



<u>Decision Ref:</u>	2020-0404
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant's complaint is that she received unfair treatment from the Provider in its course of dealings with her in respect of her mortgages, prior to the sale of her home and lands in 2011.

The Complainant's Case

The Complainant entered into two mortgage agreements with the Provider – the first in **December 2005** in the amount of €150,000 and the second in **February 2006** in the amount of €50,000, to finance the purchase of a house and lands, with the balance of the purchase price being made up from the Complainant's own funds.

The Complainant's complaint relates to the actions of the Provider, culminating in the sale of her home in **August 2011**.

In particular, the Complainant believes that the Provider is responsible for the decision which she made to sell her property and surrounding lands.

The Complainant submits that she was forced to cease work in **2007**, when following two surgeries she developed a post-operative condition which has left her unable to return to work. She submits that the Provider was furnished with ongoing evidence of her medical condition and treatment during the period **June 2007** and **April 2011**.

The Complainant submits that she had a Home Owner's Payment Protection Plan in place which covered the mortgage payments on each mortgage for 12 months, between **June 2007** and **June 2008**. Thereafter she entered into a number of separate arrangements with the Provider, including moratoria on payments, interest only repayments and reduced repayments, up to the time of the sale of her property, in **2011**.

The Complainant submits that she informed the Provider "*early on in this process of my intention to sell some of my land, in particular a scenic site with planning permission for a single story dwelling*".

The Complainant submits that "*the constant pressure of dealing alone with my financial difficulties, the failed attempt to sell some land and my deteriorating physical health also took a great toll on the state of my mental health which became increasingly fragile in 2010 and 2011.*"

The Complainant submits that her correspondence with the Provider demonstrates that it was aware of her poor health and that it was also aware of the fact that she did not wish to sell her home and lands in their entirety.

In **July 2011** the Provider sent her a letter requesting her to fill out a Standard Financial Statement (SFS) and to bring it to her with her local branch which would then send it to be assessed by its Arrears Support Unit.

She submits that although she was very ill at this point, she took the round trip to her branch by taxi to do this.

The Complainant submits that around this time, cash buyers came forward to purchase her home and lands "*at a knockdown price.*" Her solicitors wrote to the Provider on **28 July 2011** seeking redemption figures, to which the Provider responded on **02 August 2011**. Following receipt of same, the Complainant's solicitor then sent the Provider a cheque on **22 August 2011**, in order to redeem both mortgages.

The Complainant submits that from the total sale proceeds of the property of €317,000, €175,549.27 was paid to the Provider, in redemption of the mortgages.

The Complainant's submits that on **25 August 2011**, she received separate correspondences from the Provider, one informing her that a six month capital payment holiday on her accounts had been agreed and the others confirming that lump sum payments had been received on both accounts and that the accounts had been closed.

The Complainant submits that her health further deteriorated following the sale of her home and she was hospitalised for several weeks. The Complainant submits that she was "*totally broken at this point from years of mortgage distress, losing my property at a discount cash price and trying to deal with my medical condition.*"

The Complainant notes that although correspondence records that she volunteered to sell her home, her position is that this was in order to avoid repossession proceedings, which she submits during conversations with the assistant branch manager with whom she was dealing, was told would follow.

The Complainant submits that the Provider, *“could and should have given me more time to sell part of my lands, as at all times the value of my property significantly exceeded the amount owed to them. My position is that [the Provider] never explored any long term options with me for the resolution of my mortgage difficulties.”*

The Complainant submits that the Provider was aware of the extent of her physical illness as well as her deteriorating mental health and that both were compounded by her being subjected to the stressful experience of trying to negotiate a series of short term payment arrangements over the relevant period and the constant fear of losing her home.

The Complainant submits that the Provider did not comply with its obligations under the Code of Conduct on Mortgage Arrears (“CCMA”) 2010, in respect of her mortgage issues.

She has submitted that she was sent a standard letter from the Provider dated **07 July 2011** which mentioned, for the first time, a requirement to fill in a Standard Financial Statement (SFS) which enclosed explanatory notes to help fill out that SFS and which referred to seeking independent advice from MABs or a third party. She submits that the letter, however, failed to inform her that the situation with her mortgage arrears was to be considered under the new MARP. She submits that at no point was she informed, as required by the CCMA, that her case was being treated under this process, nor was she provided with a copy of the Provider’s MARP booklet, as required by the CCMA.

The Complainant submits that the effect of such omissions were that, had she been specifically informed of this, it might have changed her attitude toward the sale of her property. She suggests that the omission may have been a *“deliberate ploy”* on the part of the Provider to *“conceal”* the nature of the MARP process from her so that she would be forced to sell her property and not seek potential long term forbearance arrangements.

The Complainant also complains about the Provider’s conduct in response to the complaint which she submitted to it in **November 2016** but despite several holding letters the Complainant did not receive a substantive response until **09 August 2017**, *“effectively rejecting my complaint and offering nothing by way of redress.”*

The Provider’s Case

With regard to the Complainant’s complaint about the Provider’s general conduct concerning the Complainant’s mortgage situation, the Provider submits that as the Complainant at all times maintained Mortgage Account repayments on both Mortgage Accounts, they did not fall into arrears at any time.

The Provider submits that it endeavoured to assist the Complainant at all times during her financial difficulties and it refutes the Complainant's assertions to the contrary. It submits that it did not, at any time, advise the Complainant that her home was considered for repossession. It says that it did not commence repossession proceedings at any stage, nor would it have had standing to do so, as the Complainant's Mortgage Accounts were not in arrears, due to the alternative repayment arrangements which were put in place.

The Provider submits that on those occasions when the Complainant considered selling part of her lands, it issued consent to sell, as soon as the Provider's requirements were met in this regard, and that it was not opposed to allowing the Complainant sell part of her lands. The Provider additionally notes that in the FSPO Complaint Form of **17 August 2017** the Complainant states that it "*never explored any long term options with me for the resolution of my mortgage difficulties*", and the Provider submits that the Complainant did not receive an option for a long term restructure from **June 2008 to August 2011** because the Complainant had requested specific short term restructure arrangements on each occasion. The Provider submits that it is satisfied that the Alternative Repayment Arrangements applied to the Complainant's Mortgage Accounts from **2008 to 2011** were suitable and appropriate to the Complainant's particular circumstances.

The Provider submits that the Complainant continually maintained her restructured Mortgage Account repayments and therefore the accounts did not fall into arrears and that it would not seek to repossess in such circumstances.

The Provider refutes the Complainant's statement in her FSPO Complaint Form that:

"although correspondence may record that I volunteered to sell my property in principle, this was to avoid repossession action being brought against me. In telephone conversations with [Mr O'S] Manager of the branch where I had my account (named City), I was left in no doubt that if I did not sell, repossession action would follow."

The Provider submits that Mr O'S has strongly refuted the Complainant's allegation in this regard and submits that Mr O'S attempted at all times to deal with the Complainant in a professional and understanding manner and did not at any time advise the Complainant that she would be in danger of repossession.

In respect of the Complainant's contention that it failed to comply with the terms of the CCMA 2010, it notes that the Complainant's Mortgage Accounts did not fall into arrears and therefore it treated the accounts as a pre-arrears situation, in accordance with the relevant Provisions of the CCMA 2010, at the relevant time.

The Provider notes that the Central Bank of Ireland introduced the Code of Conduct on Mortgage Arrears (CCMA) 2010 in **December 2010**, to be implemented by all Financial Institutions from **01 January 2011**. It submits however, that the Central Bank allowed all lenders a period of 6 months to fully prepare for the implementation of the CCMA 2010. As a result, the Provider submits that it was obliged to comply fully with the CCMA 2010 from **01 July 2011** onwards.

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In relation to the Complainant's complaint regarding the Provider's handling of her complaint of **23 November 2016**, and its alleged failure to do so in accordance with the Consumer Protection Code (CPC) 2012, the Provider submits that the Complainant initially submitted her complaint via email to Mr O'S on **23 November 2016**.

Mr O'S referred the complaint to the Provider's Customer Relations Department as, due to the complexities of the case, it was best suited to investigate the issues raised on the Complainant's behalf. On **29 November 2016**, an Agent in the Provider's Customer Relations Department issued an acknowledgement letter to the Complainant and the Agent remained in contact with the Complainant via email and by telephone. It submits that as the Complainant's complaint was not resolved following a period of 40 business days, the Bank issued a 40 day hold letter on **19 April 2017**.

It says that while its investigations into the Complainant's complaint were ongoing, it was anticipated that it would be in a position to issue a Final Response Letter to the Complainant by **18 May 2017** but that the investigation process took longer than anticipated and a further hold letter was issued to the Complainant on **18 May 2017** and the Final Response Letter was ultimately issued to the Complainant on **09 August 2017**.

The Provider submits that *"every effort was made to fully investigate and resolve the Complainant's complaint within 40 business days however this was unfortunately not possible due to the complex nature of the issues raised. The Bank required additional time to fully investigate each restructure applied to the account from 2008 to 2011 and draft a comprehensive Final Response Letter."* It submits that it is not obliged to provide the Complainant with a reason for a delay in this regard under CPC 2012, however it submits that it remained in contact with the Complainant in an effort to keep her up to date with the progress of its investigations.

The Provider accepts, however, that it took longer than anticipated to respond to the Complainant's complaint and in light of this, it has offered a gesture of goodwill to the Complainant in the amount of €1,000.00.

The Complaint for Adjudication

The Complainant's complaint is that the Provider:

- Did not act fairly in relation to her mortgage accounts; in particular that it put her under undue pressure to sell her property and did not afford her sufficient time to sell part of her property, in order to reduce her mortgage debt to an affordable level.
- Failed to comply with the terms of the Code of Conduct on Mortgage Arrears (CCMA) 2010 in respect of her mortgage loans and did not consider any long term alternative repayment arrangements.
- Failed to deal with her complaint in a satisfactory or timely manner.

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 **18 June 2020** outlining the preliminary determination of this office 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 consideration of additional submissions from the parties, the final determination of this office is set out below.

As a preliminary point, taking into account the timeline of events involved, I am satisfied that Section 51(5) of the *Financial Services and Pensions Ombudsman Act, 2017* applies in circumstances where the conduct complained of occurred during the period **2008 to 2011** and consisted of acts of a continuing nature, which ceased when the last of these acts or omissions occurred, namely, **25 August 2011**. The complaint was received by the Financial Services Ombudsman on **16 August 2017**, thereby coming within the jurisdiction of this Office to investigate.

I note that the Complainant's Mortgage Account -142 was drawn down on **08 December 2005**, for a term of 27 years and in the amount of €150,000.00 while Mortgage Account - 681 was drawn down on **03 February 2006**, for a term of 27 years and in the amount of €50,000.00. The Mortgages were secured on the Complainant's property and surrounding lands.

Each of the mortgage accounts was ultimately redeemed in full on **25 August 2011** by the Complainant.

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The Complainant's complaint concerns how the Provider dealt with her mortgages from the time when she fell into financial difficulties until the time when she redeemed the mortgages, including the Provider's alleged failure to adhere to its obligations under the Code of Conduct on Mortgage Arrears 2010, Mortgage Arrears Resolution Process. The complaint also concerns how the Provider subsequently handled her complaint.

In examining the complaint, I have had detailed regard to the correspondence which occurred between the parties which I have set out in some detail below, as it serves to usefully illustrate the nature and course of dealings which occurred between the parties during the period of time in dispute.

Correspondence between the Parties

The Complainant first wrote to the Provider, to advise it of her financial difficulties on **22 February 2008**. She advised that the mortgage protection benefit which she was receiving and which was servicing her loan at that time, was due to expire in **June 2008** and she requested a 6 month moratorium from that date. She set out her circumstances as follows:

Dear Mortgage Services,

I wish to apply for a moratorium on the above accounts taking effect from June 2008. I am self-employed and on indefinite sick leave due to [medical condition], I attach my GP report. My mortgage protection on both accounts stops in June 2008 (see attached letter from [provider]) and I will not have enough income to pay my full mortgage.

I have assets which I intend to sell and the proceeds from the sale will go towards paying off my mortgage. I attach a letter from my auctioneer to show my assets and their market value. However, I will need time to sell either part of my farm or a site with planning permission, should I get planning permission. I should know the outcome of my planning application in April.

The best time to sell a site with planning permission or farm land is the summer so I will be putting the property up for sale from June onwards.

While all this is going on, I will still be out of work and unable to pay my full mortgage from June 2008 when the protection policies stop.

I would ask that you please consider my request for a moratorium on both accounts in the knowledge that I have assets that I will be selling.

I hope you don't think it forward of me when I say realistically I would need a 6 month moratorium on both accounts commencing June 2008 to give me time to get the best price for my sale and then allow time for the legal process in a sale to go through.

I hope you will consider my application in writing well in advance so as to avert a crisis come June 2008.

I have an impeccable track record with [the Provider] and you can confirm this by talking to [Mr O'S] [branch] [phone].

A note from the auctioneers acting on her behalf, dated **15 February 2008**, was attached to the letter confirming that they were acting on behalf of the Complainant who had "instructed [them] to place part of her property on the market".

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The Provider responded to the Complainant by letter dated **26 February 2008** acknowledging receipt of the Complainant's request for a 6 month moratorium and confirming that this "*will be processed before your due date on the 3rd June*". Repayments on Mortgage Account -142 were subsequently reduced by the Provider to €29.24 (the insurance payment amount only) per month from **06 June 2008**, and repayments on Mortgage Account -681 were reduced to €11.24 (insurance payment amount only) per month from **03 June 2008**.

By letter dated **18 September 2008** the Complainant wrote to the Provider, with reference to her two mortgage accounts, noting that they were subject to a moratorium until **November 2008**. She explained that as she remained on sick leave, her total income per month was €1,615.32 (€791.20 illness benefit and €824.12 from an insurance policy). As a result, she advised that she would not be in a position to repay the full amount in repayments falling due upon the expiry of the moratorium, in November:

"In an effort to alleviate my financial situation I have put my property on the market. It has been on the market since 10/7/08. I have my cottage, farm and site with planning permission up for sale. I was hoping I would sell something and use the money to pay off my mortgage. So far there has been no sale and so I am very worried as November is not far away....The asking price for the cottage is €535,000 Farm is €363,000 Site with FPP is €150,000. So I am writing to you to keep you informed of my situation and should there be any sale I will let you know immediately. However, in the event of me not selling anything then I will have to ask that you kindly review my situation and help me work out how to manage this situation come November." [emphasis added]

Further to the above, Mr O'S drafted an Internal Memo to the Provider's Collections Department, requesting that it look favourably upon the Complainant's request, taking into account her circumstances:

[The Complainant] is a [professional] and has been a mortgage client since 2005 with a perfect repayment record in that time. She has suffered ill health in recent times and has been unable to practice, leading to a sharp drop in income. She has MRPP on her mortgage and claimed her 12 months entitlement on that which finished in May. She has availed of a moratorium since then which expires next month.

I attach a letter from [the Complainant] which outlines her financial situation and her efforts to alleviate that situation. This mainly rests on her ability to sell her property as she will not be able to meet the full monthly mortgage repayment under her present circumstances. As you can see, she is looking for assistance in putting some agreeable repayment structure in place until the property sells. I would be grateful if you would review this case and contact [the Complainant] to discuss her situation. I know from my dealings with her over the years that she is a very conscientious person, always anxious that her financial affairs are conducted properly and has maintained regular contact with me about her medical difficulties. She has been pro-active in addressing the matter but is obviously concerned about the accounts once the moratorium expires. [emphasis added]

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On **07 October 2008**, the Complainant wrote to the Provider applying for a further 3 month extension, to the arrangements in place:

I want to thank you for all your help in my current situation

As discussed, I am now applying for a further 3 month extension of the moratorium on my mortgage accounts as although all my properties are up for sale, I've not had any luck selling as yet... I am sorry that I have to ask again for a moratorium. I am doing all I can to sell my properties and when I do I will then clear my mortgages totally.

I enclose a letter from my GP – written a while ago – but the condition is still the same so it's just so you have something on file about my medical condition.

...I will let you know immediately if I have any news on selling my properties. You'll be the first to know. I am very sorry about the situation and I want to thank you for being so accommodating. [emphasis added]

A further 3 month extension to the arrangements in place was applied by the Provider to the Complainant's Mortgage Accounts.

On **14 January 2009** the Complainant contacted the Provider seeking assistance prior to the expiry of the moratorium in **February 2009**:

I have my house and farm for sale since July 2008 and I am doing my best to sell up with a view to paying off my mortgages as a priority and I also need to relocate to be nearer the [Hospital].

My current moratorium expires February 2009 and now I ask – what do I do?

... However if I don't manage to sell now, then I feel I must in some way pay something off my mortgage as I cannot expect to be granted an indefinite moratorium while I try and sell up.

...the initial valuation of my cottage in July 2008 was 485€ - my auctioneer advised me to reduce the price and I dropped down to 435€ but the more I reduce the less I have to buy another place to live so while I am under constant pressure to reduce my prices, I am in a situation where if I reduce too much, by the time I have paid off my mortgage I will have so little left I'll not be able to afford a house near to the hospital. It's a real catch 22.

...

I feel my auctioneer just wants me to sell cheap as he mentioned I should think about dropping to 260€??? Why? So they will 'make a sale' and get some commission and this is pressure I don't need as it forces me to sell at a bargain basement value. I have told my auctioneer I can't drop below 420€ for my house...So I am asking if in some way I can hold out for the right customer who will pay a decent price for my house? To do this I need to ask for your help in relation to my mortgage.

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Could I ask you to consider the following options please?

- 1. Could I set up a mortgage schedule that I can afford for each month? Say 150€ off the 150,000€ mortgage account and 50€ off the 50,000€ mortgage account?
Or*
- 2. Could the moratorium be extended BUT I agree to pay some money off each account on a regular basis so I am in credit? I am in credit to date as I put 1000€ towards the accounts just recently.*
- 3. Any other way around this that you might suggest please so I am not forced to sell cheap to the first customer and I can hold out for a decent price and not be under pressure from my auctioneer just to 'sell now and sell cheap' – his words to me!*

...

In summary:

I do not take for granted all your help to date. I do not expect an indefinite moratorium as that is not fair on you. I am trying to sell my house and farm since July 2008. I want to be seen to be contributing to my mortgage even though I don't have any money to spare I would still like to be contributing off each account each month.

...

I just need more time to let me sell the property and when I do my first priority is to pay off my mortgage(s) in total. I really do apologise for the situation and it does not sit easy with me at all.

[emphasis added]

Further to receipt of this letter, the Provider, issued an internal memo, regarding the Complainant's request, which marked as *Urgent* reads:

To whom it may concern,

Attached please find the details of [the Complainant's] current situation. She has 2 mortgages with [the Provider] and requires our assistance with her current situation. Can this please be viewed asap [original emphasis] and if you have any questions please do not hesitate to contact me.

The Provider submits that the Complainant's correspondence was forwarded to its Commercial Division for review on **23 January 2009**, which concluded that based on the Complainant's income and financial situation, it was unlikely that the Complainant would be in a position to afford an Interest Only arrangement going forward. The Provider submits however that in order to assist the Complainant with her efforts to sell her property for her desired price, it placed a further moratorium on both Mortgage Accounts and the monthly repayments for Mortgage Account -142 were reduced to €150 per month for a period of 3 months.

Similarly, the monthly repayments for Mortgage Account -681 were reduced to €50.00 for a period of 3 months, with the arrangements to expire on **09 May 2009** and **04 May 2009**, respectively.

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The Provider confirmed this to the Complainant in writing on **19 March 2009**.

"the above applicant is on a moratorium on the following references [mortgage accounts]. I can confirm that she will be taken off the moratorium on 09/05/2009 and 04/05/2009."

The Complainant then emailed Mr O'S on **11 May 2009**, explaining her medical situation and asking Mr O'S to forward her request for forbearance to the relevant department. She advised *"I am doing my best to sell my property so I can pay off the mortgage but the recession has resulted in no property sales here in this part of [the country]. Bad timing or what?"*

An alternative repayment request form was completed by Complainant dated **26 June 2009**. On **10 July 2009** the Provider confirmed that it had put in place Interest Only repayments on both accounts for a period of **6 months**.

By email dated **19 November 2009** the Complainant again wrote to Mr O'S of the Provider with an update *"on [her] ongoing attempts to sell my property so I can clear my mortgage."* She advised that she had reduced the price of her property and farm from €780,000 to €585,000, noting that:

"most properties are being reduced by 50% and I had no choice but to follow this trend."

...

I am doing my best to sell [Mr O'S] as I hate not being able to pay my mortgage.

...

I am due for a reassessment of my payments in January 2010.

I can manage the current payments on each account and I would ask if this amount on each account be continued for maybe another 6 months as I am desperately trying to sell and I have spent a lot of money advertising my property.

[emphasis added]

The Complainant sent a further email to Mr O'S, on the same date, updating him on her position and stating:

"I hope I can stay on the current payments that are in place till I sell here as I can manage these payments even though I am usually in overdraft.

I am doing my best [name] to try and show that I am not neglecting my mortgage even though I am not paying the full amount.

...

If I can sell my property I will sleep at night as I can clear my mortgage then.

MABs have been a great help to me and I attend their offices regularly.

I am still waiting (since May) to get back into hospital [for trials] I never thought I end up like this.

I will do all I can to try and prevent my home from being taken away and any extra money I get I will put into my mortgage accounts."

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The Complainant subsequently emailed Mr O'S on **22 January 2010** as she was concerned by a letter which she had received from the Provider, reminding her that the "holiday period" was due to expire. She explained to Mr O'S that she was not in a position to make full payments per month and asked Mr O'S to "please stay on the reduced payments till I sell something." She advised that she was extremely stressed by the situation.

By follow up email of the same date to Mr O'S, she asked that, as she was "in credit" on both accounts, could he please ask the relevant department to take this into account and allow her to remain on reduced repayments until she "sell[s] something here." She advised that, "I am so terrified of losing my home".

The Complainant completed an Alternative Repayment Request form dated **31 January 2010**. In **February 2010** the Provider approved a reduced repayment of 50% of the monthly repayment on each loan for a period of 6 months, from **March 2010**.

By email dated **21 February 2010** the Complainant contacted Mr O'S to advise that there was a "woman interested in buying the cottage and half the farm" and that "If I can sell and just keep the €50,000 mortgage active my worries about repossession are over. I could sleep at night. Fingers crossed." She advised that "I had to drop my prices by 50% - crazy – but if it means I can sell so what."

On **24 March 2010**, the Complainant's solicitor issued correspondence to the Bank advising that the Complainant had agreed to sell an area of her lands for an amount of €6,000.00, in an effort to reduce her mortgage debt. A Deed of Partial Discharge was requested from the Provider. Having requested further information on **30 March 2010**, the Provider issued correspondence to the Complainant's solicitor on **03 June 2010** consenting to the release of the proposed site.

On **14 July 2010**, the Complainant and was granted a further 6 month period of reduced repayments on both accounts, with effect from **August 2010**.

By email of **06 December 2010** the Complainant wrote to Mr O'S and asked whether:

"owing to the latest let down in a sale can I request that until I manage to sell land and/or the [residence] I am kept on the current rate of payments – and I don't have to face a review every 6 months please.

...

My current payment arrangement is up to February 2011 and I would like to have in place an arrangement where I pay the current rates till I sell something without a review every 6 months."

The Complainant completed a further Alternative Request Form dated **04 January 2011**. Following assessment the Provider applied a reduced repayment of 50% of full payment on each account for 3 months, to commence on **03 March 2011**.

Upon notification of the agreed arrangement, the Complainant contacted Mr O'S to express her concerns:

Dear [Mr O'S]

Please help.

I got my letters for my reduced payments on my mortgage accounts today and they are only giving me from March to May. I will not have sold my house by then. I used to get 6 months at reduced payments and until I sell I was hoping to stay on this payment scheme as it is all I can afford and I am not in arrears. Now I worry they are clamping down and they will aim to take my house. I am terrified.

...

Please help me [name].

What do I do??

The Provider then reconsidered the situation, as evidenced by an internal email of **16 February 2011**, which states:

[The Complainant] rang into the MRD in a distressed state this evening asking could we extend the agreement out to 6mths. She confirmed that 4 sales have fallen through as customers purchasing are unable to obtain mortgages. She also has to attend hospital each month and her illness is ongoing and is unable to work [medical condition]

Also spoke with [Mr O'S] in [Branch] regarding same.

Based on my conversation with [Mr O'S] and [the Complainant], feel very genuine and we should facilitate her request for 6mths as opposed to 3mths."

The Provider granted an extension of the arrangements, to expire on **04 August** and **09 August 2011**, respectively.

On **05 July 2011** the Complainant emailed Mr O'S and noted that there was a review of her mortgage accounts due at the beginning of August and requested that she be permitted to remain on the same payments for the following 6 months but received an out of office reply from Mr O'S, until **19 July 2011**.

On **07 July 2011** the Provider issued a letter to the Complainant advising that in order to discuss alternative repayment arrangements, it now required her to complete a Standard Financial Statement with her local branch. It advised that its ASU would be in contact once the SFS had been assessed.

The Complainant attended at her local branch and completed a SFS signed and dated **12 July 2011**. The recommendation which was submitted by her for approval was for a capital payment holiday, on the basis that:

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"[the Complainant] is suffering from a long term illness. She is currently living with a friend and has mtg property on market since July 2008. There has been viewings lately. Looking to continue on int only for 6 months."

The Complainant included a statement in support of the application, also dated **12 July 2011**, advising:

I cannot pay my full mortqaqe as I was forced to stop working as a [professional] on 16/5/2007 due to [medical condition]. I have to attend [hospital] every 3 months now. There is no cure for this condition. Therefore I have been trying to sell my property since July 2008 as it is the only way for me to clear my mortgage debt.

...

Selling my property is the only way to clear my mortgage and yet it is impossible to sell as several people who were interested could not get a mortgage to buy my property.

I have reduced the asking price given in July 2008 by over 50% now and I still can't sell." [emphasis added]

The Provider approved the proposal of an additional 6 months capital payment holiday on both accounts, on the basis that the Complainant was *"going to sell the house and clear both mortgages, given her serious illness and reduced income she cannot afford full repayments."*

The Provider confirmed, by letters of **19 July 2011**, a 6 month *"Capital Payment Holiday"* on each of the Complainant's accounts.

Then, by letter dated **28 July 2011** the Complainant's Solicitor wrote to the Provider seeking redemption figures in respect of both mortgage accounts. The Provider furnished the figures on **02 August 2011**.

By letters dated **25 August 2011** the Provider confirmed to the Complainant that as per her recent instruction it had reduced the monthly repayments due on each account for a period of six months, from **03 September 2011** to **03 February 2012**.

By further letters of **25 August 2011** the Provider confirmed that it had applied the lump sum payments received from her solicitor to each mortgage account, in redemption of same.

Analysis

The Alternative Repayment Arrangements

It is not in dispute that the Complainant was granted a sequence of continuous, short term forbearance arrangements by the Provider during the period from **June 2008** until the time the mortgages were redeemed, in **August 2011**.

The Complainant's complaint is that the Provider "*never explored any long term options with me for the resolution of my mortgage difficulties*". In order to seek further clarity on the details of each ARA which was granted between **June 2008** and **August 2011**, this Office wrote to the Provider seeking a copy of the letters which issued to the Complainant in this regard.

By letter dated **26 February 2020**, the Provider responded, advising that:

prior to the implementation of the Central Bank's Code of Conduct on Mortgage Arrears (CCMA) 2010 and 2013, the Bank adhered to the Central Bank's Consumer Protection Code (CPC) 2006. As the below listed Alternative Repayment Arrangements pre-dated CCMA regulations, the Bank did not issue formal correspondence to the Complainant prior to offering same on her accounts.

It went on to set out the following arrangements as having been applied by it, to the Complainant's accounts, between June 2008 and August 2011:

Account -142

<u>Dates Applied</u>	<u>Restructure Type</u>	<u>Term Applied</u>	<u>Restructured Repayment Amount</u>
June 2008 to February 2009	Interest Only Arrangement	9 months	€29.24 per month
March 2009 to May 2009	Interest Only Arrangement	3 months	€179.25 per month
August 2009 to January 2010	Moratorium	6 months	€270.76 per month
March 2010 to August 2010	Reduced Repayment Arrangement	6 months	€327.47 per month
September 2010 to February 2011	Reduced Repayment Arrangement	6 months	€339.20 per month
March 2011 to August 2011	Capital Payment Holiday	6 months	€339.21 per month

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Account -9681

<u>Dates Applied</u>	<u>Restructure Type</u>	<u>Term Applied</u>	<u>Restructured Repayment Amount</u>
June 2008 to February 2009	Interest Only Arrangement	9 months	€11.24 per month
March 2009 to May 2009	Interest Only Arrangement	3 months	€61.25 per month
July 2009 to December 2009	Moratorium	6 months	€83.40 per month
March 2010 August 2010	Reduced Repayment Arrangement	6 months	€107.06 per month
September 2010 to February 2011	Reduced Repayment Arrangement	6 months	€111.56 per month
March 2011 to August 2011	Capital Payment Holiday	6 months	€111.57 per month

The Complainant's Representative responded, that in its view, the tables were "incorrect in a number of respects", namely:

(On Account -3142)

- June 2008 to February 2009 was not an interest only arrangement but was rather a nine month moratorium
- March to May 2009 was 'Interest only'
- August 2009 to January 2010 was not a moratorium; it was an 'interest only arrangement'
- March 2010 to August 2010 was a reduced repayment but in the form of a 50% payment
- September 2010 to February 2011 was similarly a reduced payment arrangement but in the form of a 50% payment
- March 2011 to August 2011 – was a continuation of the reduced 50% payment arrangement of €339.20, not a Capital Payment Holiday

(On Account – 9681)

- June 2008 to February 2009 was not an interest only arrangement; it was a nine month moratorium
- March to May 2009 was 'Interest only'
- August 2009 to January 2010 was not a moratorium; it was an 'interest only arrangement'
- March 2010 to August 2010 was a reduced repayment but in the form of a 50% payment
- September 2010 to February 2011 was similarly a reduced payment arrangement but in the form of a 50% payment

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- March 2011 to August 2011 - Incorrectly described as a Capital Payment Holiday, when in fact it was a continuation of the reduced 50% payment arrangement of €111.56.

The Provider, in turn responded by letter dated 05 March 2020, that:

Please note that the Bank can refer to different Alternative Repayment Arrangements by using different terminology at different times. For example, the Bank would refer to a restructure as a Moratorium on occasion, when referencing any restructure type that applied to an account. The term 'Moratorium' is often used as a general term to describe a period of forbearance. Similarly, the term 'Capital Payment Holiday' can be used on different occasions to describe any restructure type where all, or part, of the principle balance is not being repaid. The Bank can appreciate that this may appear confusing and would apologise for any inconvenience. ...

The Bank also notes the Complainant's representative's comments in relation to the implantation [sic] of the Central Bank's Code of Conduct on Mortgage Arrears (CCMA) 2010. While the CCMA 2010 came into force on 1 January 2011, Financial Institutions were afforded a period of 6 months (which ended on 30 June 2011) in which to fully implement the Code and prepare its operating systems etc. Therefore, the Alternative Repayment Arrangements listed in the table provided in the Bank's submission of 26 February 2020 pre-dated this Regulation.

With regard to the Alternative Repayment Arrangements which were put in place during the relevant period, I accept that the requirement to confirm in writing to the customer, the details of an ARA and the consequences of same, was only formally introduced as a regulatory requirement within the CCMA 2010; the details required to be communicated, were set out in its Section 37. It would of course have been good practice for the Provider to have confirmed the details of the arrangements to the Complainant in writing, in a more formalised way, and the obligations introduced by the CCMA recognised this.

With reference to the Provider's assertion that it "can refer to different Alternative Repayment Arrangements by using different terminology at different times", I consider that the Provider, and indeed all Providers ought to use clear terminology at all times, to denote the precise nature of the arrangement in place as each type of arrangement can have a different effect on the overall repayment obligations falling due on the loan.

However, I note that the Complainant appeared to be satisfied with the arrangements which were put in place at the various times, but has since that time come to form the opinion that the Provider did not discharge its obligations to her, under the Mortgage Arrears Resolution Process, insofar as it did not seek to explore long term forbearance options with her.

In this regard, following consideration of the Preliminary Decision the Complainant has submitted, with respect to the CCMA, that this Office has erred in law in failing to find that the Complainant was in arrears on her mortgages, at the material times.

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It has been submitted in this regard on behalf of the Complainant that:

The CCMA February 2009 version and February 2010 version both state that ‘A mortgage arrears problem arises as soon as the borrower fails to make a mortgage repayment by the due date’.

The CCMA 2010 (applicable from January 1st 2011) defines ‘Arrears’ (in Chapter 2 – Definitions) as follows:

Arrears: arise on a mortgage loan account where a borrower has not made a full mortgage repayment, or only makes a partial mortgage repayment, in accordance with the original mortgage contract, by the scheduled due date. [original emphasis]

We submit that the position is crystal clear – an account goes into arrears as soon as the borrower fails to make a mortgage repayment by the due date or if a full mortgage repayment is not made in accordance with the mortgage contract by the scheduled due date.

The Provider submitted in turn, that:

..the Complainant's Mortgage accounts were subject to several Alternative Repayment Arrangements, however as the Complainant met the terms of each arrangement, arrears did not accrue on the accounts. When an Alternative Repayment Arrangement is approved by the Bank, it is applied to the Borrower's Mortgage account, resulting in the contractual repayment amount being amended, in line with the terms of the arrangement. In the Complainant's case, the repayment amount due, in accordance with each Alternative Repayment Arrangement applied to the account, was met in full on each occasion. Therefore, the Complainant's Mortgage account did not fall into arrears, as the restructured billing amount was being paid in full each month. Had the Complainant not entered into an agreed Alternative Repayment Arrangement with the Bank, the full contractual capital and interest repayment amount would not have been met in full each month, which would have resulted in arrears accruing on the account.

I am satisfied that the position as outlined by the Provider is an accurate representation of the effect of an Alternative Repayment Arrangement, namely that it results in the contractual repayment amount falling due being amended, in line with the terms of the arrangement.

Given the various Alternative Repayment Arrangements which were applied to the Complainant's account the terms of which were met by the Complainant, I accept that arrears did not accrue. I am satisfied that this can be seen from the statements of account during the relevant periods, which show that no arrears had accrued on the relevant loan accounts.

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Code of Conduct on Mortgage Arrears 2010 and MARP

The Complainant has submitted that the letter she received from the Provider, dated **07 July 2011** did not inform her that her the Mortgage Arrears Resolution Process applied at that time to her mortgages and that, *“At no point was I informed as required by Rule 22 a) iv) of the Code that my case was being treated as a MARP case, nor was I ever provided under Rule 22 b) with a copy of [the Provider’s] booklet as required by Rule 12 of the Code.”*

In this respect, I note that Provision 22 a) iv) and Rule 22 b) of the CCMA sets out the following obligations:

22. When **arrears** arise on a **borrower’s** mortgage loan account and remain outstanding 31 days from the date the **arrears** arose, a lender must:
a) inform each **borrower** and any guarantor on the mortgage, unless the mortgage loan contract explicitly prohibits such information to be given to the guarantor, of the status of the account in writing, within 3 working days. The letter must include the following information:

... iv) confirmation that the lender is treating the **borrower’s** situation as a MARP case;

and...

b) provide the **borrower** with the information booklet required under provision 12.

The Provider submits that as the Complainant was not in arrears on her Mortgage Accounts, due to the arrangements which were put in place, Provision 22 did not apply but it submits that the Complainant was considered a pre-arrears case.

I note however that Provision 23 requires that *“When a lender is contacted by a borrower in pre-arrears, the lender must provide the borrower with the information booklet required under provision 12.”*

The Provider submits that it made a MARP Booklet available across its branch network and that it was and remains its practice, to provide a MARP Booklet to a customer during an SFS appointment and that therefore the Complainant *“would have received same at [x] Branch on 12th July 2011”*.

Whilst the Provider has submitted that the Complainant *“would have received”* a copy at the branch when she attended on **12 July 2011** it is not clear whether she so did.

The Complainant has also submitted that the Provider *“failed to comply in a timely manner under the CCMA 2010 as the MARP applied to existing arrears cases as of January 1st 2011 and their letter was not sent until 7th July 2011.”*

The Provider's position in this regard is that the Central Bank of Ireland introduced the Code of Conduct on Mortgage Arrears (CCMA) 2010 in **December 2010**, to be implemented by all Financial Institutions from **01 January 2011**.

However, it submits that the Central Bank allowed all lenders a period of 6 months to fully prepare for the implementation of the CCMA 2010 and that as a result, the Provider was obliged to comply fully with the CCMA 2010, from **01 July 2011** onwards.

I have had regard to the guidance letter, regarding the revised Code of Conduct on Mortgage Arrears, which issued from the Central Bank dated **06 December 2010**, to providers in this regard:

With effect from 1 January 2011, we expect mortgage lenders to take immediate steps towards implementing the necessary changes to their systems, procedures and documents and providing relevant staff training. During the six month period ending 30 June 2011, we will be cognisant of issues relating to systems development or other technical difficulties and required staff training, in monitoring compliance with the revised CCMA.

...

Transitional Arrangements

From 1 January 2011, this Code applies to all existing arrears cases and lenders must ensure that they comply with all provisions of this Code.

Lenders' attention is specifically brought to the following provisions in the CCMA:

- *The limits on unsolicited contact, as set out in Provision 21;*
- *Borrowers in arrears must not be moved from an existing tracker mortgage, as set out in provision 35;*
- *The twelve month period during which the lender must refrain from commencing legal action for repossession, as set out in provision 47;*
- *Where no formal arrangement is in place, a lender must review each borrower's case, in accordance with Steps 3 and 4 of the MARP;*
- *Where an alternative repayment arrangement (which was already in place before the introduction of this Code) breaks down, the lender's ASU must review the borrower's case immediately, in accordance with provision 41; and*
- *Where a borrower wishes to make an appeal and the lender has not yet established its Appeals Board, the appeal should be placed on hold until the Appeals Board is in place. Any time period between the receipt of the appeal and the establishment of the Appeals Board cannot be included in the 12 month delay on legal action set out in provision 47.*

I accept that there was a "grace period" allowed by the CBI during which "mortgage lenders were expected to take immediate steps towards implementing the necessary changes" and that the processes were required to be adhered to in full, with effect from July 2011.

Following consideration of the Preliminary decision, the Complainant has submitted that:

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“the clear import of the above extracts from the preliminary decision is that 1) the FSPO is of the view that the complainant did not receive a copy of the respondent’s MARP Booklet as required under Provision 12 in advance of her ‘SFS appointment’ in the Letterkenny branch of [provider redacted] on 12th July 2011 and 2) the FSPO is of the view that it is not clear either that the complainant ‘would have received’ a copy of the respondent’s MARP Booklet as required under Provision 12 on that date.”

The Provider has submitted that:

“As outlined in the Bank's submission dated 29 March 2018, The Central Bank introduced the Code of Conduct on Mortgage Arrears (CCMA) 2010 in December 2010, to be implemented by all Financial Institutions from 1 January 2011. However, the Central Bank was cognisant of the fact that Financial Institutions would find it necessary to implement system changes, policy updates, staff training and other technical upgrades in order to become fully compliant with the code. In light of this, the Central Bank allowed all Lenders, including [the Provider], a period of 6 months to fully prepare for the implementation of the CCMA 2010. As a result, the Bank was obliged to comply fully with the CCMA 2010 from 1 July 2011 onwards. In light of this, the Bank did not provide a MARP Booklet to the Complainant in January 2011. From July 2011 onwards, the Bank made MARP Booklets available across its branch network and online on the Bank's websites”

It appears from an email of the Complainant to Mr O’S, of **07 July 2011**, that the Complainant was first made aware of “*the new rules*” at the time she sought to arrange a review of her mortgage arrangements, prior to the expiry of the ARA on or about **03 August 2011** and she was informed that she would be required to attend at a branch, to complete a SFS.

I note that the letter which issued from the Provider, on **07 July 2011**, advised that:

To allow us discuss alternative repayment arrangements with you in relation to your mortgage, we require you to complete the attached Standard Financial Statement (SFS). Alternatively you can also complete the SFS online at [website] We have enclosed explanatory notes to assist you with completing the SFS. You may also wish to seek independent advice e.g. from MABS or another third party advisor. We would be obliged if you would now make an appointment with your local [Provider] branch. Please bring your completed SFS and 3 most recent months’ primary bank account statements to your branch appointment. Our Arrears Support Unit (ASU) will be in contact with you once again once your SFS has been assessed.

I also note that letters issued to the Complainant on **08 July 2011** noting that the temporary arrangements in place were due to expire on **03 August 2011** and if she required assistance with repayments, to contact the mortgage advisor in her local branch for assistance, or to contact its customer information line.

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I accept that the Provider did not however, make reference to CCMA or MARP in any of these correspondences, and I consider that it would have been appropriate to have made reference to this, as a matter of procedure.

I accept that it would also have been an appropriate time to have included a copy MARP booklet for the Complainant's consideration, in circumstances where the Provider has confirmed that booklets were made generally available and online from July 2011 and she had not been furnished with one. As noted, the Provider required the Complainant to fill out an SFS in **July 2011**.

In submissions received after the Preliminary Decision, the Complainant has submitted, with regard to the fact that she was not requested to complete an SFS until July 2011, that:

“Far from being a ‘get out’ clause for a lender to not use a ‘Standard Financial Statement’ until July 2011”, the Central Bank’s Industry letter of December 6th 2010 made it clear that a lender must use their own SFS version or one developed by the IBF in the interim, in the absence of an agreed version”

The Complainant pointed to the Central Bank of Ireland Industry Letter of **6 December 2010**, which advised that:

‘Standard Financial Statement Recommendation 26 in the Expert Group’s Interim Report was that “a standard financial statement (SFS) should be developed for use by all lenders and MABS, to assess a borrower’s financial position and to identify a best course of action”. As a standard format for an SFS has not yet been agreed between the relevant parties, lenders may use their own version of an SFS or one developed by the Irish Banking Federation (IBF) in the interim. However, if it is the case that a standard SFS is not agreed, the Central Bank of Ireland may move to prescribe the format of a standard SFS to be used by all mortgage lenders, next year’.

The Provider has submitted that the Alternative Repayment Request Form which it had been using, complied fully with the requirements and similarly to an Industry Standard Financial Statement, it provided for the gathering of sufficient information to enable it to fully assess the Complainant's circumstances, with a view to ascertaining the most suitable Alternative Repayment Arrangement for the Complainants' mortgage accounts.

I have had regard to the Alternative Repayment Request Forms which were utilised by the Provider prior to July 2011 and I am satisfied that the information provided for, covered the Personal Details of the Borrower, Employment Details, Income and Expenditure Details, Financial Assets, Liabilities, Provider's Recommendation and Borrower's Declaration to give a full and clear picture of a borrower's financial situation and on the basis of which an assessment is carried out. This is also the purpose of a Standard Financial Statement.

The Complainant has submitted that had she *“been specifically informed of this [the MARP process], it might have changed my attitude towards the sale of my property which I was*

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once again been forced to consider under pressure from [the Provider].” She has submitted that, “this omission may have been a deliberate attempt to conceal the nature of the MARP process from me, so that I would be forced to sell my property and not seek potential long term forbearance arrangements.”

The “nature of the MARP process” is formal framework that lenders must use when dealing with borrowers in mortgage arrears or in pre-arrears. As per the CCMA 2010,

This Code sets out how mortgage lenders (referred to in this document as “lenders”) must treat borrowers in or facing mortgage arrears, with due regard to the fact that each case of mortgage arrears is unique and needs to be considered on its own merits. This Code sets out the framework that lenders must use when dealing with borrowers in mortgage arrears or in pre-arrears. All such cases must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her mortgage obligations.

It consists of 5 steps, namely:

- Step 1: Communication with borrowers;
- Step 2: Financial information;
- Step 3: Assessment;
- Step 4: Resolution; and
- Step 5: Appeals.

As per CCMA 2011, in assessing the financial information provided within a SFS:

31. A lender’s ASU must examine each case on its individual merits.

32. A lender’s ASU must base its assessment of the borrower’s case on the full circumstances of the borrower including: a) the personal circumstances of the borrower; b) the overall indebtedness of the borrower; c) the information provided in the standard financial statement; d) the borrower’s current repayment capacity; and e) the borrower’s previous payment history

Assessment:

33. A lender must explore all options for alternative repayment arrangements, when considering a MARP case, in order to determine which options are viable for each particular case. Such alternative repayment arrangements must include : a) an interest-only arrangement for a specified period; b) an arrangement to pay interest and part of the normal capital element for a specified period; c) deferring payment of all or part of the instalment repayment for a period; d) extending the term of the mortgage; e) changing the type of the mortgage, except in the case of tracker mortgages; f) capitalising the arrears and interest; and g) any voluntary scheme to which the lender has signed up e.g. Deferred Interest Scheme.

A lender may not be willing to offer a borrower an alternative repayment arrangement, for example, where it is concluded that the mortgage is

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unsustainable and an alternative repayment arrangement is unlikely to be appropriate.

I consider that, whilst the Complainant's forbearance arrangements were each for reasonably short periods, having reviewed all of the evidence I am satisfied that the arrangements secured from the Provider on each occasion, were in accordance with the requests of the Complainant on each such occasion, for a short term arrangement, and with a view to facilitating the Complainant's ongoing intention to sell at least part of her property.

Whilst a provider's Arrears Support Unit must assess each borrower's situation, and consider the appropriateness of each of the alternative repayment options it offers, to determine which options are viable for each particular case, in circumstances where that the Complainant had sought a short term forbearance option, in order to allow her time to sell her property, I do not find that the Provider acted unreasonably in this regard or failed to assess the situation with regard to the information made available to it. On the contrary, in my opinion, the Provider's ongoing timely responses to the Complainant, in recognition of her difficult circumstances, were at a level which illustrated an appropriately sensitive approach to the Complainant's very difficult situation, well before a more formalised regulatory requirement to do so was introduced by the CCMA.

However, I accept that whilst the Provider required some time to put its MARP booklets in place, that the information which was provided by the Provider as part of its correspondences to the Complainant in July, did not make reference to the CCMA and MARP although it would have been appropriate to do so at that time.

In accordance with provision 23 of the CCMA 2010,

23. When a lender is contacted by a borrower in pre-arrears, the lender must provide the borrower with the information booklet required under provision 12.

The Provider made booklets available in branch and online from July 2011, and I accept that it ought to have provided a copy to the Complainant, at that time, but it did not do so.

The Complainant had submitted that had she been informed of the MARP process, it might have changed her attitude toward the sale of the property. It is not however clear to me what impact this additional information would have had on the matter, given that the Provider was already taking very reasonable measures to accommodate the Complainant's ongoing financial circumstances. In the interest of clarity I think that it is also important to note that the CCMA does not require a provider to grant a long term ARA if one is requested. Rather, a Provider is required to conduct an assessment, based on the financial and personal information made available to it, to assess whether an arrangement is appropriate or whether the loan is unsustainable.

Whilst I have noted above that I consider that the Complainant ought to have been issued with a copy MARP booklet in July 2011, I do not find any evidence before me that there was any mala fides or of a deliberate attempt by the Provider to "*conceal the nature of the*

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MARP process" from the Complainant, in order to not have to arrange a long term forbearance.

With regard to the Statement which the Complainant submitted to the Provider in support of her ARA application, dated **12 July 2011**, in which she stated:

I cannot pay my full mortgage as I was forced to stop working as a [professional] on 16/5/2007 due to [medical condition]. I have to attend [hospital] every 3 months now. There is no cure for this condition. Therefore I have been trying to sell my property since July 2008 as it is the only way for me to clear my mortgage debt.

...

Selling my property is the only way to clear my mortgage...

I note that the ensuing Assessment notes completed by the Provider in July 2011 state:

Reason for request: [Complainant] has being [sic] out of work due to a serious long term illness since May 2007. The mortgage property is still up for sale, she has reduced the asking price. She is now living with a friend in Dublin to be closer to the hospital for her treatment. She is currently in receipt of social welfare illness benefit of 804pm and [provider payment protection] of 846.09pm. She has borrowed approx. 10k from her mother during her illness and is repaying her 50pm. The Customer is on long term cph and is requesting to extend this again, plan is to sell the house and clear both mortgages. She is unable to work so will not be able to revert to full repayments, she is a [profession].

Brief background: - see above

Recommendation:- situation is unchanged, the property is still up for sale, customer is no longer residing there, she is managing to pay cph bills but cannot contribute anymore based on reduced level of income. I am approving proposal of additional 6months cph on both accounts as she is going to sell the house and clear both mortgages, given her serious illness and reduced income she cannot afford full repayments.

*[signed]
19th July 2011*

Overall, having had detailed regard to the evidence before me, and the series of alternative repayment arrangements which the Complainant was granted on a continuous basis between 2008 and 2011 – as these were granted by the Provider at the behest of the Complainant and in order to facilitate her expressed intention to sell the property, I do not find that the approach adopted by the Provider, or the arrangements which were put in place were in any way unfair or unreasonable in all of the circumstances.

The Sale of the Property

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The Complainant has further complained of the pressure placed on her by the Provider to sell her property and that it did not afford her sufficient time to sell part of her property, in order to reduce her mortgage debt to an affordable level.

The Complainant's position is that she sold her property as a result of the pressure put on her, by the Provider to do so. She further submits that as it was aware of her ill health, it should have been aware that she was not in a position to make such a significant decision as selling her home and lands. The Complainant has stated that the Provider:

"made no allowance for my obvious vulnerability during this time and that at the point at which I agreed to sell my property, I was not in a fit state to make a decision of such importance. By that point I was completely mentally and physically exhausted and no longer fit to understand what was happening, following [a particularly serious issue] in May 2011".

It is clear from the content of the Complainant's writings to the Provider, as set out above, that she was suffering from considerable distress and anxiety from the very difficult situation which she found herself in, health-wise and financially. It appears from the evidence before me however that it was the Complainant herself who made the decision to sell, on the basis that there was no apparent prospect of her being able to service her mortgage repayments into the future.

I do not consider that the Provider had a duty to intervene in the decision making process undertaken by the Complainant in this regard. I am also mindful that the Complainant appears to have had a solicitor acting on her behalf and she therefore had the benefit of independent legal advice, at the relevant times.

The Complainant has submitted that the correspondence with the Provider evidences the fact that that she did not wish to sell her home and lands in their entirety and that the Provider ought to have provided her with more time to effect a sale at a reasonable price. She also submits that she made the decision to sell as a result of the pressure which had been applied by the Provider, including the threat of repossession proceedings. She has stated that:

"although correspondence may record that I volunteered to sell my property in principle, this was to avoid repossession action being brought against me. In telephone conversations with [Mr O'S] Manager of the branch where I had my account (location), I was left in no doubt that if I did not sell, repossession action would follow."

Firstly, I am satisfied that the Provider granted the Complainant the opportunity to sell part of her lands on each occasion this was requested of it. As events transpired however, the Complainant encountered difficulty securing a suitable purchaser but the Provider holds no responsibility for those issues, with which the Complainant was faced.

I note that at those times when the Complainant proposed selling part of her property, the Provider issued its consent to sell part of the property on each occasion upon which it

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was sought. I do not accept, from the evidence before me that the Provider was opposed to allowing the Complainant sell part of her lands. When the Complainant sought assistance from the Provider, with a view to allowing her to sell a portion of or all of her property as profitably as possible, she was granted this by the Provider.

Overall, I do not consider that there are any grounds upon which it would be reasonable to find that the Provider acted wrongfully and/or unreasonably toward the Complainant in this regard or upon which it would be appropriate to uphold this aspect of the Complainant's complaint.

Secondly, as regards the suggestion that the Complainant's motivation to sell was as a result of the "*threat of repossession proceedings*", I do not find any evidence before me of such communications from the Provider. I note that the Complainant first advised the Provider that it was her intention to sell the property in 2008, even though her accounts were fully up to date at that time. She subsequently kept the Provider apprised of her medical situation, and whilst it was aware of her ill health, I do not consider that it would be fair, reasonable or indeed appropriate to impose a duty on the Provider to intervene in the decision of a customer to sell her property and move elsewhere. Indeed, as outlined in the correspondence at page 9 above, the Complainant had indicated to the Provider that part of the considerations underlying her decision to sell, was the opportunity to relocate, to live closer to the hospital where she was receiving treatment.

The Provider has submitted a signed statement from Mr O'S, in which he refutes that he advised the Complainant that if she did not sell, that repossession proceedings would follow:

"[The Complainant] kept in regular contact advising of the progress of her efforts to sell her house and we facilitated her requests for moratoriums, interest only and reduced repayments. I, on many occasions, re-assured her that we would do everything we could to facilitate her requests to keep her mortgage on track and she acknowledged this assistance in her emails. She did mention that she was worried about the Bank repossessing her property and I assured her that was the very last thing the bank would consider and in my many years in the Bank, I could only recall one occasion when such an action occurred.

[The Complainant] had a number of offers in 2010 for the property including one to purchase some of the land only but none came to fruition. During this time, we continued to facilitate her with agreed reduced repayments on her mortgages. This continued until she finally sold the property in the summer of 2011."

There is nothing before me which suggests that Mr O'S had advised the Complainant that she was in danger of having her property repossessed. Whilst the Complainant has submitted that such representations were made to her over the telephone by Mr O'S, this seems at odds with the totality of the written communications which occurred between the Complainant and Mr O'S, who appears, in my opinion, to have tried to assist and support the Complainant and facilitate her requests.

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The Complainant has submitted in this regard that the “*paper trail is carefully managed to ensure that [the Provider] appears facilitative but the complainant’s evidence is that the phone conversations were a different matter*” and that:

- *Mr O’S admits that he did not retain his email replies to the complainant.*
- *He has failed to produce any contemporaneous notes of the conversations he had with her.*
- *Telephone calls to the [Provider’s] Customer Resolution Centre or to the Bank’s branch telephone lines were not recorded*
- *Yet Mr O’S claims to have a clear recollection of a conversation where the complainant ‘was worried about the bank repossessing her property and I assured her that was the very last thing the bank would consider and in my many years in the bank, I could only recall one occasion when such an action occurred’.*
- *Figures contained in the [Provider] Annual Reports of 2011 and 2010 state that it repossessed 191 owner occupier dwellings in the Republic of Ireland in 2011 and 99 owner occupier dwellings in 2010. To reach this number of actual repossessions it is absolutely clear that [Provider] did at the relevant times regularly engage in repossession activity. [Mr O’S] worked at the time as Assistant Manager in a [Location] branch of the respondent but in his many years could only ever recall one repossession case.*

I accept in this regard that the statement of Mr O’S, that he “*could only recall one occasion when such an action occurred*” may have been his own personal experience.

When one has regard to the totality of the written communications which occurred between the Complainant and Mr O’S it appears to me that there was a positive course of dealings between the parties. Indeed, the Complainant continued to correspond with Mr O’S in the period after she had redeemed her mortgages with the Provider.

A thank you card which the Complainant sent to Mr O’S in **August 2013**, in which she referred to a subsequent loan, stated:

Dear [name]

*I know it was because of you that I got the loan. I will never forget your kindness to me.
Thank you so much*

I also note that the Complainant contacted Mr O’S again in **2014**, seeking his assistance with another issue. Within an email of **26 June 2014**, the Complainant set out in a friendly manner the details of her new home and advised that she “*will send photos when I am in it*”. She wrote “*Thank you again and I hope you are ok...Mind yourself and your family, I do appreciate all you have done for me [name].*”

In **August 2014**, the Complainant contacted Mr O’S for further assistance in respect of a different matter, and that she was “*asking you to help me urgently*”. On **18 September 2014**, she wrote to Mr O’S saying “*thank you for your help ...*” and raised further queries in relation to the new loan. I note that she contacted Mr O’S with further queries, during **2015** and sent Mr O’S a Christmas card, thanking him for all of his support.

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In **September 2016** the Complainant contacted Mr O'S to seek assistance regarding a loan extension which she required to facilitate repairs to her home and to cover the costs of fees incurred in furtherance of a legal dispute with the builder of her property.

On **23 November 2016** the Complainant submitted her formal complaint to the Provider, which has formed the basis of the within complaint.

She addressed it to Mr O'S stating:

*Dear [name]
I know I always thank you for being so helpful and reliable - and you are.
I don't have a problem with you.
This letter is for your bank – whichever section you deem fit to deal with the matter.
And I want a prompt reply*

She set out:

*Being an honest person, I felt under such pressure to pay my mortgage so under your bank's instructions I put my beautiful property up for sale in July 2008 at **€957,000**. And finally, 3 years later, after 4 failed sales, the whole lot sold for **€317,000**. I lost everything...*

...

There was no effort made to give me a chance to sell some of my property so that I could stay there with a reduced mortgage I could afford. I remember so well how you would say to me that unless I sold up I could be looking at a repossession – yet I was never even in arrears. I was so terrified of being made homeless by your bank and I was not even in arrears. Plus I had a clear credit history with your bank for over 20 years. You knew I was a genuine person who always paid back any loans.

No allowances were made for the fact that I was extremely unwell and no allowances were made for the fact that I had 65 acres I could sell some of and a site with full planning permission. I became so depressed with the constant stress I could not even think straight and I was terrified of a repossession. I have letters from my doctors to prove how this stress affected me and I can show how many times I had to go to a hospital in [location] while your bank was forcing me to sell.

I co-operated with your bank and I showed I was a responsible person but your bank still offered me no other option but to sell up at a cheap price. From €957,000 to €317,000...

I note that, in all of the correspondence during the relevant period, with Mr O'S, this is the first reference by the Complainant to any suggestion about “how you would say to me that unless I sold up I could be looking at a repossession – yet I was never even in arrears” as a result of which, she was “so terrified of being made homeless by your bank”.

Having considered all of the evidence which has been made available to me, it appears that the Complainant experienced grave worry about her home being repossessed and she expressed this worry to Mr O'S at various times, about her “home being taken” and that she was worried “they” were “clamping down and they will aim to take my house”.

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However, in my opinion, there is no evidence that these worries were as a result of representations made by the Provider to her. As noted above, and despite the Complainant's post preliminary submissions on the matter, the accounts were not in arrears.

It is clear that the fact that she was unable to meet her full mortgage repayment was a cause of some anxiety to the Complainant. She was described by the Provider in its internal messages as being "*conscientious*" in her dealings and this certainly appears to have been the case.

The Complainant explained to Mr O'S that "*Not being able to pay my mortgage is a nightmare and is does not sit well with me, I feel so bad about this*", and assuring him that "*I am doing my best to sell [Mr O'S] as I hate not being able to pay my mortgage.*"

However, there is no evidence that these concerns and stresses were precipitated by a threat of repossession proceedings being initiated by the Provider. Nor do I accept that no allowances were made for the fact that the Complainant was unwell and/or that she had land which could sell a portion of. As noted above and as per the correspondence set out, the Provider facilitated, when requested by the Complainant, the possibility of selling part of her property.

Overall, and with particular regard to the content of correspondence between the parties, as set out above, at pages 7 -14, I do not accept that the Complainant's decision to sell was as a result of pressure applied by the Provider and I do not find any grounds upon which it would be reasonable to uphold this aspect of the Complainant's complaint.

Complaint handling by the Provider.

The final aspect of the Complainant's complaint is in relation to the Provider's handling of her complaint. On **23 November 2016**, some years after her mortgages had been redeemed, the Complainant submitted a complaint to the Provider about how it managed her mortgage situation. This was formally acknowledged by the Provider by letter dated **30 November 2016**, after which there followed a number of holding letters – of **20 December 2016, 23 January, 20 February, 21 March, 19 April , 18 May and 14 July 2017**.

The Complainant submits that each of these "*variously assured me that 'every effort will be made to agree a fair and reasonable resolution' with me*" and that "*only the letter of April 19th informed me of an 'anticipated timeframe' within which [the Provider] hoped to resolve the complaint as required by the terms of Provision 10.9 d) of the Central Bank's Consumer Protection Code. The anticipated timeframe referred to in this letter was May 18th and this was not met.*"

The Complainant submits that she emailed the Agent with whom she had been dealing as regards the complaint, on **17 July 2017** to ask why the investigation was taking so long and that the reply which she received on **18 July 2018** asked her to, "*kindly note that I am in the process of completing a response to you and once I have same completed and sign off received I will be issuing the letter to you.*"

/Cont'd...

Eventually by letter of **09 August 2017** she submits that she received a letter of reply rejecting her complaint.

The Provider submits that

“every effort was made to fully investigate and resolve the Complainant's complaint within 40 business days however this was unfortunately not possible due to the complex nature of the issues raised. The Bank required additional time to fully investigate each restructure applied to the account from 2008 to 2011 and draft a comprehensive Final Response Letter.”

I note the following timeline of events as regards the progression of the Complainant's complaint to the Provider:

23 November 2016 – Complainant emailed her complaint to Mr O'S, with the subject line *“I want answers from your bank”*. The email set out the background to the Complainant's complaint and submitted a series of questions as regards the actions of the Provider in its dealings with her mortgage accounts, asking:

“Why did [the Provider] not give me time to sell off some of the land so as to bring the mortgage down to a level I could afford to pay?

Why did [the Provider] not give me time to sell the site I had with full planning permission as that would have reduced the mortgage also?

Why when I was dealing with a serious illness was I forced to sell up at a time I was having to go up and down to hospital in [location]?”

29 November 2016 – An acknowledgment email issued from Mr O'S and a letter issued from Ms B, Customer Relations Department, to the Complainant in relation to the complaint.

30 November 2016 – Ms B telephoned the Complainant to discuss the issues raised by the Complainant and sent a Sensitive Data Consent Form to the Complainant on the basis that some of the information which she provided in her email of 23 November 2016 would be classified as *“sensitive personal data”* under Data protection legislation.

07 December 2016 - Sensitive Data Consent Form completed by the Complainant, and received by the Provider on **09 December 2016**.

16 December 2016 – Ms B of the Provider telephoned the Complainant to advise that its investigation was ongoing.

20 December 2016 – Hold letter issued.

23 January 2017 - Hold letter issued.

31 January 2017 – Complainant telephoned Ms B to discuss the ongoing investigation

20 February 2017 - Hold letter issued, advising that it *“hope[d] to be in a position to issue a response to you by 21st March 2017”*.

28 March 2017 – Complainant submitted further details of her complaint.

30 March 2017 – Acknowledgement letter of Complainant's correspondence issued.

13 April 2017 – Ms B telephoned the Complainant to discuss her letter.

14 April 2017 – Complainant submitted further details of her complaint by email to Ms B.

/Cont'd...

19 April 2017 – Hold letter issued to the Complainant, advised that it hoped to issue a response by **18 May 2017**.

26 April 2017 – Ms B emailed the Complainant to note the investigation was ongoing.

11 May 2017 – the Complainant emailed Ms B seeking an update.

12 May 2017 - Ms B emailed the Complainant confirming the investigation was ongoing and that it hoped to issue a response by the end of May.

18 May 2017 - Hold letter issued.

30 May 2017 - Ms B emailed the Complainant confirming the investigation was ongoing.

16 June 2017 - Hold letter issued, advised that it hoped to issue a response by 14 July 2017

19 June 2017 - Ms B emailed the Complainant confirming the investigation was ongoing.

14 July 2017 - Hold letter issued, advised that it hoped to issue a response by 14 August 2017.

17 July 2017 - the Complainant emailed Ms B asking why the investigation was taking so long.

18 July 2017 - Ms B emailed the Complainant confirming that she was *“in the process of completing the response.”*

09 August 2017 – Final response letter issued to the Complainant.

I accept that, strictly speaking the Provider adhered to the requirement provision 10.9 of the Consumer Protection Code 2012 insofar as it issued hold letters and updates. It nonetheless took a significant length of time to issue its substantive response, some 9 months after its receipt of the complaint. It is not clear why it took so long.

From the internal documentation furnished, it appears that Ms B of the Provider only began to gather information in respect of the Complainant’s complaint at the beginning of **June 2017**. This represents a considerable lapse of time after the complaint was first received.

The Provider has accepted that *“it took longer than anticipated to respond to the Complainant’s complaint”* and in recognition of this, it offered €1,000.00 by way of compensation to the Complainant, within its formal response to this Office in April 2018. This offer was not accepted by the Complainant. However, I consider this figure to be a reasonable level of compensation for the poor service identified by the Provider insofar as its delayed response is concerned.

The Provider has confirmed that the offer of €1,000 was made in recognition of its failure to investigate the Complainant’s complaint in a timely and efficient manner. This Office has been advised, by submission of 27 August 2020 that, on the basis that the Provider’s payment of this sum settles this aspect of the complaint only, that the Complainant is prepared to accept this offer.

In the circumstances, as the Provider has acknowledged its failings in that respect, and has offered the Complainant a reasonable figure when responding to this complaint, which is accepted by the Complainant, I do not consider it appropriate to uphold this element of the complaint and it will be a matter for the Complainant to make contact with the Provider as regards payment of the settlement offer.

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Overall, whilst I fully appreciate the highly stressful and very difficult situation, which the Complainant experienced during the period 2008 – 2011, I do not consider that these stresses were caused by the Provider.

Rather, I am satisfied that the Provider at all times acted reasonably and sympathetically in its dealing with the Complainant during this very difficult period and accordingly, for the reasons outlined above, I do not consider that there are grounds upon which it would be appropriate to uphold the Complainant's complaint that the Provider did not act fairly in relation to her mortgage accounts and in particular that it put her under undue pressure to sell her property and did not afford her sufficient time to sell part of her property.

However, as identified above, I consider that on the basis of the particular point that the Complainant was not furnished with a booklet in relation to MARP in correspondence which issued to her in July 2011, I consider it appropriate to partially uphold the Complainant's complaint.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €350.00, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

04 November 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.

