The Complainants are aggrieved that they were not included in this scheme.

In its submissions, the Provider has argued that the 2017 scheme was only available to borrowers who were disposing of all of their secured properties. This cohort did not include the Complainants as the Complainants' RIP was cross-charged against their PPR. It is not disputed that the Complainants were not willing to dispose of their PPR so this scheme was therefore not available to them. There is no evidence that rebuts this submission so I accept that the fact the RIP was cross-charged against the RIP was the reason why the Complainants were not considered suitable for the scheme.

While I appreciate that the Complainants might consider this distinction artificial and feel that they should have been entitled to participate in the scheme, this matter falls within the commercial discretion of the Provider. Further, I do not believe that its conduct in excluding the Complainants from the scheme on the basis that they were retaining one of the secured properties on the RIP loan account was unreasonable, unjust, oppressive or improperly discriminatory within the meaning of section ***60(2) of the Financial Services and Pensions Ombudsman Act 2017***. In these circumstances, I do not uphold this aspect of the complaint.

Loan Sale

By letter dated 2 August 2018, the Provider wrote to the Complainants indicating that their RIP loan was to be transferred to a third party provider and that they would receive further contact in relation to the transfer date. The first Complainant rang the Provider on 7 August 2018 expressing his concern about the proposed sale and indicating that he proposed to take legal advice in relation to this.

/Cont'd…

In a further call on 9 August 2018, he expressed similar concerns. In the meantime, the proceeds of sale of the RIP had been applied to the account and several written requests were made for the Complainants to submit an SFS and supporting documentation in respect of the residual debt, which they did not do. By letter dated 1 February 2019, the Provider wrote to the Complainants informing them that their loan had been transferred to the third party on 1 February 2019. The Complainants are aggrieved that the loan was sold in circumstances where they had agreed to a voluntary sale of the RIP and no agreement had yet been reached between the parties in respect of the repayment of the residual debt.

Condition 1.15 of the general mortgage loan approval conditions provides that the Provider "*may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions*". Condition 6.7 of the Mortgage Conditions confirm that the Provider "*may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person ...*" As a matter of contract, therefore, the Provider was entitled to transfer the loan at any time.

Further, I do not accept that the Provider was obliged to retain the loan account merely because the Complainants had agreed to the voluntary surrender of the property. If the parties had come to an arrangement in relation to the repayment of the residual debt such as to alter the terms and conditions applicable to the loan account, the benefit of such an agreement would also have transferred to the third party provider who I note is subject to the same regulatory requirements as the Provider. The Provider was not obliged to indefinitely await the submission of an SFS and supporting documentation from the Complainants before transferring the loan in question. It had been made clear to the Complainants from their agreement in December 2017 to sell the RIP that they were obliged to liaise with the Provider to agree a repayment plan in respect of the residual debt. While I appreciate that there was some delay in the application of sale proceeds in August 2018 for which the Provider was at fault and subsequently remedied, and a phone call in mid- to late-2018 where the Complainant was left on hold for 28 minutes while trying to speak to someone in relation to the residual debt, no other steps were taken by the Complainants to contact the Provider in respect of repayment of the residual debt.

In all the circumstances, I do not uphold the aspect of the complaint relating to the transfer of the loan in February 2019.

Mishandling of Complaint

It appears from a call log dated 9 August 2018 that the first Complainant raised a complaint over the phone in respect of the proposed sale of the loan account to the third party provider. It appears that the first Complainant also indicated that because the RIP was cross charged on his home loan, he was concerned that his home was a risk due to the sale of the loan. I have not been provided with a call recording of this call but an internal note indicates that the first Complainant was also unhappy that it took four years to reach agreement to sell one of the RIPs when he states that he has worked hard to try to resolve the situation.

/Cont'd…

By email dated 13 August 2018, the first Complainant expressed his frustration that the shortfall on the RIP loan comprised mainly of accrued interest which would have been considerably less if his proposal to sell the property back in 2013 had been accepted. He further expressed frustration that he was told that he was not suitable for the voluntary surrender scheme which had been highlighted in the national media. The first Complainant indicated that he and his wife desperately wanted to agree a deal with the Provider as they wanted to get normality back to their lives.

The complaint was acknowledged by letter dated 15 August 2018 with a designated customer service agent identified with responsibility for the complaint. A follow up telephone call was received from the first Complainant on 17 August 2018.

The Complainants have argued that the call of 9 August 2018 was not logged as a complaint but the records submitted by the Provider indicate that it was. Further I accept that the acknowledgement letter of 15 August 2018 was sent within five business days of receipt of the Complainants in compliance with Provision 10 of the Consumer Protection Code 2012 (**CPC**).

By letter of response dated 4 September 2018, the Provider indicated that the loan in question had been classified as non-performing and the loan had been included in the sale to a third party as a result. The Provider assured the Complainants that all Central Bank Codes of Conduct would continue to apply to the loans after the transfer. While this letter of response dealt with the issue of the loan transfer, it did not make any reference to the complaint regarding the proposal the Complainant had made over a period of years in respect of the sale of the RIP or the fact that they had been excluded from the 2017 voluntary surrender scheme. This has subsequently been accepted by the Provider.

By letter dated 10 April 2019, the Provider accepted that its letter dated 4 September 2018 did not address all of the issues the Complainants had raised in their email dated 13 August 2018 and apologised for this. The letter went on to deal with the outstanding issues. The letter indicated that the Complainants initially discussed the issue of a voluntary surrender with their portfolio in 2013 and 2014. The letter noted that they were requested to complete an SFS so that the Provider could assess the position but that the Complainants were unable to submit all the documentation in order for the Provider to assess the circumstances. The letter noted that the RIP loan was deemed unsustainable. The Provider stated that it had no record of advising that a write-off could be put in place and that the Provider does not offer any form of debt forgiveness. The letter confirmed that the Complainants did not qualify for the voluntary surrender scheme as the RIP loan account was cross charged against the Complainants' family home. A goodwill gesture of €200 was offered in light of the fact that all of the issues had not been addressed in the September 2018 correspondence.

If a letter in similar terms as the letter of 10 April 2019 had been sent to the Complainants in response to their August 2018 complaints, I would be of the view that the Provider had complied with its regulatory obligations.

/Cont'd…

However as the September 2018 letter only addressed one of the three complaints that were raised, I am of the view that the Provider was in breach of Provision 10.7 CPC which obliges the Provider to "*seek to resolve any complaints with consumers*". I therefore uphold this aspect of the complaint.

I note that a further complaint was made by the first Complainant by email dated 5 November 2018 in which he indicated that he was left on hold for 24 minutes waiting to talk to the recoveries unit upon the insistence of the Provider. This is presumably the same call that I have referenced above that took place in mid-to-late 2018. From my consideration of the call in question, I believe that the hold period was 28 minutes. The first Complainant complained that the representative in question had a poor attitude and refused to understand his perspective and his endless attempts to engage with the responsible department. He indicated that he was convinced he had been deliberately left on hold. In a letter of response dated 9 November 2018, the Provider indicated that it had listened to the call in question and was satisfied that the representative had acted professionally at all times.

Once again, I do not believe that the Provider responded fully to the complaint in this regard as there was no mention of the lengthy period that the Complainant had been left on hold for. The Provider was entitled to conclude in its response to the complaint that, in its view, the complaint had not been made out in respect of the attitude adopted by the representative. It should, however, have acknowledged and responded to the complaint that the Complainant was left on hold for such a lengthy period. While it is always a source of frustration for customers to be left on hold for a lengthy period of time, the circumstances of that particular call – when the first Complainant was already unwilling to speak to the relevant department and was convinced to do so by the Provider's representative – makes the long period of the hold all the more aggravating. While it would not be reasonable to make a finding in relation to a CPC breach in respect of this call when the Provider has not had an opportunity to respond, I would encourage the Provider to also consider its response to this complaint of 5 November 2018 in the context of the overall service failures identified in this decision and seek to ensure that customers are not left on hold for such lengthy periods of time and, at least, to apologise when such an eventuality arises.

I partially uphold the complaint because of the multiple delays and failings by the Provider identified above in respect of the assessment of proposals and SFSs submitted by the Complainants between 2012 and 2016; and because of its mishandling of their August 2018 complaint. I do not uphold the balance of the complaints relating to any alleged commitment in respect of a write-off of the residual debt after the voluntary sale of the property, the transfer of the loan to a third party provider, or the exclusion of the Complainants from the 2017 voluntary surrender scheme.

It is appropriate, in my view, to direct that a sum in compensation is paid by the Provider to the Complainants to reflect the service failures that have been highlighted.

/Cont'd…

I note that the Provider has offered the sum of €3,000 to the Complainants in this regard but I do not consider the quantum offered to be adequate and further, in all the circumstances of the complaint, and owing to the multiple service failures identified, I consider the sum of €5,000 in compensation to be appropriate.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2) (b).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €5,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

3 September 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.