



<u>Decision Ref:</u>	2020-0353
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process Delayed or inadequate communication Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Legal fees charged
<u>Outcome:</u>	Rejected

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

The Complainant and her ex-husband entered into a mortgage loan agreement with the Provider in **May 2005**. In **November 2011**, the loan account began to fall into arrears. Following this, the Complainant and her ex-husband separated. The Complainant states that she engaged with the Provider to the fullest extent possible. However, she states that without warning, the Provider refused to continue to engage with the Complainant and work with her to try and keep her family home. Amongst the complaints made in respect of the Provider's conduct, the Complainant believes that the Provider exerted excessive pressure on her to sell her home and failed to pursue her ex-husband for his share of the outstanding debt.

The complaint relates to the conduct of the Provider regarding a joint mortgage loan and the Complaint Form was signed by both parties to the mortgage loan. However, the complaint in respect of the Provider's conduct is made to this Office by only one of the joint borrowers, the Complainant. The second party to the loan has confirmed by letter dated **17 January 2020** "... that my only input into this complaint when it was submitted, was to sign the necessary form in line with the rules for submitting a complaint in the case of joint account. ... I trust this letter will allow [the Complainant's] complaint move forward and be processed in her own right."

The Complainant's Case

In her Complaint Form, the Complainant states that following her judicial separation she feels that the Provider has subjected her to "... unnecessary pressure which at times was excessive."

The Complainant states that the Provider has refused to engage with her in trying to keep her home "... even though they had been working with me but this seemed to suddenly change overnight. I had been keeping to agreements in place."

The Complainant explains that as a result of the Provider failing to send her account statements which were requested on three separate occasions, the Complainant encountered difficulty applying for Mortgage Income Support, causing her *huge stress*. The Complainant states that she *continually* asked the Provider to direct any correspondence for the joint borrower, her ex-husband, to his address as letters addressed to him at the family home was confusing for the Complainant's children. However, the Provider has ignored these requests. The Complainant also advises that the house insurance was incepted through the Provider and on renewal, the premium increased to such an extent that the Complainant was unable to insure her home.

The Complainant maintains the position that "... because there is equity in my home that [the Provider] see the opportunity to recoup all monies hence pressure to sell/repossession."

In resolution of this complaint, the Complainant states:

"I would like my complaint reviewed in full so that it can be ascertained if it has merit and if so that whatever sanctions can be made on [the Provider] be made without delay.

I would like to keep my home and an affordable option be put in place until my youngest child reaches 21 yrs."

The Complainant has made the following complaints in relation to the conduct of the Provider:

- *Their failure to explore all options with me under the MRP*
- *Excessive pressure to submit to a Voluntary Sale*
- *Excessive communications i.e. letters, phone calls*
- *Failure to take my situation in its entirety into account in helping me keep my home*
- *Failure to pursue my co-borrower for his share of the mortgage*
- *Continuous communication being sent to me for my co-borrower even though I have requested they not do this on several occasions*
- *Continually addressing me as Mrs when I have requested they do not do so and provided a copy of Judicial Separation to show I am no longer married.*

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- *Failure to investigate my complaint in its entirety*
- *Failure to investigate an appeal to the findings of those complaints in its entirety*
- *Failure to provide information in a format that I can understand following Data Access Request*
- *Failure to work with me in trying to keep my home*
- *Giving me continuous run around and refusing to speak with me. Directing me to speak with their Solicitors who cannot provide answers to questions I have asked*
- *Insisting I increase the insurance on my home which has left me in a situation where I have no insurance as I simply cannot afford the quote [the Provider/Insurer] have quoted me”*

The Complainant explains that she is a single mother with dependent children having separated from her husband for a number of years prior to making this complaint. The Complainant states that she is the only one contributing to the loan and has been the only one to communicate with the Provider until recently. The Complainant also outlines that she is in receipt of an invalidity pension and mortgage income support.

Since her separation, the Complainant has *“... always communicated with the bank, attended all 6 monthly reviews, have always answered every phone call, letter etc.”* The Complainant submits that *“... the bank refused to put a reduced mortgage payment in place for me and tried to pressurise me into selling my home.”* The only reason given for the Provider’s refusal was that the loan had become unsustainable. The Complainant advises that no options were discussed with her *“... regardless of the fact I requested this and expressed my utter frustration at the fact that this was not explored with me.”* When the Complainant requested that the Provider furnish her with the documentation demonstrating how the Provider had reached its decision, the Complainant was informed that she was not privy to that information.

The Complainant states she informed the Provider that as a result of her Judicial Separation, the court ruled that she was to stay in the family home with her children until her youngest child reached 21 years of age at which time the property was to be sold. The Complainant provided a copy of the Judicial Separation along with letters from her solicitors to the Provider. However, *“... the bank took no account of the pleas that were made to them and continued on their quest to evict me from my home.”*

Following an *extremely frustrating* phone call with the Provider’s solicitors, the Complainant contacted the Provider and made a formal complaint. The Complainant explains that:

“Although the bank acknowledged my complaint and dealt with it in the time allowed the results clearly showed they had not investigated my complaint fully. I put in a further complaint based on the fact they had failed to investigate my complaint and got more or less the same reply.”

A Civil Bill for Possession of the family home was then received by the Complainant and *"[o]n receipt of this I felt like I could not fight this anymore and phoned that banks Solicitors to ask if I agreed to put my home on the market would the bank be willing to stop the proceedings and work with me."*

The Complainant was told that the Provider's instruction was to proceed to repossession and if the Complainant wanted to send an Income and Expenditure Statement, it would be reviewed.

The Complainant informed the Provider's solicitors that her income remained unchanged and therefore, she did not see the point in submitting the statement but simply wanted to know if the Provider would be willing to consider the Complainant's request.

It is outlined by the Complainant that: *"I just kept getting the same answers which caused me huge frustration. I was put on hold while this Solicitor spoke to a member of the bank and then came back with the same answer."* The Complainant asked for the name and contact number of the person the solicitor had just spoken to but this was refused. The Complainant was advised that she could contact the Provider's customer service line. The Complainant explained she did not think this line was relevant to her and her request was again refused. The Complainant then requested a copy of the call between the Provider and its solicitor. The Complainant was advised that she was not entitled to a copy of the call. The Provider's solicitors told the Complainant that a copy of their call would be made available to her, however, at the time of the letter of **19 May 2015**, this had not been received.

In the next section of this submission, the Complainant refers to the adequacy of the information received following a data subject access request.

The Complainant feels that the Provider has treated her *appallingly* over the previous two years and caused her undue stress for which she has attended her GP and has been prescribed medication. The Complainant has been put in a situation where she has been refused a direct number for the department dealing with her account and has been told that she must communicate with a firm of solicitors that cannot answer basic questions. The Complainant states that if she is to be made pay for legal fees then her questions should be answered and, as her contract is with the Provider and not its solicitors, *"... by them forcing me to deal with their Solicitors and not them this is accruing a bill for their Solicitors that I will end up paying."*

The Complainant also feels that the Provider:

"... see my home as having equity and therefore recouping all that is outstanding on my mortgage and have given no credence to the fact that a Judge has ruled that the house will be sold in 7yrs time or the fact there are [number redacted] children living in my home. ... I would like to see the Bank work with me in helping me keep my home for the next seven years by putting an agreed payment plan in place for me that I can afford so I may keep to the Judicial Court order that is in place and provide a home for my children or alternatively stop the legal proceedings against me and agree to allow me to sell my home myself without the pressure."

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The Complainant remarks that “... a Judge as part of a Judicial Separation review recognised the pressure this bank has put me under and has summoned a member of this bank to appear in her court to answer questions she has to put to them.”

Further Submission

The Complainant made a further submission dated **22 July 2019**. The Complainant raised two particular issues in this submission. The first relates to the difficulty encountered by the Complainant in obtaining a redemption figure for the loan during a telephone call on **28 January 2019**. The Complainant explains that after a frustrating telephone conversation, she was eventually given a redemption figure of €185,800.00 in full and final settlement of the loan if paid that day with daily interest accruing at a rate of €23.00. The Complainant states she confirmed the figure a number of times as she did not want to receive a further bill down the line. The sum of €185,823.00 was transferred to the Provider on **29 January 2019**. However, on **31 January 2019**, the Complainant received a bill from the Provider for €708.10. The Complainant states that the Provider was unable to give an explanation as to what this fee was for.

The second issue raised in this submission relates to the legal fees being applied to the Complainant's loan account. The Complainant states she requested that the Provider stop applying legal fees to her loan account. The Complainant remarks that she was not aware until recently that “... it is for the County Registrar to determine what legal fees, if any, should be charged.” In any effort to ascertain a real picture of what she was being charged for, the Complainant requested a breakdown of legal fees along with a breakdown of the interest being charged to the account as a result of this in **January 2019**. The Complainant states that this request was never answered.

The Provider's Case

The Provider explains that the mortgage loan was drawn down on **18 May 2005** in the amount of €160,000.00 over a 25 year term and initial repayments on the loan were set at €673.36. The borrowers then began to experience difficulty with the loan due to a change in circumstances in **October 2007**.

Excessive Communication

The Provider rejects the Complainant's assertion that its communications with her were excessive. The loan account had been in difficulty since **2009** and the Provider's records show communication logs for 10 years. As evidenced from the Timeline of Events, the Complainant initiated the majority of telephone contact regarding the loan account. The Provider submits that it engaged with the Complainant in relation to the arrears on the loan at all times and all contact was courteous and professional.

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With respect to written correspondence, the Provider issued regular letters to the Complainant in accordance with the **Code of Conduct on Mortgage Arrears 2006** and **Code of Conduct on Mortgage Arrears 2013** (together, the **CCMA**) in order to fulfil its obligations under the CCMA. Such correspondence was issued in an effort to keep the Complainant up to date on the status of the loan account. The Provider submits that all correspondence issued to the Complainant was done so correctly and in accordance with the CCMA.

The Provider also states that it complied with provisions 2.1, 2.2 and 2.9 of Consumer Protection Code 2012 and equivalent provisions of the Consumer Protection Code 2006 (together, the **Code**).

Arrears

The Provider refers to the Timeline and repayment history contained in the loan account statements. As outlined above, the loan account first fell into difficulty in **October 2007** and arrears began to accrue on the loan consistently from **6 November 2011**. The Provider has set out the arrears balance on the loan account for each year from **2009** which stood at €1,516.45 to **2018** when arrears totalled €67,354.05.

The alternative repayments arrangements (**ARAs**) applied to the loan account have also been set out by the Provider. These range from 3 to 6 month periods from **November 2007** up to **May 2014** and consist of moratoriums, interest-only arrangements, an arrears repayment plan, and a managed repayment arrangement.

In **October 2014**, the Provider explains that it passed the loan account to its legal representatives to commence possession proceedings in respect of the mortgaged property. On **30 January 2019**, arrears totalling €67,354.05 were cleared following a lodgement of the proceeds of sale in the sum of €185,823.00 to the loan account. The Provider advises that the outstanding balance on the loan was subsequently transferred to another financial services provider on **1 February 2019**.

Sustainability of the Loan

The Provider explains that under the CCMA, a mortgage loan is deemed unsustainable when a financial services provider deems there to be insufficient disposable income to service the loan repayments under any of the ARAs offered.

In this case, the Provider deemed the loan to be unsustainable on 6 separate occasions and each decision was made following a full assessment of the borrowers' circumstances, including a fully completed SFS and supporting documentation. The Provider has set out details of each assessment carried out and the decisions reached in its submissions.

The Provider states that it is satisfied that it correctly deemed the loan unsustainable on each occasion. It is also pointed out that the borrowers availed of several short term ARAs and it had come increasingly likely that their circumstances were not going to change significantly in the future.

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The Provider states that both borrowers were unemployed and the only source of income was social welfare. The level of income evidenced in the SFSs and supporting documentation was insufficient to sustain the loan in the long term. The Provider submits that it is not appropriate to remain on short term restructure arrangements on a long term basis, therefore, it asserts that the loan was correctly deemed unsustainable.

Alternative Repayment Arrangements

The Provider states that in addition to the 6 occasions on which the loan account was deemed unsustainable, the loan account was subject to several ARAs. The Provider has set out each ARA applied to the loan account and referred to above.

It is stated that the Provider fully engaged with the Complainant in an effort to ascertain if an ARA was appropriate for the loan. However, as the Complainant's circumstances had not changed significantly, the loan was unsustainable.

Meetings with the Borrowers

In its submissions, the Provider has listed the branch meetings held with each of the borrowers regarding the loan. The Provider explains that it has a dedicated Arrears Support Unit (**ASU**) in place to deal with customers in arrears. In addition to the branch meeting listed by the Provider, the Complainant actively engaged with the ASU in an effort to discuss the arrears on the loan.

MARP

The Provider also rejects that it failed to explore all options with the Complainant in accordance with its Mortgage Arrears Resolution Process (**MARP**). As previously outlined, the loan was subject to a number of ARAs and deemed unsustainable on 6 different occasions.

Pressure to Sell Mortgaged Property

On finding the loan unsustainable, the Provider states that it was obliged to advise the Complainant that the most appropriate option available to her was to sell the mortgaged property either by Assisted Voluntary Sale or Voluntary Surrender. On each occasion, the Provider reached this decision following a full assessment of the Complainant's case.

The Provider explains that it is not appropriate for a mortgage loan to remain on short term ARA on a long term basis. In the Complainant's case, both borrowers were unemployed on a long term basis and their income consisted of social welfare payments alone. It became evident that the Complainant's circumstances were not going to improve and there was insufficient affordability to service the loan under any of the ARAs offered by the Provider. In order to repay the loan and fulfil their contractual obligations, the most appropriate course of action was to sell the mortgaged property.

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Account Title

The Provider states that that it required a copy of the Order for Judicial Separation together with a request from the account holder in order to amend an account title.

On **28 November 2014**, the Provider received correspondence from the Complainant enclosing a copy of her Order of Judicial Separation for the Provider's records. However, the Provider states that the Complainant did not request her account title to be amended, therefore, no action was taken in this regard.

This issue was raised by the Complainant in her formal complaint on **11 February 2015**. However, the Provider "*... regret[s] to note that the Bank's Final Response Letter dated 23 March 2015 ... requested that the Complainant submit a copy of the Order for action, however same was already on file with the Bank since 28 November 2014. The Bank sincerely apologises for this oversight and regrets any upset this may have caused.*"

Corresponding with the Joint Borrower

In respect of correspondence being issued to the joint borrower at the Complainant's address, the Provider states that it issues all general mortgage loan correspondence to the property address for the attention of both borrowers. This correspondence includes account statements and rate change letters. However, in the case of separated borrowers, the Provider can hold two separate correspondence addresses on file.

The Provider states its records show that it received written notification of a new address from the joint borrower on **29 June 2012**. In this respect, the Provider states that:

"[w]hile the Bank issued correspondence to the second named Complainant at his new address on 11 December 2012 ..., it would appear that further correspondence issued to both parties were not issued to the second named Complainant's new address going forward."

The joint borrower's address was not correctly updated until **21 November 2016**. The Provider notes that all correspondence from its solicitors were issued to the borrowers separately from **October 2014**.

The Provider states it "*... can accept that it failed to implement an address change for the second named Complainant in a timely manner and would sincerely apologise for any inconvenience or upset this may have caused.*"

Failure to Pursue the Joint Borrower

The Provider refers to the Complainant's comments that the Provider "*lent money to two people, not one*" and appreciates these comments. While the Provider notes that the Complainant made efforts to engage with it in respect of the arrears, it states that the other joint borrower did not co-operate fully in the process.

However, the Provider continued to hold both borrowers jointly and severally liable for the mortgage loan debt in accordance with the mortgage contract. The Provider refers to section 1.21 and section 19.1 of the Mortgage Conditions.

The Provider submits that it is fully entitled to contact both borrowers in relation to the arrears situation and to engage with the Complainant solely or jointly; whenever possible in an effort to recover the loan. The Provider also refers to the details of communications with the joint borrower included in its Schedule of Evidence.

Additionally, the Provider states that it sought to engage with the joint borrower in an effort to apply an ARA to the account. The joint borrower submitted a Standard Financial Statement (SFS) in this regard on **1 October 2011** and **7 December 2016**. The Provider also continued to issue CCMA correspondence separately to both borrowers to keep them advised of the status of the loan account. The Provider's solicitors also issued correspondence to the borrowers in relation to the arrears and ongoing litigation process.

Insurance Cover

Referring to correspondence sent to the Complainant on **14 March 2013**, the Provider explains that it received details of the Complainant's alternative home insurance cover. However, it was noted that the level of cover may have been inadequate based on recent guide tables on rebuilding costs. The Provider suggested that the Complainant review the alternative policy to ensure that sufficient cover was in place.

The Provider outlines that it requires mortgage loan holders to have in place both home insurance and life assurance at all times. It states that it would never advise a customer to cancel their insurance or reduce their cover to an insufficient amount. The Provider states that it has a duty of care to its customer and at all times, would advise customers to ensure their insurance cover is adequate to prevent potential loss should they need to make a claim.

Department of Social Protection Letter

The Provider explains that account statements are issued every January. However, on reviewing the Complainant's case, the Provider "*... has identified delays on the Bank's part with regards to the [Complainant's] requests for information for the Department of Social Welfare.*"

The Provider notes that the Complainant telephoned it on **14 December 2010** requesting a letter outlining details of a restructure in place on the loan account. The Provider explains that it asked that this request be set out in writing so that the appropriate letter could be arranged. However, the Provider:

"... regret[s] to note that the Complainant submitted a copy of letter from the Department of Social Welfare as requested by email on 27 December 2010 and by post on 8 February 2011 but same was not actioned by the Bank.

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The [Complainant] subsequently issued correspondence by registered post on 11 February 2011. The Bank regrets to note that a response was not issued ... until 8 March 2011."

On **26 September 2014**, the Complainant telephoned the Provider to request loan account statements be issued to her for the purpose of her Mortgage Income Support (**MIS**) application as the deadline for this was **8 January 2015**. While the Provider has no record of the post being returned, it is noted by the Provider that the Complainant contacted it again on **2 October 2014** as she had not received the requested statements. On **8 October 2014**, the Complainant confirmed that she had received the statements and as such, the Provider assumed that the January deadline was met.

The Provider "*... apologises for any inconvenience caused as a result of the above delays.*" However, the Provider submits that MIS is assessed by the Department of Social Protection and is of the understanding that MIS is granted following a full means test. The Provider is also of the understanding that this allowance can be backdated in certain circumstances. The Provider states that if the Complainant can provide evidence that its delay caused financial detriment, it would be happy to review the matter again with a view to reimbursing any lost funds.

Communications with the Provider's Solicitors

On **24 October 2014**, the Provider outlines that it passed the Complainant's file to its solicitors to commence possession proceedings in accordance with the mortgage contract. From this point onwards, the Provider's solicitors managed the collections and recoveries process on the loan account and sought to engage with the Complainant on the Provider's behalf in accordance with its instructions. However, the Provider states that it continued to engage with the Complainant in addition to its solicitors, in an effort to determine whether an ARA was appropriate to suit the Complainant's particular circumstances.

Referring to telephone conversations between the Complainant and the Provider's solicitors in **January 2015**, the Provider states that the Complainant requested details of the upcoming court hearings, however, as the Return Date was not yet set, the Provider's solicitors were unable to confirm the date to the Complainant. The Provider states that its solicitors issued correspondence to both borrowers separately with details of each court hearing as soon as the information became available.

Breakdown of Legal Fees

The Provider states that since the loan account was passed to its solicitors in **October 2014**, the Complainant has sought a breakdown of legal costs from the Provider on 3 separate occasions; the first of which was on **7 June 2017**. On **9 June 2017**, the Provider states that it issued correspondence to the Complainant detailing a full breakdown of the legal costs applied to the loan account. On **11 January 2017**, the Provider wrote to the Complainant offering to refund all legal costs applied to the loan account. Again, on **30 October 2018**, the Complainant requested a further breakdown of legal fees.

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This was provided to the Complainant on **5 November 2018**. On **8 February 2019**, the Complainant responded by declining the offer of having the legal fees refunded as she felt that the joint borrower should not benefit from the outcome of her complaint.

The Provider notes that the Complainant also requested details of the amount of interest charged to the loan account as a direct result of legal fees being applied to the account. The Provider *"... regret[s] to note that while the Bank responded to the Complainant's correspondence on 14 February 2019 ... the requested interest amount was not provided. The Bank apologises for this oversight. ..."* The Provider states that the amount of interest applied to the loan account as a result of the legal fees was €605.91.

Legal Fees and Charges

The Provider explains the legal fees applied to the loan account are costs incurred by the Provider as a result of the loan account entering the litigation process.

The Provider refers to the Letter of Approval dated **21 April 2004**, General Mortgage Approval Conditions, Mortgage Conditions and signed Acceptance of Loan Offer dated **2 May 2005** when applying legal costs to the loan account. In particular, the Provider cites section 12 of the Mortgage Conditions *Costs and Expenses* which was accepted by the Complainant by signing the Acceptance of Loan Offer in **May 2005**. The Provider states that it is satisfied that the legal fees applied to the Complainant's loan account were in compliance with the mortgage contract.

The Provider points out that:

"... in an effort to resolve the Complainants' complaint to their satisfaction, on 11 January 2019 the Bank offered to refund legal fees in the amount of €5,366.01 ... The Complainants did not accept this offer, however this offer remains open to the Complainants should they choose to accept same at a later date. The interest accrued as a result of these fees (€605.91) would also be refunded to the Complainants."

Investigation of Complaints and Appeals

The Provider states that it is satisfied that it has fully investigated the Complainant's formal complaints and CCMA appeals appropriately and efficiently on each occasion and has fulfilled its obligations under the CCMA and the Code. The Provider has dealt with each complaint and appeal made by the Complainant from **2012 to 2019**.

Redemption Figure

The Provider states that on **28 January 2019**, the Complainant telephoned it to request a redemption figure for the loan account. The Complainant was provided with a figure of €185,823.00, although it was noted to be an approximate figure and subject to daily interest accrual. Formal redemption figures were requested to be issued to the Complainant by post. This can take up to 10 days.

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On preparing redemption figures, all costs are reviewed to ensure all charges are applied to the account before final redemption figures are issued. The Provider's solicitors had an outstanding legal cost of €725.70 which was applied to the loan account before the redemption figures were issued.

Before receiving the redemption figures by post, the Complainant lodged an amount of €185,823.00 to the loan account on **30 January 2019** believing that the loan was being redeemed in full. However, the Complainant was unaware that this was not sufficient following the addition of the legal costs.

On **31 January 2019**, the Provider issued formal redemption figures detailing the closing balance of €708.10. Furthermore, as the loan was in the process of being transferred to another financial services provider, the remaining balance was transferred on **1 February 2019** and the Provider issued correspondence to the Complainant in respect of this.

On receipt of the redemption figures on **30 January 2019** and the transfer letter of **1 February 2019**, the Complainant submitted a formal complaint on **6 February 2019**. Following an investigation of the complaint, the Provider found that it did not advise the Complainant that legal costs may be outstanding before providing the Complainant with an estimated redemption figure during the telephone conversation on **28 January 2019**.

Further Submission by the Complainant

The Complainant delivered a further submission dated **22 July 2019**. In this submission, the Complainant refers to the complaints identified in the Complaint Form and accompanying submission. However, the Complainant also refers to events that arose after the date on which her Complaint Form was received by this Office in **September 2015**.

This Office wrote to the Complainant by letter dated **10 September 2019** referring to the July 2019 submission and the list of the complaints outlined by the Complainant in the Complaint Form and the May 2015 submission. The Complainant was advised that her complaint regarding the Provider's conduct in respect of her data subject access request is not a matter within the jurisdiction of this Office and was more properly a matter to be referred to the Office of the Data Protection Commissioner. This letter also referred to the Complainant's request to the Provider for a *reduced redemption figure* in **2019**. The Complainant was informed that while this Office can investigate the procedures undertaken by the Provider regarding MARP, it will not investigate the details of any re-negotiation of the commercial terms of a mortgage loan agreement which is a matter for the Provider and the Complainant.

I note that two new complaints in particular have been identified in the July 2019 submission. These are (i) the application of legal fees to the loan account and the Provider's failure to furnish the Complainant with details of these fees; and (ii) the provision of an incorrect redemption figure during a telephone conversation on **28 January 2018**.

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The Provider has not objected to the introduction of these new complaints and it has also sought to address these in its submissions. Furthermore, a Final Response letter was issued by the Provider in respect of (ii) on **14 February 2019**.

Accordingly, these additional complaints are included in this adjudication.

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to explore all options under MARP with the Complainant;
2. Placed excessive pressure on the Complainant to submit to a voluntary sale of the mortgaged property;
3. Failed to work with the Complainant and failed to give appropriate consideration to the Complainant's circumstances in respect of trying to keep the mortgaged property;
4. Engaged in excessive communication;
5. Failed to provide the Complainant with account statements and/or correspondence when requested;
6. Failed to pursue the joint borrower for his share of the mortgage loan;
7. Sent correspondence intended for the joint borrower to the Complainant despite being requested not to do so;
8. Failed to acknowledge the Complainant's correct title following her Judicial Separation;
9. Failed to properly investigate the Complainant's complaints and appeals;
10. Wrongfully and/or unreasonably insisted that the Complainant increase the level of insurance cover on the mortgaged property;
11. Provided an incorrect redemption figure to the Complainant on **28 January 2019**;
12. Wrongfully and/or unreasonably applied legal fees to the loan account and failed to provide details of those fees when requested; and
13. Provided poor customer service to the Complainant.

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The Complainant in her complaint states that she wants the Provider to:

1. Waive the legal fees and interest charged to her account;
2. Compensate her for the way she and her family *"have been treated"* by the Provider.

Decision

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

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

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

A Preliminary Decision was issued to the parties on 24 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.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. E-mail from the Complainant to this Office dated 24 August 2020.
2. Letter from the Provider to this Office dated 7 September 2020.
3. E-mail, together with attachment from the Complainant to this Office dated 11 September 2020.

Copies of these submissions were exchanged between the parties.

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

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At the outset I must point out that this complaint was received by the then Financial Services Ombudsman's Bureau on **19 May 2015**. However, legal proceedings had been commenced by the Provider on **12 January 2015**. This presented a difficulty in terms of the jurisdiction of the Financial Services and Pensions Ombudsman to investigate the complaint.

The Office of the Financial Services and Pensions Ombudsman was established on **1 January 2018** by the ***Financial Services and Pensions Ombudsman Act 2017 (the Act)***.

Section 49 of the Act provides:

Where—

(a) a complaint has been made to the Ombudsman, and

(b) any party to the complaint subsequently commences proceedings in any court against any other party to the complaint in respect of any of the matters which are the subject of the complaint,

then, any party to the proceedings may at any time after an appearance has been entered, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings and the court, if it is satisfied that—

(i) there is no sufficient reason why the matter in respect of which the said proceedings have been commenced should not be investigated by the Ombudsman, and

(ii) the party that commenced the proceedings was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary for the proper conduct of the investigation,

shall make an order staying the proceedings.

The Circuit Court made an order under Section 49 staying the Court proceedings in **April 2019** thereby allowing the investigation by this Office to progress.

The Mortgage Loan Agreement

The Complainant and her ex-husband (the **Borrowers**) entered in a mortgage loan agreement with the Provider and signed an *Acceptance of Loan Offer* dated **2 May 2005** on the terms and conditions set out in (i) Letter of Approval, (ii) General Mortgage Loan Approval Conditions, and (iii) Mortgage Conditions.

Correspondence

There has been a significant degree of correspondence exchanged between the parties to this complaint prior to it being submitted to this Office regarding the Complainant's and the Borrowers' personal and financial circumstances and the alternative repayments arrangements offered by the Provider. I will now set out certain of this correspondence below.

2007 to 2010

The first ARA in respect of the loan appears to have been granted just over two years into the mortgage in **October 2007** and consisted of a 3 month moratorium on capital and interest.

The Provider wrote to the Borrowers on **14 April 2009** to advise that a *payment holiday* was being applied to their account for 3 months commencing on **February 2008**.

On **25 May 2010**, the Borrowers accepted a 3 month reduced payment arrangement of €435.00 commencing in **May 2010**.

The Borrowers wrote to the Provider on **6 September 2010** returning a signed acceptance form for a reduced repayment arrangement for **August and September 2010** in the amount of €562.85 and on the expiry of this arrangement, repayments would be approximately €955.48. The arrears on the loan account at this point stood at €1,823.11. The Borrowers also sought to explain their current situation to the Provider:

"... we would like to ask if at all possible could the arrears of e1,823.11 be added to the principal balance of our mortgage.

[The Complainant's ex-husband], although an employee had not worked for the last three years due to severe depression. He is under the care of the Psychiatric Dept in [name of hospital redacted] and attends his G.P. on a weekly basis. We do not envisage [him] being able to return to his employment for the foreseeable future.

[The Complainant's ex-husband's] only income is illness benefit from Social Welfare. In this regard we see no possibility of being able to pay the arrears outstanding on our account and this in turn leads to more stress and worry for us both."

2011

By letter dated **16 February 2011**, the Provider wrote to the Borrowers stating:

"Further to our recent correspondence we are pleased to confirm that the Bank is prepared to suspend by way of moratorium/reduce by way of underpayment your monthly repayments on your above mortgage account for a limited period. ...

/Cont'd...

This temporary reduction in your monthly repayment is intended to assist you overcome any short term difficulties you may be experiencing. ..."

This arrangement was due to run for 6 months commencing in **March 2011** with repayments of €560.06 per month and at the end of this period, repayments would be approximately €974.28. The arrears on the loan account at this point totalled €3,852.61.

The Complainant wrote to the Provider on **28 March 2011** as follows:

"I ... would like to note that as far back as last November I have being (sic) requesting a letter stating there was no arrangement in place for the arrears on this account, which was necessary to receive some help with our payments. I made numerous phone calls to be told letters had not been received, people dealing with the account had moved on etc, etc. I eventually on the third attempt of sending the letter registered it.

I have stated on all three occasions and in a detailed letter that my husband has mental health problems ... On top of this, we have lost out on mortgage interest supplement for this time, which we would have been entitled to and which cannot be backdated. As a consequence the arrears on this account have increased but not for the lack of trying to get some help.

Our situation has since changed, in so far as we are now in the middle of a marital separation ...

I now have to draw up a new application for mortgage supplement as my husband will be leaving this home. As he is on illness benefit he will not be in a position to contribute to the financial running of this home, as all of his income will be taken up renting a property and his living costs. I myself am on invalidity pension and will have [number redacted] dependent children to care for.

I also requested in writing some months ago that the arrears be capitalised on this account in order to help our situation. I ask that this be again considered as a matter of urgency to ease the worry associated with same.

I will endeavour to pay whatever I can until I can get some help organised but I'm afraid it will not be the amount agreed as I simply do not have it, as there will be one less income into this home. ..."

The Complainant wrote to the Provider on **25 July 2011** to advise that she was in receipt of €105.20 MIS per week and was required to make a minimum contribution of €24.00 per week. The Complainant explained that her ex-husband indicated that he would pay €10.00 per week to the loan account but this had not yet commenced. The Complainant requested *"... that a new arrangement be put in place which is affordable to me given my present circumstances. It would help greatly if the arrears on this loan could be capitalised ..."*

/Cont'd...

The Provider wrote to the Borrowers on **26 September 2011** to inform them that following an assessment of a request for a restructure and SFS, the Provider was unable to offer an ARA as *"All parties to the mortgage must agree to the alternative repayment option."* A further letter dated **9 November 2011** issued to the Borrowers explaining that the request for a restructure together with an SFS had been assessed by the Provider, however, it was unable to offer an ARA as *"The proposal repayment amount is below the level considered sustainable for the repayment of your loan."*

2012

The Provider wrote to the Borrowers on **26 June 2012** informing them that it had agreed to a reduced repayment amount for 6 months commencing in **July 2012**. The Provider indicated that it would collect €429.00 per month however, the loan account would be billed at €955.91. The arrears on the loan account were €9,642.17.

The Complainant wrote to the Provider on **2 July 2012** enclosing a signed acceptance of the Provider's ARA. It was also stated in this letter that the Complainant was in receipt of €99.20 in MIS and that she had been managing the loan on her own for the past 18 months with no assistance from her ex-husband.

On **11 December 2012**, the Provider wrote to the Borrowers offering a 6 month reduced repayment arrangement of €300.00 per month and at the end of this period, repayments would be approximately €962.27. The arrears on the loan account stood at €13,755.63 at the date of this letter.

The Complainant wrote to the Provider on **19 December 2012** in response to the reduced repayment arrangement requesting that a full moratorium be granted and also that the Provider consider re-capitalising the arrears on the loan. The Complainant also set out her current financial situation and the contributions that were being made by her ex-husband towards the loan.

2013

The Provider wrote to the Complainant on **4 January 2013** acknowledging her appeal in respect of the above-mentioned ARA. By letters dated **18 January** and **21 January 2013**, the Provider wrote to the Borrowers to advise that a 3 month moratorium had been approved in respect of the loan account and at the end of this period, repayments would be approximately €955.32. This was accepted by the Borrowers.

The Borrowers were furnished with an SFS to complete and return to the Provider on **15 April 2013**. A voluntary sale of the mortgaged property was recommended by the Provider in **June 2013**. This will be set out further below together with the borrowers' acceptance of a further ARA in **November 2013**.

2014

The Provider wrote to the Borrowers on **3 June 2014** advising that following a full assessment of the previously submitted SFS and the exploration of alternative options, the Provider was unable to offer an ARA because:

“Based on your completed Standard Financial Statement there is insufficient disposable income available to service payments on your mortgage under any of the alternative repayment arrangements offered by [the Provider].”

The options available to the Borrowers, as set out in the letter, were voluntary sale, trading down, voluntary surrender and mortgage to rent.

The Complainant responded to this letter on **20 June 2014** expressing the view that the Provider was “... yet again try[ing] to force me to sell my house.” The Complainant also pointed out that the Provider failed to offer or explore other options that may have been available to her such as interest only or part interest and part capital repayments, a reduced interest rate, deferred payments, a term extension or capitalisation of arrears.

The Provider acknowledged the Complainant’s appeal on **30 June 2014** and a decision on her appeal was communicated to her on **10 July 2014** advising that her appeal was declined on the basis of no affordability to make the required repayments.

The Provider wrote to the Complainant on **22 July 2014** to explain that the incorrect letter was issued in respect of her appeal. The correct letter was enclosed. This Complainant’s appeal remained declined and the reason for this decision was that there was insufficient disposable income available to service the loan under an ARA offered by the Provider.

The Provider issued a demand notice on **2 October 2014** calling on the Borrowers to deliver up vacant possession of the mortgaged property or discharge the amount outstanding on the loan of €160,814.26. The arrears on the loan account at this date were €21,782.09.

The Borrowers were advised on **24 October 2014** that their file was being passed to the Provider’s solicitors.

Sale of the Mortgaged Property

The Provider wrote to the Borrowers on **10 June 2013** recommending that:

“Following our recent assessment of your account, we believe that the best option for your financial circumstances is for you to sell the property. This will enable you to use the proceeds of the sale to clear the arrears outstanding and repay or significantly reduce, your mortgage balance.

This recommendation is based on the information that you provided to us in your Standard Financial Statement (SFS).”

This letter also offered to pay €250.00 plus VAT to assist the Borrowers in obtaining independent financial advice. The arrears balance on the loan account was €15,472.60 at the date of this letter.

The Provider wrote to the Borrowers again on **13 September 2013** as follows:

"We have reviewed the information which you have provided to us in your Standard Financial Statement (SFS) and explored a range of alternatives. We believe that the appropriate option for you, given your financial circumstances, is for you to sell your mortgaged property.

We understand the stress that this recommendation may cause. However, in light of the level of repayments you can currently afford, we believe this is the best option for you.

Selling your property will enable you to use the proceeds of sale to clear your outstanding arrears and repay, or significantly reduce, your mortgage balance."

This letter also provided information regarding an assisted voluntary sale, the need to obtain independent legal and financial advice, the process if the Borrowers wished to proceed with the sale, and their options if the recommendation to sell was not accepted.

The Complainant responded to this letter on **25 September 2013**:

"I am writing to you in response to your letter dated 10/06/2013 and rejecting your suggestion that I sell the above property i.e. my home and that of my children's.

As stated to you already, a Judge has ruled that this home is to be sold in nine year's time, when my youngest child reaches the age of 21 yrs. As a borrower, who has voluntarily kept you informed at all stages of the difficulties I find myself in, I find it unfair and unjust that you are now attempting to force myself and my children from our home.

Through no fault of my own and through the fault of my co-borrower, the arrears on this mortgage have arisen over the past year. This was as a direct result of my ex-husbands refusal to sign papers offering a Moratorium and as a result of MIS I was receiving being cut in August `12 on the basis that no Judicial Separation was in place and my ex-husband was receiving full rent allowance.

...

I am appealing this decision on the basis of:

1/ This is a family home with [number redacted] young children living in it

2/ No other options have been explored or offered to me based on my circumstances

/Cont'd...

3/ [The Provider] have been made aware this home is to be sold in nine years time

4/ Regular weekly payments of e125 are being made to my mortgage account

5/ No effort is being made from [the Provide] that I can see to recoup any of the monies owing from my co-borrower

..."

The Provider advised the Complainant that her appeal should be addressed to its Appeals Board by letter dated **2 October 2013**. The Provider issued a letter dated **8 October 2013** informing the Complainant that it was investigating the matter. The Complainant was advised that the matter was still being investigated by letter dated **5 November 2013**.

The Provider wrote to the Borrowers on **19 November 2013** advising that a 6 month reduced repayment of €541.66 had been approved and at the end of this period, repayments would be approximately €966.82. The arrears on the loan account were €18,867.08 at the date of this letter.

On **22 November 2013**, the Provider wrote to the Complainant in respect of her appeal advising her that the Appeals Board had approved a six month reduced repayment arrangement. This was accepted by the Borrowers.

Investigation of Complaint

The Provider's internal system notes record that a complaint was made by the Complainant on **13 January 2015**. The description of the complaint is as follows:

"Clt wished to register complaint regarding lack of information regarding repossession process for property. Acc was passed to [the Provider's solicitors] a number of weeks ago. Clt queried when she can expect a court date and what she will need to proceed. Advised [the Provider's solicitors] were vague with their info and [the Provider] could not answer questions."

The Provider wrote to the Complainant on **19 January 2015** acknowledging her complaint and advised that her complaint was being investigated. The Provider also wrote to its solicitors on **19 January 2015** requesting a response in respect of the complaint. A reply to this was received on **21 January 2015**. The Provider's *Notes* indicate that on receipt of a response from its solicitors, the complaint was investigated.

A Final Response was issued to the Complainant on **6 February 2015** stating the outcome of the Provider's investigation:

"I have contacted ... Solicitors regarding your complaint and they have listened to the telephone calls from the 13th January 2015 which they believe you are referring to. [The Provider's solicitors] have confirmed that you were requesting timeframes of when the first return date would be set."

/Cont'd...

They were unable to give you this information as they have no control over the court listings. They informed you that when they have received the return date, they would write to you detailing when it is, what is required of you and any options available to you. [The Provider's solicitors] also noted that they had recommended that you obtain independent legal advice.

Neither [the Provider] nor [the Provider's solicitors] were in a position to give you the information you requested as it was not available at the time."

A second complaint was made on **11 February 2015**. In the Provider's internal system notes, the complaint is recorded as follows:

"1. House Insurance through [the Provider] and [Insurer]. Received letter from [the Insurer] saying home was not insured for a sufficient amount and informed that insurance amount would be increased if they did not contact.

a. Since got another letter from [the Provider] saying that they should up the amount.

b. Received another saying the insurance is going to increase in line with loss adjusters instructions.

i. 4 letters total

ii. Received letters about having a choice of whether or not to up insurance, does not want to up the insurance and finds it quite ironic that we want her to up the insurance when we claim she cannot even pay for the home.

c. Badgering and intimidating as far as she is concerned.

2. Letter received yesterday in answer to complaint ... she asked if we sent one to [her ex-husband].

(Told her the only address they were sent to was [mortgaged property])

a. Continually sent for [the Complainant's ex-husband] to her address.

i. (Informed her that we had to issue CCMA communication, which she said she had already been told)

b. Have we noted the correspondence address for [the Complainant's ex-husband]? Does not want correspondence for him coming to this address.

i. Stopped for a time and then recently recommenced

/Cont'd...

1. (Did the correspondence address get changed back? [The Complainant] has [number redacted] CIFs ...)

c. Mr & Mrs ..., she is legally separated and requests that we remove the title Mrs. Title from her name.

3. Letter received yesterday, same letter as above

a. Would like to make a complaint based on that letter that [the Provider] have failed to listen to her complaint

b. “[The Provider’s solicitors] cannot give you a court date”, complained that [the Provider’s solicitors] did not communicate with 3rd party, but sent letters to herself, not her authorised third party.

i. Told previously had to call [the Provider’s solicitors]

ii. Person on the phone could not answer any of the questions, transferred to [the Provider] and then transferred back, did not get an answer to her questions.

iii. Could not get exact court date but wanted to know what the expected time frame be, not a specific date.

iv. Wanted to know which of VS or possession would be better, employee she was put onto was not able to explain the two options.

v. Making a complaint that we did not investigate it. Also, she said that previous resolution letter said [the Provider’s solicitors] listened to the call, wants us to notify her that we have listened to the call.”

The Provider wrote to the Complainant on **17 February 2015** acknowledging the complaint and advised that it was being investigated. A further letter dated **10 March 2015** was sent by way of update to inform the Complainant that her complaint was still being investigated.

The Provider’s Notes show that in the investigation of this complaint, the Provider contacted the Complainant’s branch, and its solicitors requesting call recordings. The recordings were received by the Provider and reviewed on **20 March 2015**. A number of emails have also been furnished in respect of the investigation of this complaint.

An email was sent from the Provider’s underwriting department to its asset management unit dated **18 March 2015** following a request from the asset management unit to ensure it had made the correct decision regarding the loan and states:

/Cont’d...

"I have reviewed the case again and would agree with the original decision. The borrowers did not meet the repayments due on the most recent restructure offered and over the past 6 months have lodged a total of €340 to the mortgage, an average of €28.33pm.

Income is small @€1,607pm and there is no evidence to show this will increase in the future, noting that [the Complainant] is on a course to improve her employment prospects but there is no guarantee of this happening.

Expenditure was listed on the SFS @ €1,859pm which shows the household is operating at a monthly deficit and this is backed up by the repayment profile. I/O due on the account post CAP is c.€333pm which would be a struggle for the borrowers based on their income and therefore I think disposal of the property is the best course of action at this point."

A Final Response letter dated **23 March 2015** was then issued to the Complainant outlining each of the complaints that were made and sought to address each aspect of the complaint. I will now deal with the complaints made to this Office as set out above.

The First and Third Complaints

The Borrowers began to experience difficulty meeting the repayments under the loan principally due to a change in their personal and financial circumstances during **2007**. In or around **November 2011**, the loan account fell into arrears.

The evidence in this complaint shows that there was a lot of engagement between the Complainant and the Provider whether in the form of written correspondence, meetings or telephone conversations. However, the evidence also shows that there was an apparent lack of engagement or co-operation, or at the very least, less than full co-operation from the other joint borrower, the Complainant's ex-husband. This in itself caused significant difficulties in terms of requests for alternative repayment or forbearance arrangements and acceptance of those arrangements as the consent of both parties to the loan was required in such instances.

The Provider was clearly aware of the Complainant's personal and financial circumstances. This is reflected in the correspondence exchanged between the parties and the internal documentation submitted by the Provider in evidence. Furthermore, the documentation submitted by the Provider clearly demonstrates that it gave an appropriate level of consideration to the Complainant's and the Borrowers' circumstances when assessing the loan and what arrangements could be put in place. A number of short term arrangements were offered to and accepted by the Borrowers. However, the Provider did not consider these to be a long term solution towards repayment of the loan balance and accumulating arrears.

The Provider states that it wanted a sustainable solution. However, as is apparent from the information furnished by the Complainant to the Provider, the loan was unsustainable owing to her repayment capacity and the absence of any or any meaningful contribution from the ex-husband towards the loan.

While the Provider is obliged to consider various options under the CCMA for distressed borrowers, there is no evidence to suggest that it failed in this regard. I accept that the Provider assessed the Complainant's and the Borrowers' circumstances on each occasion with a view to putting a sustainable solution in place. However, on each such occasion, the loan was deemed unsustainable, thus limiting the options the Provider was in a position to offer.

Although the Provider is required to consider various options, it is not obliged to offer a particular option or arrangement to a borrower once adequate considering is given to a borrower's particular circumstances; which I am satisfied occurred in this instance.

It is not denied that the Complainant made every effort to engage with the Provider. However, I note that she has not identified what exactly the Provider should have offered by way of a viable or sustainable long term arrangement that would not only ensure the repayment of the loan and also the repayment of the growing arrears balance.

Furthermore, having had the opportunity to review the Provider's internal documentation, the Complainant has not identified precisely what the Provider failed to do in terms of its assessment of her circumstances, the proposals/recommendations it made or how it failed to give appropriate consideration to her situation and the position of the Borrowers. Additionally, I note that neither the Complainant nor the Borrowers submitted any formal proposals to the Provider to address the accumulating arrears and the repayment of the loan going forward nor was any alternative to selling the mortgaged property put forward.

Furthermore, the documentation submitted by the parties demonstrates that the Provider was willing to engage with the Complainant and the Borrowers not only from when they first began to experience difficulties but also following referral of the loan file to its solicitors in **October 2014** and the subsequent issuing of legal proceedings for possession of the mortgaged property.

Accordingly, I cannot accept that the Provider failed to consider the options suggested by MARP or otherwise, nor can I accept that the Provider failed to give appropriate consideration to the Complainant's circumstances particularly her efforts to keep the mortgaged property.

The Second Complaint

The Complainant maintains that the Provider exerted excessive pressure on her to submit to a voluntary sale of the mortgaged property. The Provider wrote to the Borrowers on **10 June 2013** recommending that the mortgaged property be sold. The Provider wrote to the Borrowers again on **13 September 2013**.

/Cont'd...

The Provider took the view that the best option regarding the loan was a sale of the mortgaged property following an assessment of the Complainant's and the Borrowers' financial circumstances. Having reviewed each letter, I am not satisfied that either letter was drafted in a manner that sought to exert pressure on the Complainant. In particular, I note these letters emphasised the need to obtain independent legal and financial advice and offered to make a contribution toward the cost of this.

Furthermore, a telephone conversation took place between the Complainant and the Provider on **10 June 2013** in respect of the letter she had received. A recording of this call has been provided in evidence.

I have considered the content of this call and there is no indication that the Provider attempted to exert any pressure on the Complainant to submit to the recommendation to sell. In fact, the Complainant was advised that she did not have to accept this recommendation and also of her right to appeal this decision.

Legal proceedings were issued in **January 2015**, seeking possession of the mortgaged property. Though I accept that this was distressing to the Complainant, I do not consider that this nor the correspondence which issued to the parties prior to this and calling on the Complainant and the Borrowers to deliver up vacant possession of the mortgaged property, constitutes conduct that would attract a finding against the Provider under the ***Financial Services and Pensions Ombudsman Act 2017***.

The Fourth Complaint

The Complainant believes the Provider engaged in an excessive level of communication with her.

Up to the date of making her complaint to this Office, the Complainant received correspondence from the Provider relating to various aspects of the loan. It appears this correspondence was addressed to both Borrowers at the address of the mortgaged property. The Provider advises that correspondence relating to the loan is issued to the mortgaged property in line with its policy. The Provider's solicitors also issued correspondence to this address but only in relation to the Complainant.

In terms of the MARP correspondence, the Provider is obliged to write to a borrower every three months as mandated by Chapter 3, Provision 25 of the 2013 CCMA. I note that this was explained to the Complainant during a number of telephone conversations.

Having considered the correspondence issued to the mortgaged property and the Complainant, I have been provided with no evidence that the Provider engaged in an excessive level of written correspondence with the Complainant.

/Cont'd...

Telephone conversations also took place between the parties. I note that a number of these telephone calls were initiated by the Complainant. I have considered the content of the recordings of these telephone calls and looking at the telephone contact initiated by the Provider and the period of time over which this took place (between 2013 and 2015), I have no evidence that the Provider engaged in an excessive level of telephone contact with the Complainant.

The Fifth Complaint

The Complainant was in receipt of mortgage income support (**MIS**). On two particular occasions the Complainant asked that the Provider furnish her with account statements and also a letter regarding any arrangements in place to deal with her arrears.

The evidence in this complaint is that the Complainant spoke with the Provider by telephone on **14 December 2010** and explained that she needed a letter from the Provider detailing the arrangements in place to deal with her arrears in order to complete her applications for MIS. The Provider advised that the Complainant would have to ask the Department of Social Welfare to put this request in writing. The Complainant forwarded an email to the Provider on **22 December 2010** which she had received earlier that day in respect of her application for MIS. This letter requested information from the Complainant's lender in respect of the arrangements in place to in relation to arrears on the loan account.

It appears from the Provider's submissions that the Complainant wrote to the Provider on **8 February 2011** in respect of her MIS. I note that a copy of this letter does not appear to have been furnished by either party. A further letter was sent to the Provider on **11 February 2011** enclosing a letter from the Community Welfare Officer from the HSE which requested information on "*... what arrangements are in place re arrears on mortgage.*"

Referring to a previous discussion with the Provider in respect of this matter, the Complainant requested a reply from the Provider as her application for mortgage income support could not proceed without a response from the Provider. Over two months after the initial request was made, a response was issued to the Complainant on **8 March 2011**.

On **10 September 2014**, the Complainant contacted the Provider by telephone seeking account statements for her MIS application. The Complainant was advised that the statements would be ordered that day and they would arrive in approximately 5 working days. The Complainant contacted the Provider again on **24 September 2014** advising the Provider's agent that she previously requested account statements for her MIS application but they had not arrived. The Complainant also advised the Provider's agent that she was out of time for her application and had to seek an extension.

The statements were re-ordered by the Provider's agent. The Complainant contacted the Provider for a third time on **2 October 2014** looking for the account statements which still had not arrived. The Complainant advised the Provider's agent that because she was unable to provide the account statements, she had missed a week's MIS supplement. However, she was granted an extension in order to allow her to get the relevant account statements.

/Cont'd...

One of the Provider's agents contacted the Complainant on **8 October 2014** and was informed by the Complainant that the account statements were received.

I note in respect of the **2014** request that Chapter 3, Provision 7 of the 2013 CCMA directs that requests for documentation and information required for the purpose of applying for State support are to be processed within 10 business days of the receipt of the request.

While the Provider acknowledges its shortcomings in respect of this aspect of the complaint, it is quite clear that the Provider failed to action the Complainant's requests within an appropriate timeframe particularly given the purpose for which the information was sought. This is most unacceptable.

The Sixth Complaint

The Complainant is dissatisfied that the Provider did not pursue both Borrowers in respect of the loan. It is important to note that both the Complainant and her ex-husband signed the loan agreement. Therefore, both parties are liable for the debt. Accordingly, the Provider is entitled to seek to recover the debt from either or both parties.

It does not appear to me that the Provider actually failed to pursue the second borrower, the Complainant's former husband and specifically, and only, pursue the Complainant. The correspondence in respect of the loan issued to the mortgaged property and was addressed to the Borrowers; not specifically the Complainant. Around the time of the Borrowers' separation, the Complainant remained in the mortgaged property with her ex-husband having vacated. As noted above, the Provider explains it is its policy to issue correspondence to the address of the mortgaged property.

I am not satisfied that the Provider has in fact necessarily failed to pursue the Complainant's ex-husband nor has it sought to specifically or only pursue the Complainant. This is because the Provider attempted to recover the debt through recommending a voluntary sale of the mortgaged property and legal proceedings seeking possession of the mortgaged property. The mortgaged property was owned by both Borrowers irrespective of whether or not it was occupied by them. Therefore, rather than pursuing one Borrower over another, the Provider sought the sale and/or possession of the mortgaged property, a joint asset. The mortgaged property was ultimately sold and the sale proceeds were used to redeem the loan with no apparent residual debt remaining.

In light of this, I am not satisfied there was a *"[f]ailure to pursue my co-borrower for his share of the mortgage."*

The Seventh Complaint

The Complainant's ex-husband wrote to the Provider on **28 June 2012** explaining that he was *"... unaware of any of the details relevant to [the loan] now or for many years heretofore."* The Complainant's ex-husband explains that he was separated from the Complainant for 12 months and had been living at the address cited at the top of this letter.

/Cont'd...

A request was made that the Provider rectify this situation. The Provider responded to this on **2 June 2012** acknowledging the new correspondence address.

In an internal email within the Provider, the individual investigating the complaint made on **11 February 2015**, wrote to another of the Provider's agents on **17 February 2015** as follows:

"The borrowers separated but we have not updated [the Complainant's ex-husband's] correspondence per the attached letter in 2012.

Would it be possible for you to update [the Complainant's husband's] address ..."

However, despite the request contained in this email, the Provider accepts in its submission in response to this complaint that the address of the Complainant's husband was not formally updated until **21 November 2016**.

It is clear that the Provider failed to update its records to reflect the fact that the Complainant's ex-husband no longer lived at the mortgaged property. The Complainant advised the Provider on a number of occasions that correspondence addressed to her ex-husband was being sent to the mortgaged property and that her ex-husband no longer resided at this address. In her submissions, the Complainant states she found this very stressful and that it caused upset and confusion for her children. It does not appear from the evidence that, on being informed of this, the Provider checked its records to ensure they were up to date in relation to the Borrowers' correspondence details. This is also compounded by the fact that an internal request was made in **February 2015** to update the correspondence records but does not appear to have been acted upon until **November 2016**, essentially two years later.

Notwithstanding this, the Provider's failings in respect of this aspect of the complaint must be viewed in the context of the Provider's policy of sending correspondence pertaining to the loan account to the address of the mortgaged property and that such correspondence would necessarily include the names of both account holders.

Furthermore, while the Complainant has referred to the stress and harm caused by this, I would note the following, somewhat contradictory, comments made by the Complainant. During a telephone call on **28 January 2013**, the Complainant states that:

"If he is not going to contribute in any manner or form to this mortgage, I don't want any documentation sent to him ..."

In a letter to the Provider dated **28 January 2013**, the Complainant states:

"As [the Complainant's ex-husband] has refused to co-operate in any manner or form in relation to his responsibilities to this loan, I am asking as a single person trying to manage this property alone, that all correspondence in relation to the mortgage be sent to me only i.e. I do not give permission for correspondence to be sent to [my ex-husband] regarding this loan as I believe is my right under your code of conduct."

/Cont'd...

In essence, this aspect of the complaint concerns the Provider's failure to action a request made by the Complainant's ex-husband, not the Complainant. While the Complainant advised the Provider on a number of occasions that her ex-husband no longer resided at the mortgaged property, the Provider was not strictly obliged to change its correspondence records on foot of a request of the Complainant. A request of this nature would have to be made with the authority and consent of the Complainant's ex-husband. Accordingly, I am not satisfied that the Provider failed to act on any instruction given by the Complainant in terms of her ex-husband's address. Although, it would have been prudent to verify the address of the Complainant's ex-husband given what it had been told by the Complainant on several occasions.

Therefore, while I am satisfied that the Provider did in fact send correspondence intended for the Complainant's ex-husband to the mortgaged property after he advised the Provider of his current address, owing to the fact that correspondence sent to the mortgaged property after this date would still contain the names of both joint account holders, it is not clear which correspondence was specifically and solely intended for the Complainant's ex-husband.

The Eight Complaint

The Complainant states that the Provider failed to acknowledge her correct title following her separation. It appears that the Provider was first made aware of the Borrowers' separation in a letter from the Complainant dated **28 March 2011**. The Complainant furnished the Provider with a copy of the Order for Judicial Separation under cover of letter dated **27 November 2014**. I note the Order is dated **25 July 2013**.

The Complainant also advised the Provider's agent during a telephone conversation on **1 December 2014** that she had recently sent a copy of the Order to the Provider. However, no instruction was given on either of these occasions to effect a name change.

The Provider explains that it received correspondence from the Complainant enclosing a copy of her Order of Judicial Separation for its records on **28 November 2014**. However, it is noted by the Provider that the Complainant did not request her account title to be amended, therefore, no action was taken in this regard. The Provider states that, as outlined in the Final Response letter dated **23 March 2015**, it required a copy of the Order for Judicial Separation together with a request from the account holder in order to amend an account title.

Specifically, paragraph 4 advises: *"In order to amend your name or title on our System, we require you attend a branch and provide proof of your legal separation and Identification."*

This issue was raised by the Complainant in her formal complaint on **11 February 2015**.

/Cont'd...

However, the Provider “... regret[s] to note that the Bank’s Final Response Letter dated 23 March 2015 ... requested that the Complainant submit a copy of the Order for action, however same was already on file with the Bank since 28 November 2014. The Bank sincerely apologises for this oversight and regrets any upset this may have caused.”

Having considered the evidence in this complaint, it does not appear that the Complainant gave an express instruction to the Provider to change the title of her name as it appears on the joint loan account from Mrs to Ms. The Complainant is making the case that such an instruction arose implicitly from when she informed the Provider of her separation, the making of the Court Order, or the fact she corrected the Provider’s agents during certain telephone conversations. In her submission dated **24 January 2020**, the Complainant states:

“I note the bank state I did not request a title change when submitting a copy of my Judicial Order.

I would have expected given the Code that by submitting that document I should have been automatically treated as an individual why else would I submit this.”

I do not believe this was sufficient to oblige and/or, indeed, authorise the Provider to effect a name change. Therefore, even though, as the Provider acknowledges, a copy of the Order was furnished by the Complainant in **November 2014**, I accept that a formal request from the Complainant was nonetheless required. Therefore, as there is no evidence of such a request having been made, I am not satisfied that the Provider failed to acknowledge the Complainant’s correct title following her Judicial Separation.

The Ninth Complaint

I have reviewed the correspondence issued to the Complainant in respect of her complaints and appeals made to the Provider up to the date of her complaint to The Financial Services Ombudsman’s Bureau in **September 2015**. I have also reviewed documentation furnished by the Provider in response to this aspect of the complaint. The Complainant also had the opportunity to review this documentation.

However, having done so, she has not identified the grounds on which she asserts the Provider’s investigations into her complaints or appeals were deficient. While the Provider issued an incorrect appeal letter to the Complainant on **10 July 2014** (and the correct one on **22 July 2014**), I do not consider the underlying process was inadequate or deficient. Therefore, I accept that, having considered the documentation pertinent to this aspect of the complaint, the Provider did not fail to properly investigate each of the complaints made by the Complainant, nor has it failed to consider her appeals in an appropriate manner.

The Tenth Complaint

The Complainant believes that the Provider wrongfully and/or unreasonably insisted that she increase the level of insurance cover in respect of the mortgaged property.

/Cont’d...

The Provider wrote to the Complainant and her ex-husband by letter dated **14 March 2013** in respect of their home insurance, advising:

"I have now updated your alternative home insurance details but please note that based on recent guide tables of rebuilding costs the level of cover provided may be inadequate. You should revert to your insurance provider to ensure that you have the correct level of cover,

If you have the sum insured adjusted please arrange to let us have a copy of the revised policy schedule confirming this. Also please ensure the correct address is on the policy and that [the Provider] is noted as an interested party.

It is essential that you re-assess your level of cover every year, based on current rebuilding costs, making allowances for any improvements or extensions that you may have made since your last renewal date."

The Provider wrote to the Complainant and her ex-husband on **20 April 2015** advising them that it was cancelling their insurance policy due to default in direct debit payments. This was followed by a number of further letters in **2015** notifying the Complainant and her ex-husband that the insurance policy had lapsed and that they were responsible for ensuring an adequate level of insurance in respect of the mortgaged property.

Two sections of the *Mortgage Conditions* are also relevant to this aspect of the complaint:

"The Mortgagor covenants so long as the Mortgage is outstanding:

...

5.6 To pay all sums due from time to time in connection with the insurance of the Property.

...

8.1 The Property shall be insured at the expense of the Mortgagor for such amounts against such risk with such insurers and in such manner as [the Provider] may from time to time require or approve."

The Provider had an interest in ensuring that the property was adequately insured. Equally, the Borrowers had an interest and a contractual obligation to insure the mortgaged property to an appropriate level. In line with the Provider's interests and the Borrowers' obligations, I believe the purpose of the letter in **March 2013** is clear.

Furthermore, while the Complainant states in her submission dated **24 January 2020** that her insurance "... was in line with the advice I received regarding building costs ..." she has not established any basis which suggests that the level of insurance cover suggested by the Provider or the Insurer was in any way excessive or unreasonable.

/Cont'd...

It appears that each party had a view as to what was adequate on the basis of the building information available to them.

Therefore, taking the foregoing into consideration, I have not been provided with any evidence that the Provider wrongfully and/or unreasonably insisted that the Complainant increase the level of insurance cover in respect of the mortgaged property.

The Eleventh Complaint

The Complainant contacted the Provider by telephone on **28 January 2019** requesting a redemption figure in respect of the loan as she wished to redeem it immediately.

The Complainant was advised that the redemption figure on that date stood at €185,800.00 with interest accruing at a daily rate of €23.00 and that this was an approximate figure. The Provider's agent advised the Complainant that redemption figures could take up to 7 days to issue. The Complainant was dissatisfied with this and wanted to redeem the loan account immediately as she did not want to pay any additional interest. The Provider's agent advised the Complainant that the figure of €185,800.00 would be sufficient to redeem the loan account on that particular day. When asked if the redemption figure would change, the Provider's agent advised the Complainant that it would be subject to a daily interest charge.

The mortgage was redeemed on **30 January 2019**. On **31 January 2019**, the Provider wrote to the Borrowers advising that €708.10 remained outstanding on the loan account. This related to legal fees.

The Provider accepts that its agent did not advise the Complainant that legal costs may be outstanding before giving her an estimated redemption figure during the telephone conversation on **28 January 2019**.

In light of the foregoing, I am satisfied that the Provider's agent failed to fully advise the Complainant as to the costs or charges that may be outstanding on her loan account, in particular, legal fees. This gave the Complainant the misleading impression that the quoted redemption figure would only be subject to a daily interest charge. I will deal with whether these charges should have been applied at all later.

The Twelfth Complaint

The Provider's *Notes* in respect of a telephone conversation which took place on **7 June 2017** indicate that the Complainant requested details of the legal fees being applied to the loan account. I have considered the content of the recording of this call and the precise point at which the Complainant requested a breakdown of the legal fees is not clear.

However, it appears that the recording of this call may not have captured the entire call duration. The Provider wrote to the Complainant on **9 June 2017**, with a full list of fees applied to the loan account and also referred the Complainant to section 12 of the *Mortgage Conditions* regarding its entitlement to charge fees to the loan account.

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A further request for a breakdown of legal fees was made during a telephone conversation on **30 October 2018**. The Provider responded to this request on **5 November 2018**. The Provider has prepared a schedule of fees charged in respect of the Complainant's loan account. This schedule also identifies the amount of interest charged on those fees but not the interest rate that was applied.

While the Complainant appears to have suggested that she requested details of legal fees on three separate occasions, she has not specifically identified the dates when these requests were made. I have outlined the details of two such requests above, however, it is not clear when the third request was made. In respect of the two requests I have referred to, I accept that the Provider responded to these requests and within an appropriate timeframe.

I note that section 12 of the *Mortgage Conditions* states:

"12.2 The Mortgagor covenants to indemnify [the Provider] against and to pay all costs and charges incurred by [the Provider] of an incidental to:

- ...
- *the protection realisation and enforcement of [the Provider's] security including all legal costs charges and expenses incurred by [the Provider] or on its behalf.*
- *the collection or recovery of any moneys owing under the Mortgage.*
- ...
- *the defence or conduct of any proceedings arising out of any matter relating to the Mortgage or Property ...*
- *otherwise in connection with the Mortgage ...*

12.3 All money to which this Condition applies shall bear interest at the Appropriate Rate from the date the same shall have been made or incurred and the date of actual repayment to or reimbursement of [the Provider] and where payment falls into arrears shall be subject to interest at the Appropriate Rate as provided for in these Conditions.

12.4 All moneys to which this Condition applies shall be a debt due from the Mortgagor to [the Provider] and shall form part of the Total Debt secured by the Property and be payable immediately to [the Provider] by the Mortgagor.

12.5 All legal costs and fees shall be on a solicitor and own client full indemnity basis."

While I accept section 12 of the *Mortgage Conditions* sets out that the Provider is contractually entitled to apply legal fees to the loan account and charge interest on those fees, this does not, in my view allow the Provider to simply add any charges it wishes to the Complainants' mortgage loan.

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The Provider has not put forward a sufficient justification for either the content/subject matter of the relevant fees, or of the quantum of the fees charged to the mortgage. In the course of proceedings, legal fees can be sent to the Office of the Legal Costs Adjudicators but this Office does not and cannot operate as an arbitrator for such costs. If the Provider wishes to add fees and charges to a customer's account, it is incumbent upon the Provider to provide a sufficient basis for doing so.

In all the circumstances of the case, and despite Clause 12 of the mortgage terms and conditions, I am not satisfied that the Provider was entitled to add the disputed legal fees to the Complainants' account.

In this regard, I note the Provider's acceptance *"that perhaps legal costs should not have been applied to the account"*.

I also note that the Provider subsequently clarified that it would also refund the interest that was charged to the loan account that was attributable to the legal fees, refund associated accrued interest and pay additional compensation to the Complainant in the amount of €4,000.

The Provider wrote to the Complainant on **11 January 2019** as follows:

"I refer to the Banks previous correspondence of 23rd March 2015 in relation to your complaint.

I wish to confirm that the Bank has carried out a further review of your complaint. In an effort to reach an amicable resolution, the Bank would like to offer a refund of the legal fees that have been applied to your Mortgage account as a gesture of goodwill and in final settlement of your complaint. This figure is approximately €5,366.01 and if accepted, would be deducted from the current arrears balance. ..."

The Complainant responded on **31 January 2019**. I note the follows parts of her response:

"... It goes without saying that accepting your offer to offset the legal fees off the arrears on the account would in turn allow my ex-husband benefit from my complaint following sale. This would not have been acceptable to me as it is not his complaint.

...

I would also like to request a full breakdown of what additional interest accrued on my mortgage account as a direct result of the legal fees that were applied to the account? ..."

While the Complainant is dissatisfied with the Provider's proposal, I would note that both Borrowers were responsible for the debt that arose on foot of the loan, both Borrowers were the owners of the mortgaged property and both Borrowers were debited for the legal costs. The loan account was redeemed using the proceeds of sale from the mortgaged property.

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The redemption figure included the legal costs now agreed to be refunded by the Provider. Furthermore, the Complainant has not demonstrated that the legal fees were discharged by her personally or by any means other than the sale proceeds from the mortgaged property. Therefore, I accept that it was appropriate for the Provider to suggest refunding the legal fees to the loan account.

The Thirteenth Complaint

The incidences of poor customer service proffered by the Provider have been identified throughout this Preliminary Decision and, for the most part, acknowledged by the Provider as set out in its redress proposal below.

Redress from the Provider

In concluding its submissions, the Provider advises that it offered to refund all legal fees applied to the loan account in full. The Provider confirms that *"... it is still willing to refund all legal fees to the Complainants, together with all interest accrued as a result."*

The Provider also states that it:

"... has highlighted some service issues that have occurred during the handling of the Complainant's mortgage and would like to address these

Firstly, the Bank regrets to note its failure to correctly update its records in June 2012, on receipt of new correspondence address details for the second named Complainant in writing. ...

Secondly ... the first named Complainant submitted an Order for Judicial Separation to the Bank on 28 November 2014 which was held on file. However, when the first named Complainant requested that her title be amended to 'Ms' in February 2015, the Bank failed to action this request. ...

Thirdly ... the Bank could have been more efficient when providing the first named Complainant with requests for information for the Department of Social Welfare in December 2010 and 2014. ...

Finally ... the Bank can fully appreciate that some confusion arose in relation to the formal Redemption Figures issued on 31 January 2019. ...

Furthermore, the Bank can appreciate that perhaps legal costs should not have been applied to the account ... As a result of applying these costs, the Complainants' mortgage account was transferred to [financial services provider] on 1 February 2019 with an outstanding balance of €708.10. The Bank notes that the Complainants' mortgage was redeemed in full on 3 January 2019, however the Bank will refund all legal fees to the Complainants as outlined above."

/Cont'd...

Finally, the Provider states it wishes to:

“... sincerely apologise for the above service failings and for any upset or inconvenience caused as a result. In light of the above, and in addition to the refund of all legal fees and associated accrued interest, the Bank would like to offer additional compensation to the Complainants in the amount of €4000. The Bank feels that this is a fair and reasonable offer and same remains open to the Complainants should they wish to accept it at a later stage.”

On the basis that the redress offered by the Provider consists of the refund of legal fees in the amount €5,366.01 plus interest charged in the amount of €605.91 to the borrowers, together with the additional amount of €4,000.00 by way of compensation to the Complainant in respect of the service issues identified above, I consider the redress and compensation offered by the Provider to be reasonable in the circumstances.

The Complainant and her ex-husband have submitted a written authorisation to the Provider, which details how the intended compensation is to be divided. The Provider has confirmed receipt of this authorisation. As I am not upholding the complaint, or making a direction, it follows that the Complainants' authorisation is a matter for the Provider.

For the reasons set out in this Decision, and on the basis that I consider the redress and compensation offered to be reasonable, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

12 October 2020

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

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,
and

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

