



<u>Decision Ref:</u>	2021-0009
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Maladministration (mortgage) Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered in a mortgage loan agreement and a top-up loan agreement with the Provider in **October 2007** and **December 2007** respectively. The Complainants approached the Provider in **January 2013** as they were beginning to experience difficulty servicing their repayment commitments to the Provider and their other lenders. While not entering arrears in respect of the mortgage loan until **August 2013**, the Complainants suggested selling their family home in an effort to clear their outstanding loans. In this complaint, the Complainants assert that the Provider failed to explain the necessity for the sale of their family home and frustrated their efforts to retain their home. The Complainants also assert that the Provider failed to reach a mutual agreement regarding the residual debt that remained following the sale of their family home.

The Complainants' Case

The Complainants explain that their mortgage was “... allowed based on repayment capacity of First applicant [the First Complainant’s] income to include an annual bonus, guaranteed OT and increments.” The First Complainant’s income “... was drastically affected by a pay freeze in cessation of OT + Bonus ...” and the Second Complainant ceased working due to illness thereby impacting the household income even further.

It is submitted by the Complainants that from the outset, they were open with the Provider about their financial difficulties and furnished the Provider with a Standard Financial Statement (SFS) together with supporting documentation to demonstrate their financial difficulties.

The Complainants state that the Provider was advised that a moratorium on their loan repayments would facilitate the clearance of their secondary debt and enable the Complainants to maintain their full repayments from the end of the moratorium. The Complainants state that the Provider *"... instead gave the statutory 3 x 3 months interest only periods and maintained that the capacity to repay the mortgage was satisfactory in their opinion."*

The Complainants state that:

"The debt continued to mount and the pressure through mail correspondence and regular phone calls landline and both parties mobiles became over bearing and incessant.

One particular occasion saw [the First Complainant] being assisted at the roadside due to an anxiety attack following an extremely persistent member of the [Provider's] arrears team ..."

The Second Complainant became extremely unwell and was under the care of her GP and the supervision of her consultant. The Second Complainant was also taking medication as a result of the ongoing stress.

It is stated by the Complainants that *"[a]t no point was there a cessation of the pursuit for repayment which grew momentum over time."* The Complainants advise that *"[e]ventually on medical advice and that of [consultancy firm] a financial adviser allocated by [the Provider] the only alternative left was to sell."* The Complainants refer to the financial adviser's surprise at the lack of appetite on the part of the Provider to reach an amicable settlement.

The Complainants state that their mortgage advisors requested that the Provider cease taking payments in respect of the mortgage until the sale of the property went through but this was to no avail. The Complainants submit that:

"The opinion of repayment capacity on the mortgage was maintained by [the Provider] and although they were aware that we had placed the house on the market at the then market value, refused to acknowledge the efforts being made and insisted on full repayments."

The Complainants submit that the Provider's conduct in this regard propelled them further into debt.

When an offer was made in respect of the property and contracts signed, the Complainants explain that a *"... letter of agreement that we did not have the capacity to repay and 'permission' to sell the property came."* Separately, a *letter of reschedule* for the residual debt also came which was followed by a telephone call from the Provider the next day.

The Complainants state that the Provider's agent was curt with the Second Complainant when explaining that the sale would not be sanctioned in the absence of the signed reschedule of residual debt.

The Complainants point out that although the Provider's agent was aware of the completion date for the sale and the *threat* to the Complainants if they breached this contract, "... she reiterated the point that the residual debt schedule should be signed and returned immediately. She also reiterated that there would be no negotiation. The reschedule of debt was final."

From the outset, the Complainants believe that they were thwarted in any effort they made to retain their family home and "[b]y the final phone call from [the Provider] we felt coerced, harassed and bullied into submission." The Complainants state that they left their home, which according to the Provider, was a voluntary sale scheme. The Complainants explain that they now live in separate rental accommodation and the Second Complainant has suffered a stroke which she attributes to stress. The Complainants point out that due to additional medical expenses and the costs of separate living, they have now fallen into further arrears with respect of the rescheduled debt.

The Complainants also point out that both of their daughters lived with them during this *nightmare* and have been severely traumatised: "The younger of whom suffers severe migraine and depression." The Complainants' son, who is married and has his own family, "... was distraught to see the quandary we were in, and feeling helpless to assist."

In the final paragraph of their submissions, the Complainants state:

"We are both in our fifties now after a lifetime of building a life together. [over 30] years of marriage, [number] children reared and never defaulted on a repayment of any kind. Yet we are now a broken family in health, financially and as a unit. This we lay at the door of [the Provider].

The heartbreak and stress they have needlessly caused is unforgiveable."

The Complainants elaborated further on their complaint by email dated **1 July 2019** stating:

"The question of necessity for our family home to be sold still remains unresolved. The responsibility for the need to sell was a direct consequence of the inadequate support and lack of negotiation with the provider to us.

Also the fact that the provider maintained a verdict of capacity to repay the loan amount to the very end, contrary to the recommendation of the [mortgage advisor's] representative and the PIP advisor [PIP] of [the consultancy firm].

The decision of sale of the family home was taken in an attempt to repay the loan amount with a write down on the residual debt as recommended by the advisor supplied by the provider.

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The decision was made out of necessity to get respite from the constant barrage of contact from the providers arrears team one contact in particular [Provider's agent].

At that point both of us had suffered tremendous loss of health issues which have culminated in irreversible damage to both physical and mental health.

When a vendor was identified and contracts were pending the provider contacted us stating that the capacity to repay the mortgage was unachievable and sale was permitted.

However on exchange of contracts the provider contacted via phone call from [the Provider's agent] stating a stay on the sale would remain, the new schedule for residual debt was signed and immediately returned.

This put the sale in jeopardy and us in breach of contract.

There had been no negotiation on the residual debt as the provider had been uncommunicative for the entire term of the sale. Therefore the terms were set down by the provider without consulting us.

We have been and remain in limbo since first approaching the provider in 2011. ..."

The Provider's Case

The Provider advises that the Complainants' mortgage account first went into arrears in **August 2013**. When this occurred, the repayments being made at the time varied between €600 and €800. The Complainants were also meeting their repayments in respect of the top-up loan. The Provider explains that, as at the date of its submissions, the Complainants were not making their monthly repayments in respect of the mortgage account with the last full repayment of €350 being made on **1 November 2017** and a partial payment on **3 April 2018**. The Provider advises that the top-up loan was redeemed in **April 2015**.

The Provider explains that it negotiated with the Complainants between **January 2013** and **June 2016** and prior to entering arrears, the Complainants wrote to the Provider in **January 2013** seeking forbearance as they were experiencing financial difficulty. The Provider explains that an interest only arrangement was offered to the Complainant on **28 January 2013**. A further request for forbearance was received in **July 2013**. The Provider states that the Complainants explained on their Standard Financial Statement (**SFS**) that they had contacted an auctioneer and were in the process of preparing a brochure for the sale of their home. The Provider wrote to the Complainants on **19 July 2013** to inform them that their request for forbearance was rejected as the Complainants were prioritising their secondary debt over the mortgage loan.

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The Provider submits that an assessment carried out by its Arrears Support Unit (**ASU**) in **January 2013** prior to the Complainants going into arrears and forbearance of six months was afforded to the Complainants in order for them to organise their secondary debt in a way that allowed them to make their contractual mortgage repayments. The Provider submits that the Complainants failed to restructure their debt to a level where they could maintain their contractual repayments. The Provider states that another assessment took place in **July 2013** and it was decided, based on the information provided in the SFS and supporting documentation, that the Complainants had ability to make their repayments but instead prioritised other debt.

A letter dated **22 July 2013** was then received by the Provider's ASU, requesting that the Provider reconsider its decision. The Provider explains that *"[t]his letter was treated as an appeal of the ASU's decision however it was not forwarded to the Mortgage Appeals Office (MAO) and the Bank apologises for this."* On **1 October 2013**, a letter issued to the Complainants advising them that their appeal had been considered by the Mortgage Appeals Board (**MAB**) and their appeal was not upheld as the MAB was satisfied with the decision of the ASU.

The Second Complainant contacted the Provider having received notification that the appeal was not upheld. The Provider explains that the Second Complainant was looking for other options and advised that she was trying to secure restructures on the secondary debts. The Second Complainants advised the Provider that they were living on an overdraft and they had more medical bills to pay. The Second Complainant was advised that as the appeal was not upheld, the Provider was now seeking the contractual capital and interest repayments. The Provider states that the Second Complainant then informed its agent that the family home was on the market but it was in negative equity. The Provider's agent then asked the Second Complainant to obtain legal advice as there would be a residual balance and the Provider would need a proposal on how the Complainants intended to clear this balance. The Provider states that the Second Complainant advised that the most they could stretch to was €900 per month between both loans.

The Provider explains that the Complainants asked what options were available to them. The Provider states it maintained the position that the Complainants had the affordability to make full capital and interest repayments. As this was the case and as there was no change in circumstances, the Provider states that it would not be applying any forbearance to the Complainants' mortgage account. The Provider explains that the Complainants proposed to make payments of €800 towards their mortgage account and to continue to make the full capital and interest repayments on the top up account. This Provider advises that this proposal was considered and assessed however, the outcome of this assessment was that the mortgage repayments were affordable.

The Provider advises that it received a proposal from the Complainants on **14 October 2013** where it was proposed that the Complainants would make repayments of €800 instead of the €600 they were making at that time. The Provider points out that this proposal was not responded to until it was resubmitted a few months later.

The Provider “... acknowledges its failure to respond to this proposal initially and would like to offer €250 as a Good Will Gesture in order to compensate for this.”

The Provider explains that the Second Complainant called to one its branches on **13 November 2013** regarding her proposal and enquired as to whether the Provider was willing to accept it. The Provider’s agent contacted the ASU and the Second Complainant was advised that the ASU would be in contact with her. The Provider observes that it “... failed to respond in a reasonable time. The Bank acknowledges this failure and apologises for this.” On **17 January 2014**, an ASU agent attempted to contact the First Complainant but the call did not connect. The Provider explains that the mortgage account was receiving payments of €800 per months and the top-up account was up to date. However, the mortgage account was 2.5 months in arrears and increasing. The Provider states that the Complainants’ SFS on file from **September 2013** was being assessed.

The Complainants wrote to the Provider by letter dated **2 February 2014** to inform the Provider that their situation had not improved and their home was on the market for €250,000 but the current offer was €205,000. The Complainants advised that the sales proceeds would not cover their debt and that their rent payments would have to take precedence over the residual debt. The Complainants advised that they would continue to make repayments of €800 to the mortgage account and maintain repayments on the top-up loan. The Complainants also requested that the Provider reconsider their appeal decision again. The Provider explains that it assessed the SFS on **22 February 2014** and the mortgage loan was deemed affordable and an interest only arrangement was declined. The Provider submits that the Complainants were continuing to prioritise their secondary debt. The Provider states that “... it acknowledges and apologises for this delay.” In response to the Complainants’ letter, the Provider wrote to the Complainants on **24 February 2014** to inform them that the Mortgage Arrears Resolution Process (**MARP**) Mortgage Appeals Board decision was final and they could refer a complaint to this Office. On the same day, the Provider contacted the First Complainant, who was unhappy with the Provider’s decision. At that time, the mortgage account was 2.93 months in arrears.

The Provider explains that it was approached by the Complainants who advised that their situation had changed and requested that their situation be reconsidered. The Complainants wrote to the Provider on **11 March 2014** to update it on their current situation. The Provider received an SFS together with supporting documentation on **26 March 2014** and sought certain missing documentation from the Complainants on **31 March 2014**. These documents were received by the Provider on **4 April 2014**. The Provider called the First Complainant on **15 April 2014** to enquire if the Complainants would be in a position to make a payment. The First Complainant advised that he would pay when he could.

On **3 May 2015**, the Provider’s Integrated Decision Support Tool (**IDST**) was completed and signed off. The Provider explains that this is a document used by the ASU as part of its forbearance assessment process. The Provider contacted the First Complainant on **9 May 2014** to go through the assessment and advised that the Complainants’ case was affordable if the mortgage loan was prioritised.

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An interest only arrangement was offered for a 3 month period to allow the Complainants to reduce or restructure their secondary debt. The First Complainant was not happy with this outcome and was advised that the Provider's decision could be appealed and outlined the timeframes involved. The Provider states that on **13 May 2014**, interest only letters were issued to the Complainants for signing. On **14 May 2014**, the Second Complainant contacted the Provider and expressed dissatisfaction with the interest only arrangement. The Second Complainant stated that she awaited receipt of the letter and would contact the Provider if she had any questions or queries. The Provider states that it received a signed and accepted letter in respect of the interest only arrangement on **20 May 2014**.

The Provider submits that the Complainant were yet again advised that they had capacity to make payments. The Complainants were afforded a 3 month interest only arrangement to give them an opportunity to get their secondary debt in order. The Complainants' mortgage advisors contacted the Provider and advised that the Complainants were proposing to sell their home. A 12 month interest only arrangement was sought while the Complainants were trying to find a buyer. They also requested that the Provider consider the net proceeds of sale as full and final settlement of the mortgage loan. The Provider informed the Complainants' advisors that this was not something it was agreeable to as the Complainants were deemed to be able to afford the mortgage. The Provider informed the advisors that if the Complainants wished to proceed with the sale then they would still be liable for the residual debt.

The Provider states that it received a letter from the Complainants' mortgage advisors as outlined above, on **16 July 2014**. On **8 September 2014**, the mortgage advisors informed the Provider that the Complainants had received an offer in respect of the property. The Provider advised the mortgage advisors that it would not reassess the Complainants' case for a compromise settlement on the residual debt. The Complainants would remain fully liable for the residual debt and a repayment plan would need to be submitted when their solicitor sent in confirmation of the offer. The Provider further advised the mortgage advisors that no proposal could be considered until an official letter of offer had been submitted.

The Provider states that the property went sale agreed on **29 October 2014** for €230,000, leaving an estimated residual debt of €58,100. A Letter of Agreement (**LoA**) was sent to the Complainants on **21 November 2014** explaining that the Complainants would remain liable for the residual debt under the terms set out in the letter. On **3 December 2014**, the Second Complainant contacted the Provider in response to a voicemail received by the First Complainant where it was queried whether the Complainants had signed the Voluntary Sale for Loss agreement (**VSFL**). The Second Complainant advised that they had signed the VSFL but their solicitor was sending the Provider a query regarding the figures. The Provider advised the Second Complainant that the figure was the balance less the net sale proceeds. The Provider also advised that the Complainants could afford the repayments based on their income.

The Provider states that it received a call from the Complainants' solicitor on **3 December 2014**, regarding queries he had emailed to the Provider but to which he received no response. The Provider submits that it has no record of receiving this email query. The Provider explains that the Complainants' solicitor was satisfied when it was explained that all arrears were included in the figures. The Provider explained that it could not issue the LoA until the residual debt letter was signed and returned.

On **11 December 2014**, the Complainants' solicitor confirmed that all queries had been addressed and that the Complainants had signed the LoA and sent it in the post which was received by the Provider that day.

The Provider called the Second Complainant on **23 December 2014** in respect of the top-up account as this account had gone into arrears and requested payment. The Second Complainant advised the Provider's agent that there was an arrangement in place with the Provider. The Second Complainant advised the Provider's agent that the sale would go through in the next couple of weeks. The Provider's agent informed the Second Complainant that she understood her position but that the Complainants were still obliged to make their contractual repayments in the meantime. The Second Complainant informed the Provider agent's that they were not in a position to make a repayment. The Second Complainant was then advised of the impact to her credit rating and the possibility of further calls being made to both Complainants.

In **January 2015**, the Provider was advised that there would be a delay in closing the sale due to certain issues with water percolation and the septic tank which would cost €7,000 plus VAT to resolve. The Provider was also informed this would affect the sales price.

The Provider rang the Second Complainant on **20 February 2015** to query why lodgements were not being made to the mortgage account. The Second Complainant advised the Provider's agent that they had moved out of the property on **22 December 2014** as the sale was due to close before Christmas. The Second Complainant informed the Provider that the Complainants were paying €950 in rent and could not afford the mortgage repayments. The Provider's agent advised the Second Complainant that they were fully liable for mortgage balance and they should lodge to the mortgage account if possible. The Provider received the net sale proceeds in the sum of €220,800: €26,344.01 was lodged to the top-up loan account and €194,455.99 was lodged to the mortgage account. The Provider explains that the residual debt was €58,457.60 with the new monthly repayments being €600.71.

The Provider submits, referring to the detailed chronology in its submissions to this Office, that the Complainants proceeded with the sale of the property and they were informed throughout the process that they were liable for the residual debt. The Provider states that the Complainants were unable to make repayments for a period of time due to a delay in selling the property, a delay which was outside the Provider's control.

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A residual debt repayment plan was sent to the Complainants on **21 November 2014** which was signed by the Complainants on **1 December 2014**. The Provider explains that 15 days after the Complainants were no longer the official owners of the property, they informed the Provider that they could not make the repayments. The Provider submits that it then took over a year for the Complainants to supply the relevant information to enable the Provider to carry an assessment as requested by the Complainants.

On **5 June 2015**, the Provider contacted the Second Complainant in relation to the residual debt. The Second Complainant advised that the Complainants had recently separated and could not afford the residual debt repayments. The Provider advised the Second Complainant that a new SFS was required. On **15 June 2015** the Provider called the Second Complainant who informed the Provider that she would revert by **16 June 2015** to advise as to how much she could pay for the month of June.

On **8 March 2016**, the Second Complainant contacted the Provider and was advised that she was underpaying on the residual debt each month. The Second Complainant told the Provider that she had rent to pay each month and that the Provider had forced the residual debt repayments on the Complainants. The Second Complainant also explained certain matters to the Provider regard the Complainants' circumstances.

On **16 April 2016**, the First Complainant called the Provider. The Provider advised the First Complainant that the Complainants were consistently underpaying on the repayment arrangement that was put in place. The First Complainant was advised that an SFS was required. The First Complainant told the Provider that he was paying €350 per month in rent and was told to include this in his SFS. The First Complainant suggested that it would be more suitable to extend the repayment term and reduce the monthly repayments. The Provider has set out further details regarding telephone conversations that took place with the Complainants in its submissions.

The Provider submits that following the implementation of the terms of the LoA, the last time the Complainants adhered to this arrangement in full was **November 2017**. The last partial payment was made in **April 2018**.

The Provider observes that the Complainants requested numerous assessments and forbearance while they had affordability to make their repayments. The Complainants proposed the selling of the property. The Provider states that the delay in selling the property was beyond its control. The Provider also states that the Complainants failed to adhere to the original residual debt repayments immediately after the sale of the property. The Complainants then took over a year to provide the relevant documents in order to carry out an assessment for reduced repayments. The Provider explains that it agreed to reduce the repayments to less than the Complainants advised they could afford and the Complainants maintained those repayments for a year and five months following which they made partial payments for a further five months before payments ceased in **April 2018**.

The Provider submits it is satisfied that when it came to repayments arrangements, it considered all proposals and requests and the Complainants were afforded forbearance when it was justified.

Alternative Options

In responding to the question of whether any solutions other than a voluntary sale scheme were put forth, the Provider explains that no solution was put forward as any assessments carried out prior to the sale of the property determined that the Complainants had full affordability throughout the term of their mortgage if they prioritised their mortgage loan over secondary debt. However, the Complainants were choosing to service secondary debt ahead of their mortgage repayments.

The Provider states that the Complainants put forward the voluntary sale option in **July 2013**. The Complainants submitted an SFS in which they advised that they had approached an auctioneer to put together a brochure with a view to selling the property. The Complainants informed the Provider that they knew their debt was unsustainable so they approached an auctioneer. The Provider notes that the Complainants did advise that they wanted to stay in their home but they continued to prioritise other debt. The Provider submits that it did not force the VSFL option on the Complainants, it was their request to proceed with this option.

When assessing a case for forbearance, the Provider states, as outlined above, that it uses an IDST that is designed to explore all possible options. Its case managers entered the Complainants' information from the SFSs and supporting documentation and the IDST then determined the most suitable option. For cases such as this one, the Provider also used a case assessment summary sheet.

The Provider explains that in the Complainants' case, each time an assessment was carried out, it was determined from the IDST that they had the affordability to make repayments if they prioritised their mortgage loan repayments and they were therefore, deemed mortgage affordable.

No Negotiation on Residual Debt

The Provider rejects the Complainants' contention that it was *uncommunicative for the entire term of the sale*. The Provider explains that there were no negotiations on the residual debt as it was made clear to the Complainants that there would be no compromise due to the fact that they had the affordability to make the mortgage repayments prior to the sale of the property. During a telephone call on **11 December 2014**, the Complainants' solicitor confirmed that all queries had been answered and that his clients had signed and accepted the VSFL letter. The Provider had also advised the Complainants' mortgage advisors that as the Complainants were deemed mortgage affordable, there would be no re-assessment of their situation with regards to a write-off or compromise of the residual debt.

However, the Complainants' solicitor was advised that if the Complainants had a proposal regarding repayments, they could submit it to the Provider but it would not be considered until an official letter of offer regarding the sale amount was received by the Provider. The Provider submits that it received no such proposal and the Complainants agreed to the VSFL letter without raising any concerns prior to doing so.

Certain complications then arose with respect to the property which caused the net sales proceeds to be less than expected. In addition, there were no lodgements being made during delay in the sale and the Complainants advised they had moved into rented accommodation. The Complainants then separated and advised that they could not afford the residual debt repayments. The Complainants did not dispute the residual debt repayments and were advised to submit an SFS and supporting documentation to allow the Provider to explore alternative options. As outlined above, the Complainants took over a year to supply this information. When it was received, the Provider assessed the Complainants' situation and reduced their repayments to less than the figure they claimed they could afford. The Complainants went on to pay less than the newly agreed reduced amount and ultimately did not meet these repayments.

Communications with the Complainants

The Provider submits that it is satisfied it acted in accordance with provision 22 of the Code of Conduct on Mortgage Arrears 2013 (CCMA), throughout the duration of the Complainants' mortgage loan. The Complainants submitted financial information and following assessment, they were deemed mortgage affordable. However, the Complainants maintained a position of prioritising their secondary debt. The Provider submits that it addressed the Complainants' claim that they felt *bullied and harassed* in its Final Response letter dated **17 June 2016**. The Provider states that it apologised in its Final Response letter that the Complainants felt this way and assured them that the Provider had assessed their case for any possible forbearance and that the outcome of these assessments and its communications to the Complainants were in line with the Provider's procedures.

The Provider states that it is satisfied that the level of successful telephone contact with the Complainants was in line with the CCMA and not excessive. The Provider advises that if the Complainants would like to identify a particular period in which they believe that the Provider applied excessive pressure through mail correspondence and/or regular telephone contact, it will investigate this. The Provider notes that the Complainants refer to pressure through mail correspondence however, the Provider is required under the CCMA to issue regular arrears correspondence. Additionally, the Complainants' account was flagged so that calls to the Complainants would only be made once a month.

Adherence to the CCMA

The Provider had sought to address each of the complaints raised by the Complainants in the context of the CCMA.

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Failure to clarify the necessity for sale

The Provider explains that it did not suggest that the Complainants' home be sold or advise that it was a *necessity*. The Complainants approached the Provider with this option. The Provider states that the Complainants did not believe that they had affordability to make their mortgage loan repayments and service this loan within the agreed term. The Provider explains that an assessment of the Complainants' position then took place and the documentation contained in the relevant parts of the Schedule of Evidence demonstrates its rationale for deeming the Complainants' mortgage loan affordable. The Provider states that it took the Complainants' income details along with their expenditure and allowed for regular medical expenditure. The Provider considered that the Complainants' mortgage was affordable however, the Complainants were prioritising their secondary debt over their mortgage. The Provider advised the Complainants of the outcome of its assessment by letter dated **19 July 2013**. This letter also advised the Complainants of their right to appeal this decision. The next assessment took place in **May 2014** and the Provider concluded that the Complainants were prioritising their secondary debt over their mortgage. The last assessment took place in **May 2016**.

As outlined above, on **24 July 2013**, the Complainants sent a letter to the Provider in which they requested that it reconsider its decision of **19 July 2013**. The Provider accepts that this was an appeal letter but it was not sent to its Appeals Department. The Provider acknowledges that this should have been forwarded to its Mortgage Appeals Board. The Provider states that it failed to adhere to provision 51, parts b), d) and e) and apologises for this.

In the remainder of this section, the Provider has set out its compliance with provision 51 of the CCMA.

Failure to support or negotiate with the Complainants

The Provider rejects the argument that it did not support or negotiate with the Complainants when they were trying to remain in their family home. As previously stated, the Complainants suggested selling the family home and progressed the sale of their home with the assistance of an auctioneer. The Complainants notified the Provider when they were sale agreed and sought consent to sale.

The Provider states that it assessed the Complainants' situation based on the information provided and it was deemed on each occasion that they were prioritising their secondary debt and had affordability to meet their mortgage loan repayments within term. The Provider explains that the Complainants failed to restructure their secondary debt to a level that allowed them to meet their contractual mortgage repayments and continued to prioritise their secondary debts. The Provider states that it assessed the Complainants' situation on several occasions at the Complainants' request and provided periods of interest only for 6 months on **28 January 2013** and for 3 months on **9 May 2014**.

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The Provider states that it considered all elements of the Complainants' situation. The Complainants advised the Provider that the Second Complainant had health issues but did not elaborate on this. The Complainants were asked to submit all information to the Provider that they felt explained their situation. The Complainants supplied this information and the Provider worked with what it was given when assessing the Complainants' case. The Provider states that it received receipts surrounding the Second Complainant's medical expenses and these were considered and allowed for as part of the Provider's assessment as recurring medical expenses when received but it was unaware of the overall situation.

The Provider advises that the Complainants' overall indebtedness and repayment history was considered and the Provider initially allowed the Complainants 6 months interest only payments to give time to restructure their secondary debts to a point where they could afford their mortgage loan repayments.

The Provider notes that the Complainants have stated that the Provider approved their mortgage loan in **2007** on the basis of the bonuses and overtime that the First Complainant was receiving at the time the mortgage loan was applied for. The Provider explains that it took 50% of the First Complainant's bonuses and overtime into consideration in line with the relevant procedure at the time. The Provider states that this information was taken into consideration when the mortgage loan was applied for, however, when it came to the assessments carried out in relation to the forbearance requests, the information contained in the Complainants' SFSs and supporting documentation still showed that the Complainants had affordability. The non-guaranteed income was not included in this assessment. The Provider states that it was satisfied that the Complainants' mortgage could be maintained on the First Complainant's base salary at the time of each assessment.

Coercion, harassment and bullying

The Provider rejects the allegation that it coerced, harassed or bullied the Complainants into submission. The Provider states that it assessed the Complainants' situation on the information provided and the decision was made that the Complainants were prioritising their secondary debt and not the mortgage loan that was attaching to their family home. The Provider submits that it encouraged the Complainants to understand the severity of failing to maintain their mortgage loan repayments and advised them of the consequences of not adhering to their contractual repayments. The Provider submits that the Complainants continued to prioritise their secondary debt and progressed the sale of their family home.

No negotiation on residual debt

From a CCMA perspective, the Provider states that the Complainants approached it on **8 September 2014** through their mortgage advisor, advising that they had an offer on their property.

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The Provider's case manager advised the mortgage advisor that as the mortgage was deemed affordable in **April 2014**, the Provider would not re-assess the situation as the Complainants' circumstances, to the Provider's knowledge, had not changed. The Complainants were still liable for the residual debt and a repayment plan would need to be submitted when the Complainants' solicitor was sending confirmation of the sale offer to the Provider. The case manager advised that any proposal could not be considered until a confirmation of offer letter was received as only then could the actual residual balance figure be known to the Provider.

On **29 October 2014**, the Provider consented to the sale of the property with the Complainants being fully liable for the residual debt. A VSFL was issued to the Complainants on **21 November 2014** in which the repayments were outlined to the Complainants. The Complainants and their solicitor had queries regarding the VSFL agreement content. The Provider submits that on **3 December 2014**, the case manager answered the queries that the Second Complainant had raised and then later, those raised by their solicitor.

On **11 December 2014**, the Complainants' solicitor returned the case manager's call from the previous day and the solicitor confirmed that the Complainants accepted the VSFL. The case manager also addressed the solicitor's queries regarding fees. While there were matters outside the parties' control during the sales process, the Complainants failed to make full repayments during this time. The Provider explains that the parties were in contact on a number of occasions during this time. The Complainants never raised any issue regarding the agreement that they signed despite the regular contact between the parties. It was not until the property was sold on **5 June 2015** that the Complainants advised the Provider of their issue with the repayment amount. A month after the property was sold, the Complainants failed to adhere to the terms of the agreement.

The Provider states that it sought separate SFSs from the Complainants as they had separated at that time, along with supporting documentation. It was not until a year later that all necessary information was supplied. The Provider received this information on **23 May 2016** and assessed the situation and issued an arrangement with a LoA for a lower repayment amount which was signed by the Complainants and received by the Provider on **20 June 2016**.

The Provider has also confirmed and explained that the Complainants were dealt with under MARP. In particular, the Provider explains that it assessed the Complainants' financial situation prior to the sale of the property and they had affordability for the mortgage loan. All SFSs were reviewed and other repayment options were explored based on these assessments but as the Complainants had affordability to repay the mortgage loan within the term, the Provider determined that the other options were not applicable. The Provider submits this was not a situation of affordability but prioritisation.

The Provider also confirms that no telephone calls have been made to the Complainants since **10 February 2018** when the First Complainant informed the Provider that the Second Complainant was seriously ill.

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Conclusion of the Provider's Submission

The Provider states that it wishes to empathise with the difficult and upsetting situation the Complainants have found themselves in, the personal events that have transpired since the sale of the property, and acknowledges and sympathises that the Second Complainant has been unwell.

However, the Provider states that it is satisfied that at all times, it tried to work with the Complainants and to emphasise to them the importance of prioritising their mortgage loan ahead of secondary debt. The Complainants were facilitated with periods of interest only to alleviate the financial stress and to allow them time to restructure their other debt. The Provider states that it explained the consequences of not prioritising the mortgage loan however, the Complainants chose not to do this and decided to sell their family home.

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to clarify the necessity for the sale of the Complainants' family home;
2. Failed to support and/or negotiate with the Complainants when they were trying to remain in their family home;
3. Coerced, harassed and bullied the Complainants into submission in respect of their attempts to retain their family home;
4. Failed to reach a mutual agreement in relation to the residual debt; and
5. Failed to provide an appropriate level of customer service.

Decision

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

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

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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 14 July 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 the Preliminary Decision, the parties made the following submissions:

1. E-mail from the Complainants to this Office, together with attachments, dated 27 July 2020.
2. E-mail from the Provider to this Office, dated 7 August 2020.
3. E-mail from the Complainants to this Office, dated 12 August 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.

It is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the re-negotiation of the commercial terms of a mortgage loan or an alternative repayment arrangement which is a matter for the Provider and the Complainant and does not involve this Office whose role is an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant.

The First Request for Forbearance

The Complainants applied for a 6 month interest only facility on **18 January 2013** and submitted an SFS dated **22 January 2013**. Section D of the SFS deals with *Your Current Monthly Debt Payments*. The Complainants' SFS shows that they had, in addition to the mortgage loan, a number of short-term debts. It appears, for the most part, that the monthly repayments in respect of all of the Complainants' debts other than the mortgage loan were being met and there were no outstanding arrears.

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At section F, the Complainants advise the Provider that:

“While we have been meeting our commitments to date, it has become close to impossible and as you will notice from the latest statements this month will not be possible to maintain our debts without assistance. We have approached Mabs for further assistance with a budgeting strategy and will be our intention to work with them to clear our arrears and repay our debts in full. If the market allowed we would sell the house to clear all but unfortunately the valuation is not adequate.”

A 6 month interest only facility was extended to the Complainants on foot of this request.

The Second Request for Forbearance

The Complainants applied for a further 6 month interest only facility on **27 June 2013**. The Provider has submitted a copy of an undated letter which appears to have accompanied this application. This letter states, in part:

“... [Auctioneer] is in the process of formulating a brochure with a view to the sale of our home should the need arise. We would of course wish to stay in our home but if that is not in the long term a viable option then the house and auctioneer will be ready for sale.

This will not cover the debt we have with either yourselves or the rest of our creditors as we are in severe negative equity ...

... We have cleared quite a bit of the small household arrears over the past few months and hope that by following our current budget we will be in a better position to address the larger debt in the near future.

... As you will note there is a significant deficit but we hope with assistance of the interest only facility to be able to control the situation ...”

The Complainants submitted an SFS dated **27 June 2013** in support of their application. At section C, the Complainants explain as follows:

“The family home has been viewed by [auctioneer] and has formulated a brochure with a view to sale. We would prefer to remain in the family home as sale at this point would not cover the complete mortgage or personal debts. Hopefully with further assistance from yourselves our accounts will improve enough to allow us to maintain our home.”

Section D indicates that the Complainants were endeavouring to meet repayments in respect of all of their debts.

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A *Case Assessment Summary* dated **7 July 2013** was prepared by the Provider in response to the above application and contains the following recommendation:

“Repayments are affordable, and as such borrowers need to prioritise the home loan. Secondary debt is being serviced at €1,088 per month, while home loan is receiving approximately half of this figure. This cannot be allowed to continue. Account must revert to C&I repayments (with the possibility of a small term extension if required).”

The Provider wrote to the Complainants on **19 July 2013** following its assessment of their request to advise them that it was being declined:

“... Based on this assessment and on the basis that the mortgage payments must be prioritised over other borrowings, you have capacity to meet your contractual payments of principal and interest under the mortgage. Therefore, we believe you should maintain your contractual payments.”

The letter then advises that the Complainants should seek assistance from MABS or any independent financial adviser; engage with their unsecured lenders to negotiate restructures; and utilise alternative resources or assets available to them to help make the mortgage loan repayments. The Complainants were also advised of their right to appeal this decision.

Appeal of Provider's Refusal

The Complainants wrote to the Provider on **22 July 2013** in respect of its decision to decline their application for a further interest only facility. The Complainants explain their financial situation and advise the Provider as follows:

“... This mortgage is on our family home. It was with great difficulty that we made the request for the first six months and with even greater (sic) that we had to request further assistance.

While we understand the responsibility to have the mortgage honoured fully, we hope that you can understand the difficulty we are experiencing in doing this at present. While ideally we would hope to maintain ownership of our home, we have placed the property with an auctioneer with a view to sale ... if a viable solution cannot be reached.

This is not an option we wish to take and would therefore hope that, with your assistance we could come to an arrangement to meet our mortgage commitment.

As we cannot meet the repayments fully we are open to discussing any options, which would see a long-term affordable solution and the possibility of staying in our home. We have other large debts which of course are not of interest to you but which we also wish to honour.

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...

We hope that you can consider this request favourably and await your earliest reply.

In the interim period while the decision is being made on this request, we would ask to avail of a short term payment arrangement so as not to fall in an arrears situation."

The First Complainant also wrote to the Provider by email dated **12 August 2013** outlining, amongst other matters, the efforts being made in respect certain of the Complainants' other indebtedness:

"The top up mortgage with [the Provider] is being maintained in full and will continue to be. The Insurances etc are also being maintained in full.

We have also applied to [financial services provider 1] to restructure our debt over a longer term, as yet have not heard any decision on this request.

I understand there is a minimum of one month turn around on this.

The [financial services provider 2] are also deliberating the term of our debt with them and will let us know in due course.

...

Our short term debt if renegotiated should be at the end of term in seven years. Keeping our home is of course our priority and is our wish but we have placed the property with [our auctioneer] ..."

By letter dated **16 August 2013**, the Provider acknowledged the foregoing letter and email as an appeal of its decision to refuse the interest only request and advised the Complainants that their appeal would be considered by its appeals board and a response would issue as soon as possible. The Provider advised the Complainants on **4 September 2013** that their appeal was currently being considered and it would revert to them as soon as possible.

Arrears Letter

The Provider wrote to the Complainants on **31 August 2013** to advise them that their mortgage account had gone into arrears. I note that this was the first time the mortgage loan account went into arrears. The letter advised that the Provider was treating the Complainants' loan in accordance with MARP. It also advised that:

"It is vital that you cooperate with [the Provider] in relation to your current arrears situation. Please be assured that the threat of legal action will not be imminent as we are obliged to wait at least 12 months before proceeding to legal action for repossession if a borrower cooperates with us.

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It is important to note however, that where you fail or cease to cooperate with [the Provider] you will lose the protections afforded by the MARP and as a consequence the 12 month moratorium before commencing legal action will not apply.”

Unsuccessful Appeal

The Provider wrote to the Complainants on **1 October 2013** to inform them that their appeal had not been upheld.

During a telephone conversation on **7 October 2013**, the Second Complainant advised the Provider about the efforts being made to address the secondary debts which the Second Complainant explained, were being serviced through an overdraft facility. The Second Complainant told the Provider that they went from a situation in respect of the mortgage loan of interest only to nothing, with no options being advanced by the Provider. The Provider advised the Second Complainant that once there is affordability there is nothing else the Provider could agree to. In the course of this conversation, the Second Complainant informed the Provider that the family home was on sale. The Provider explained that if it was the case that the Complainants were in negative equity, they would need to put a proposal forward on how they intended to deal with the residual debt.

The Provider suggested that if the Complainants were going for a voluntary sale for loss, they should seek independent legal advice outside of the Provider. The Second Complainant acknowledged that they did not seek such advice and were waiting to see how their appeal would go. The Second Complainant expressed the view that she was hopeful that some kind of arrangement could be reached following their appeal and then negotiate with the Provider in respect of the residual balance following the sale of their family home. The Second Complainant stated: *“I suppose it’s just best to go sell and then just negotiate the balance that’s left I suppose.”*

The Complainants wrote to the Provider on **11 October 2013** expressing their dissatisfaction with the outcome of their appeal. The Complainants proposed that they would increase their mortgage loan repayments from €600 to €800 per month and continue to maintain repayments on their top-up loan.

Third Request for Forbearance

The Complainants wrote to the Provider on **6 March 2014** to update it on their current personal and financial circumstances. The Complainants also advised the Provider that their family home was still on the market.

An SFS dated **25 March 2014** was submitted to the Provider.

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At section C, the Complainants state:

"We have the family home on the market with [auctioneer] and intend to downsize asap. Moving closer to town will hopefully be more economical on fuel costs and a smaller house more economical on heating maintenance and living costs also on taxes, septic and water charges. ..."

I note that section D of this SFS indicates that the Complainants were also making payments towards their other debts. The Complainants explain at section F as follows:

"As mentioned above we are at present attempting to sell our home with a view to downsizing as we acknowledge that it is not sustainable given the level of debt we are attempting to cover along with secondary debt and living."

The Complainants forwarded further documentation to the Provider on **2 April 2014**.

The Provider has submitted two IDSTs prepared on foot of this request for forbearance. The conclusion reached on page 7 of both IDSTs is effectively the same and state as follows:

"Mortgage is deemed affordable recommending I/O for three months. Arrears of 4.5k. Customers are married mr is working full time mrs is current in education earning SW. Customers have [number redacted] dependents I am including [age redacted] as they are currently in college and SFS states that customers are supporting them.

Salary figure for mr got by adding 3 payslips received 9/4/14 and dividing by 3. Expenditure has been reduced from SFS figure to [financial services provider] guide = 200 for medical expenses in relation to mrs. Secondary debt needs to be reduced and mortgage prioritised customers need to be made aware of this. With income of 4405pm month mortgage of 1362 should be affordable."

The Provider offered the Complainants a 3 month interest only arrangement on both their mortgage loan and top-up loan by letter dated **13 May 2014**. This was accepted by the Complainants on **15 May 2014**. I note that the seventh and final page of this letter contains a number of warnings, one of which states as follows:

"IN THE EVENT THAT THE PROPERTY IS DISPOSED OF (E.G REPOSSESSION) AND THERE REMAINS AN OUTSTANDING UNPAID LOAN AMOUNT, YOU WILL REMAIN LIABLE FOR ANY OUTSTANDING DEBT, INCLUDING ANY ACCRUED INTEREST, CHARGES, LEGAL, SELLING AND OTHER RELATED COSTS."

Mortgage Advisor's Proposal

The Complainants' mortgage advisor wrote to the Provider by letter dated **7 July 2014** with the following proposal:

"Secured Debt Proposal

Property is on the market and is expected to sell for in the region of €250k which will leave a shortfall of €27k. Customers have no funds to meet shortfall and have several unsecured debts. Propose interest only payments for 12 months pending sale of property and fro (sic) net sale proceeds to be taken in full and final settlement of the debt."

Letter of Agreement

The Provider sent an LoA to the Complainants on **21 November 2014** in respect of the sale of the family home which was given a target sales date of **21 February 2015**. In this letter, the Provider states:

"... we have concluded that you are no longer able to make the repayments due in respect of your Mortgage Loan(s) and that this is unlikely to change in the foreseeable future.

... We are agreeable to you selling the Mortgaged Property on condition that you use the "Sale Proceeds" to reduce the Mortgage Loan balance(s) and repay the remaining balance(s) in accordance with the terms and conditions of this Letter of Agreement. ...

The amount remaining on your Mortgage Loan(s) after the Sale Proceeds have been applied to your Mortgage Loan(s) (the "Residual Debt") shall be repayable to the Lender under the terms and conditions of the Letter of Agreement. Details of the proposed repayment of the Residual Debt are set out below. ..."

The LoA also contains a number of conditions, in particular the following:

"11. It shall be a breach of this Letter of Agreement if you do not pay the full amount of each scheduled monthly repayment following the sale of the Mortgaged Property when due ...

15. As previously advised, should you wish to obtain independent financial advice (which we strongly recommend), the Lender will pay a total of €250 (plus VAT) for a meeting with an adviser chosen from the panel of practising accountants ..."

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The LoA advised the Complainants that:

“Prior to signing this Letter of Agreement we strongly recommend that you:

- *Obtain independent legal, tax and financial advice particularly if there is any aspect of this Letter of Agreement that you do not fully understand; ...”*

The Complainants were also advised in the LoA that should they wish to discuss any of the information contained therein, to contact the Provider’s ASU department. The LoA was signed by the Complainants on **1 December 2014**.

The Provider received a letter from the Complainants’ solicitor dated **19 February 2015** advising that the sale would be delayed because the purchaser’s engineer was not satisfied that the percolation area on the site was constructed in accordance with the planning permission. The Complainants’ solicitor forwarded a bank draft in the sum of €200,800 to the Provider under cover of letter dated **14 April 2015**.

Residual Debt

A Letter of Confirmation (**LoC**) was sent to the Complainants on **7 May 2015** advising that the sale proceeds were not sufficient to discharge all amounts due under the Complainants’ loans and the residual balance was now repayable under the terms and conditions of the LoA. The monthly repayments were set out in the LoC at €620 per month.

The Second Complainant advised the Provider during a telephone conversation on **5 June 2015**, that the Complainants would be unable to meet the residual debt repayments. When asked was there a change in the Complainants’ circumstances, the Second Complainant advised the Provider that she had recently separated from the First Complainant. The Second Complainant was then advised that each of the Complainants would have to submit an SFS.

The Second Complainant informed the Provider during a telephone conversation on **17 June 2015** that the Complainants would not be in a position to meet the contractual repayments under the mortgage loan and that she had met with the consultancy firm who would be assisting them with the residual debt and it was hoped that the consultancy firm would be dealing with the Provider going forward.

The Second Complainant returned a call to the Provider on **8 March 2016**. During this call the Second Complainant informed the Provider that the Complainants were forced to sign the residual debt agreement. The Provider’s agent queried why the Complainants did not appeal this. In response, the Second Complainant states that she had been appealing to the Provider for the past four years since the Complainants first got into difficulty and that she was told by the Provider that the Complainants were earning sufficient funds to repay the mortgage loan.

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The Complainants wrote separate but effectively identical letters to be Provider on **19 May 2016** and enclosed their respective SFSs dated **19 May 2016** and **20 May 2016**. The letters state:

"... The loan for 'residual debt from the family home' which was sold in 2015, after protracted dispute with [the Provider] which began in 2012. From the outset of our difficulties we were completely open with [the Provider] and approached you without delay. It was insisted by [the Provider] that we could afford the full repayments, in actuality that was proven through documentation not the case. We simply asked for reduced repayments for a period of time.

The €650 monthly, which we were paying, was what we could afford. This would have seen us retain our house, clear our secondary debts while still fulfilling our mortgage commitment to [the Provider] over a longer period.

Instead of assisting us [the Provider] forced us into a situation, where by we had no alternative but to sell our family home. ...

... The decision of you as a financial institution not to negotiate with a client to reach a positive outcome it is a farce. As a result of this farce we are both suffering with acute illness. ...

The constant harassment and bullying from [the Provider] group has been a living nightmare.

*The final insult was the letter of "Agreement" stating that **we could not afford the mortgage with permission to sell.** A follow up phone call from [the Provider's agent] stating, 'If a signed letter of agreement for the residual debt was not received the sale couldn't go ahead'. At this stage the contracts to sell were signed, as per the letter of permission. This is a clear case of abuse of position. ..."*

Both Complainants' SFSs indicate that with the exception of one secondary lender, full repayments were being made in respect of the Complainants' secondary debts.

The Provider completed a *Case Assessment Summary* dated **30 May 2016**. The *Assessor Recommendation and Rationale* section states as follows:

"Property sold - residual debt case. Joint account, separated brwrs. Both brwrs renting separate properties. Mrs brwr living with [age redacted] dependent, Mrs. Brwr unemployed due to sickness, Mr brwr working full time. Mr Brwr is paying room rent of €200 plus €800 rent for Mrs. Brwr. He has included bills for both households on his SFS. Therefore have taken the amount of these bills stated on her SFS as maintenance paid to her by Mr Brwr totalling €350.

Mrs. Brwr has no DSC. Mr Brwr has DSC of €477.

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Arrears are currently €3,688 which is 6 months in arrears. There has been 9 months forbearance to date. Last assessment done in 2014, mortgage deemed affordable, customer-initiated voluntary sale for loss approved. Sale proceeds from house lodged 04/15 of €194,455.99. Arrangement to pay €597.65 over 100 months to clear residual debt at the time. However, borrowers since separated and Mr. Brwrs income has reduced. Brwrs have been paying €350 per month.

Recommend 170 repayments of €347.74 to clear residual in full. No compromise.

Brwrs have secondary debt and on a pro-rata basis, €281 is available for [financial service provider] debt. However, brwrs can afford €350 per month and are currently paying this amount."

A LoA dated **8 June 2016** was sent to the Complainants proposing 170 monthly repayments of €347.79. This was signed by the Complainants and dated **16 June 2016**. This letter appears to have been enclosed with a letter dated **17 June 2016** where it was agreed that the Complainants would make monthly repayments of €350. A further LoC was sent to the Complainants on **29 July 2016** setting the monthly repayments at €345.95.

Telephone Conversations

Recordings of telephone conversations between the Complainants and the Provider have been provided in evidence. I have considered the content of those calls. While I have made reference to some of the conversations which took place between the Complainants and the Provider above, I also note the following.

On **24 February 2014**, the Provider contacted the First Complainant in respect of the arrears on the mortgage loan. The First Complainant was advised that the Complainants were prioritising their secondary debts and having assessed their case, the mortgage loan was deemed affordable and, in such circumstances, the Provider would not be offering an interest only facility. The First Complainant advised the Provider as to the efforts being made in respect of the Complainants' secondary debt and that these lenders were willing to accept reduced repayments. The First Complainant also advised that his family home was on sale but did not seem to be selling. The Provider intimated to the First Complainant that an option would be to have the arrears capitalised but this would involve meeting the full contractual repayments under the mortgage loan for a number of consecutive months. The Provider also suggested that the Complainants seek financial and legal advice. During the conversation, the First Complainant states: *"I have other loans and smaller loans that I need to get out of the way. ... What the bank is saying, to hell with everything else and you pay your mortgage. And it doesn't work that way."*

The Provider advised the First Complainant that the family home loan should be prioritised. The First Complainant agreed and stated that he wished to keep his family home, adding: *"We just wanna get rid of it at this stage. I wanna pay off my mortgage ..."* The First Complainant later states that *"I am paying other loans which I have to pay."*

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The First Complainant further stated that the family home was used as security for the Complainants other loans. The First Complainant also noted the manner in which the parties viewed the situation: the Complainants were looking at it from the perspective of all of their debts whereas the Provider was focusing solely on the mortgage loan. Following on from this observation, the Provider's agent stated that the First Complainant could do whatever he wanted with his money.

Analysis

The First Complaint

The first complaint is that the Provider failed to clarify the necessity for the sale of the Complainants' family home. It is clear from the evidence in this complaint that the sale of the family home was first suggested by the Complainants in their SFS dated **22 January 2013**. It is also acknowledged by the Complainants in this SFS that they had approached the Money Advice and Budgeting Service (**MABS**). The Complainants' intention was *"to clear our arrears and repay our debts in full"* and *"[i]f the market allowed we would sell the house to clear all but unfortunately the valuation is not adequate."* The Complainants' decision to sell their home, therefore, was not just to clear their mortgage loan but all of their borrowings and this decision came at a time when there were no arrears on the mortgage loan or the top-up loan. In response to this request, a six month interest only facility was then extended to the Complainant.

At the time of the second request for forbearance, the Complainants advised the Provider that an auctioneer had been appointed and was in the process of formulating a brochure for the sale of the family home. Following its assessment of the Complainant's position, the Provider advised the Complainants on **19 July 2013** of its view that they had affordability to meet their mortgage loan repayments but they were prioritising their other debts over the mortgage loan. It was not until **August 2013** that the Complainants fell into arrears on their mortgage loan.

I accept, on the basis of the evidence in this complaint, that it was not unreasonable for the Provider to form the view that the Complainants had affordability to make their full monthly mortgage loan repayments but that they had chosen to prioritise their other borrowings over the mortgage loan. While choosing to service their other debts is entirely a matter for the Complainants, it does not render the Provider's assessment of their situation unreasonable and simply because the Complainants chose to do so, did not oblige the Provider to reconsider or change its position.

Furthermore, I accept that the Provider advised the Complainants of its view regarding affordability from at least **19 July 2013** and that they should prioritise their mortgage loan repayments. The Provider also advised the Complainants on this occasion and at various times after this, to seek assistance from MABS and independent legal, financial and/or tax advice.

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In addition to this, I note that from **2013** right through to the sale of the property and residual debt proposals, the Complainants received assistance and/or advice from MABS, the mortgage advisor, the consultancy firm and also retained a solicitor in respect of the sale of their property.

There is no evidence to suggest that the Provider required or demanded that the Complainants sell their family home or that it was a Provider led strategy. This was the Complainants' idea and the sale was progressed by the Complainants without interference from the Provider. Even though the Complainants indicated that they wished to retain their family home, it was not for the Provider to try to convince them otherwise or propose an alternative. The Complainants were aware of the Provider's position regarding affordability/prioritisation.

Therefore, I am not satisfied that the Provider was obligated to explain or clarify the necessity for the sale of the Complainants' family home.

The Second Complaint

The second complaint is that the Provider failed to support and/or negotiate with the Complainants when they were trying to remain in their family home. The evidence outlined above demonstrates that the Provider endeavoured to engage with and support the Complainants and gave appropriate consideration to their personal and financial circumstances. However, the level of negotiation the Provider was willing facilitate was limited in light of the decision regarding the Complainants' affordability/debt prioritisation.

This was made clear to the Complainants on a number of occasions but appears to be something the Complainants were unwilling to accept. While the Complainants state that they sought to engage with their other lenders, there is no evidence, other than that contained in the correspondence outlined above, to demonstrate the efforts that were made or the arrangements entered into. Furthermore, I note that the only proposal advanced by the Complainants was a property sale and no explanation appears to have been given as to why the Complainants were not prioritising their mortgage loan and instead making such a high proportion of their secondary debt repayments. I also note that during a telephone conversation with the First Complainant on **24 February 2014**, the Provider's agent advised the First Complainant that a possible option would be to have the arrears capitalised but this would involve meeting the full contractual repayments under the mortgage loan for a number of consecutive months. Taking these matters into consider, I am not satisfied that the Provider failed to support and/or negotiate with the Complainants when they were trying to remain in their family home.

The Third Complaint

In light of the discussion in respect of the previous two aspects of this complaint and the evidence outlined above, I am not satisfied that there is any evidence to support the Complainants' position that the Provider or any of its agents coerced, harassed and/or bullied the Complainants into submission in respect of their attempts to retain their family home. I consider it difficult to accept this position when the Complainants were the ones who suggested and progressed the sale. While the Complainants are dissatisfied with the position adopted by the Provider, it seems to me that the lack of alternative options emanated from the Complainants' repayment decisions in respect of their secondary debts. This is not necessarily a matter for the Provider. Furthermore, at no point did the Provider seek to force or progress the sale.

The Fourth Complaint

The Complainants assert that the Provider failed to reach a mutual agreement in respect of the residual debt. The Complainants acknowledged in the first SFS that was submitted in **January 2013** that there would be residual debt following the sale of the property. During the telephone conversation that took place on **13 October 2013**, the Provider explained to the Second Complainant that if it was the case that the Complainants were in negative equity, they would need to put forward a proposal as to how they intended to address the residual debt and that independent legal advice should be sought. As outlined above, the Second Complainant acknowledged that they did not seek such advice and were waiting to see how their appeal would go. The Second Complainant expressed the view that she was hopeful that some kind of arrangement could be reached following their appeal and then negotiate with the Provider in respect of the residual balance following the sale of their family home. The Second Complainant stated: *"I suppose it's just best to go sell and then just negotiate the balance that's left I suppose."*

On **7 July 2014**, the Complainants' mortgage advisor proposed that the Provider accept the sale proceeds in full and final settlement of the Complainants' debt and also requested that a 12 month interest only arrangement be granted pending the sale of the house. Following this, a LoA dated **21 November 2014** was sent to the Complainants which contained a proposal regarding the residual debt. This was signed by the Complainants on **1 December 2014** without any objection. When the sale completed, the Complainants received a LoC in respect of the residual debt in **May 2015**. The Complainants informed the Provider in **June 2015** that they would be unable to meet the residual debt repayments. During a telephone call on **8 March 2015**, when the Second Complainant advised the Provider that they were forced to sign the residual debt agreement, the Second Complainant acknowledged that she did not seek to appeal the Provider's proposal regarding the residual debt.

I accept that the Complainants were aware from the time the sale was first suggested that there would be a residual debt. I also accept that the Complainants were sufficiently aware that they would be responsible for the residual debt.

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I note that the Provider does not appear to have responded to the mortgage advisor's letter of **7 July 2014**, however, no proposals were made by the Complainants in respect of how they intended to deal with the residual debt. Furthermore, the Provider's position regarding affordability/debt prioritisation remained unchanged in respect of the residual debt and at no point did the Provider indicate otherwise. It was in the context of this position that the Provider calculated the residual debt repayments. However, when the Complainants indicated that they would not be in a position to make the schedule residual debt repayments, the Provider assessed their situation once it had all the necessary documentation and an alternative repayment arrangement was entered into.

The Fifth Complaint

The Complainant and the Provider have identified certain customer service failings in their submissions.

First, the Second Complainant advised this Office on **16 October 2019** that, having considered the Provider's submissions and having listened to the various telephone call recordings, a telephone conversation took place between the Second Complainant and one of the Provider's agents between **3 December 2014** and **10 December 2014**. The Second Complainant submits that *"[t]his call is a vital part of the final days and go to prove excessive pressure to sign the letter for residual debt."* The Provider explains in a submission received on **19 November 2019**, that it does not have a recording of the call in question and this call does not appear to have taken place. The Provider also explains as it does not record calls made from regional offices. In light of the parties' submissions on this point and the lack of specificity from the Second Complainant regarding the call, I have no evidence that this call took place.

Second, the Complainants believe that the Provider's agents did not deal with them in an appropriate manner during a number of telephone conversations that took place during the period to which this complaint relates.

In particular, the Complainants have identified a call which took place between the Provider and the First Complainant on **24 February 2014**. During this conversation, which I have outlined above, the Provider's agent stated that the First Complainant could do whatever he wanted with his money. The Complainants were dissatisfied with this conversation, especially the comment which I have identified. Having considered this call, I believe that the foregoing comment must be considered in the context of the conversation which, at that point, was focused on the Complainants' debt prioritisation. Therefore, I accept that the Provider's agent dealt with the First Complainant in a reasonable, polite and courteous manner during this call.

Furthermore, having considered all of the recordings furnished by the Provider, I do not agree with the Complainants characterisation or description of these calls and I accept that the Provider's agents dealt with the Complainants in a professional and polite manner and also endeavoured to assist the Complainants and address any issues they raised.

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The Complainants, in a post Preliminary Decision submission dated 27 July 2020, made a number of statements which they believe are additional points of fact.

They submit that while the Provider *“has implied that they were unaware of the status of our health...they were furnished with Doctors letters throughout”*.

The Complainants attached supporting documentation to their submission. Within this documentation are a number of letters from a named GP detailing the Complainants' medical status.

The Provider responded to the Complainants' submission stating that:

“The Complainants have provided doctors letters as part of their Further Observation in order to show that the Bank were aware of the Complainants ill health. The Bank has reviewed the Complainants letters and has searched for these letters on the relevant systems. The Bank advise that, unfortunately, having carried out a further review of our system, we have no record of receiving these particular letters prior to the further observations submission”.

I have no evidence of this information having been submitted to the Provider prior to this investigation.

The Complainants, in their post Preliminary Decision submission, also submit:

“You have deduced from the documentation submitted along with the Bank's opinion that we prioritised secondary debt in preference to our mortgage. This is untrue as the secondary debt was rescheduled by the creditors' i.e. [named credit union]”.

Having again reviewed the evidence, this evidence appears to me to support the position that the Complainants prioritised secondary debt.

The Complainants further state in their post Preliminary Decision submission that:

“You reference from the outset that I (SNC) mooted the sale of the family home. We would ask you to consider that we had contacted the Bank much earlier than the date of first accruing arrears. On advisement of [named individual] of [branch of the Provider] and a PIP advisor from [named company] (who was recommended by [the Provider], we may not have a choice but to downsize/sell or negotiate to remain in the family home. This advisement was at the core of us “propelling the process of sale forward” but not the will to sell but the necessity.

The wording used in the SFS and phone calls throughout was sheer desperation. It does not appear from the preliminary adjudication that the emotion and distress felt was clear to you.

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Likewise the calls received from the ASU in [Provider] could not be appreciated from a transcript. They were demoralizing”.

The Complainants also submit that:

“It is regrettable that the interpretation you have deducted from our case is one of wishing to sell our family home. Any inference made to sell was on advisement as previously mentioned.

It is also unfortunate that you have not noted the Banks’s lack of will to engage with us on advisement as previously mentioned.

*We also feel a discrepancy on your behalf to assume that because the regional calls are not recorded by the Bank, that the call from [named staff member at Provider’s regional branch] did not take place in December of 2014. As previously stated this call **did** take place and was witnessed on speaker phone. It is puzzling how the word of the bank is taken but ours is dismissed repeatedly”*

[Complainants’ emphasis]

I accept that the situation the Complainants were in was very stressful and that communications in relation to these matters were undoubtedly difficult and emotional. I did not dismiss the word of the Complainants but based my decision on the evidence available to me. In relation to the particular phone call that the Complainants refer to, I did not, as suggested, accept the word of the Provider and dismiss the word of the Complainants. Rather, I pointed out that I had been furnished with no evidence that this call took place.

The Provider explains that during its investigation of this complaint, it identified “... some delays and customer service failings ...” The Provider states that it:

“... acknowledged above a delay in the ASU forwarding the Complainants’ letter dated 22/07/2013, which was understood to be an appeal, to the MAO. ...

The Bank also acknowledged above that there was a delay between October 2013 and early February 2014 in responding to the Complainants; proposal from the [mortgage advisor].

The Bank also notes that there was confusion during a telephone call on 06.03.2014. The SNC explained during this call that she had received 4 letters with conflicting information in them.

The agent tried to explain to the SNC what she was to do but he should have advised the SNC that he would have a look at the account and explain the position her account was in. Instead the agent made assumptions based on the SNC’s descriptions of the letters. The Agent did eventually give the SNC the correct information but the Bank understands that this call may have led to some confusion.

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The Bank apologises for this and for any inconvenience this may have caused.”

In addition to the foregoing matters, the Provider has also identified and apologised for certain other customer service failings in its submissions, as outlined above, which I accept. I also note that the Provider appears to have failed to respond to the mortgage advisor’s proposal dated **7 July 2014**.

The Provider explains that:

“In recognition of these customer service failings and delays, the Bank would like to formally offer a gesture to the Complainants in the amount of €2,250 and apologise for any inconvenience caused.”

I consider this goodwill gesture offered by the Provider to be a reasonable sum of compensation for the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainants, I do not uphold any aspect of this complaint.

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 January 2021

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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.

