



<u>Decision Ref:</u>	2021-0012
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Maladministration (mortgage) Arrears handling - Mortgage Arrears Resolution Process Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Premature ceasing of arrears negotiations
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a mortgage loan held by the Complainant with the Provider since **28 April 2004**. It relates to the conduct of the Provider regarding the re-classification of the Complainant's mortgage loan, the manner in which the Provider dealt with arrears on the loan account, the manner in which the Complainant's complaint was dealt with by the Provider and the standard of the Provider's customer service.

The Complainant's Case

The first element of the complaint relates to the re-classification of the Complainant's mortgage loan account from a Private Dwelling House mortgage ('PDH mortgage') to a Buy To Let mortgage ('BTL mortgage') on or about **25 September 2014**. At the time that the Complainant took out his mortgage with the Provider in **April 2004**, it was classified as a PDH mortgage. The Complainant states that in **2011** he moved abroad and at that time arranged to lease his dwelling to a local authority for a ten-year period. He states that this rental income was intended to cover the mortgage repayments due.

The Complainant explains that a taxation situation subsequently arose which resulted in Revenue obtaining an attachment order over the rents of the property, leaving a shortfall and a situation where the mortgage account fell into arrears. He explains that he availed of a six month moratorium on his repayments during **2013**, at which time he also suffered illness which prevented him from working.

The Complainant says that in **April 2015**, the Provider notified him, by letter to his address outside the country, that it had re-classified his mortgage loan from being a PDH mortgage loan to a BTL mortgage loan. The Complainant claims that this change in classification had consequences for him as it removed the protections due to a mortgage holder in arrears that exist under the Mortgage Arrears Resolution Process ('MARP') contained within the Code of Conduct on Mortgage Arrears 2013('the CCMA'). This matter was the subject of a complaint to the Provider on **14 July 2015** wherein the Complainant wrote to the Provider "*to appeal the decision to demand immediate payment of all monies due on [his] mortgage*". The Complainant states that the basis for his appeal was the "*inherently flawed underlying premise upon which the unilateral decision to change the status of this mortgage from personal to investment*" was made. To resolve the issue, the Complainant says that he was required to swear an affidavit to the effect that the property was his only residence in the state. Subsequent to receipt of this affidavit, the Provider arranged to have the mortgage loan account classified back to a PDH mortgage.

The Complainant wrote to his local branch of the Provider on **26 February 2018** outlining that he had to emigrate to gain training and clinical experience, that he had leased the property to the local county council following a taxation situation arising with Revenue and that, despite a period of 6 months being agreed with the Provider for reduced repayments, he has been unable to meet his financial obligations. The Complainant also explained that the stress of his situation, along with threatening letters and phone calls from the Provider had led him to the brink of nervous breakdown and a prolonged period of absence from the workplace. The Complainant requested a review of his file.

The Complainant wrote to the Arrears Support Unit of the Provider on **6 May 2018** to "*bring [its] attention to the treatment [he had] been subjected to by [the Provider] in respect of [his] tracker mortgage*". In this letter, the Complainant again outlined that he had to emigrate to gain training and clinical experience, that he had leased his property to the local county council following a taxation situation arising with Revenue and that, despite a period of 6 months being agreed with the Provider for reduced repayments, he has been unable to meet his financial obligations. The Complainant also explained that the stress of his situation had led him to experience two nervous breakdowns which have resulted in prolonged periods of absence from the workplace. He states in this letter that he was treated in an "*underhanded and illegal manner*" by the Provider in **2015** when his mortgage was reclassified as BTL and that it was exceptionally difficult to provide the required affidavit from a foreign country which led to him experiencing stress. He states that he wrote to the Provider in **February 2018** asking for a review of his file but had not heard from them and that he would hope to be considered for some financial redress as a result of the treatment the Provider has subjected him to.

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The Complainant wrote to the Provider on **31 May 2018** (received by the Provider on **1 June 2018**) stating that he would like to negotiate a restructuring of his mortgage to deal with arrears that have arisen as a result of the situation he was facing with Revenue. The Complainant stated that he was *“very disappointed”* that the soonest available appointment to discuss a restructuring of his mortgage was not until **29 June 2018**.

He stated that this appeared to him to be in direct conflict with the guidelines for discussing a MARP case as set out in Page 12 of the MABS guideline booklet. The Complainant states that because of the nature of his work he may not have the opportunity or the privacy to take a phone call and he would appreciate the Provider facilitating an in-branch discussion with a MARP specialist. The Complainant states in this letter that he would also appreciate an update on the progress made examining his file with respect to the significant breaches of the code of conduct by the Provider, most notably, though not exclusively in **2015**. The Complainant notes that he has not received any correspondence from the Provider in respect of either his appeal in **2015** or his correspondence of **26 February 2018**.

In his Complaint Form to this Office dated **9 September 2018**, the Complainant also complains about the nature of the Provider’s engagement with him regarding the arrears on his mortgage and about the level of service he has received. In his Complaint Form, he refers to *“repeated requests for review”* as having been *“fobbed off with meaningless letters”*.

The Complainant made further submissions to this Office by way of email dated **5 January 2020**. In these submissions, he states that the *“fundamental crux of [his] complaint comes down to simple miscommunication”*. He states that any attempts he has made to address his issues with the Provider have been *“met with major resistance and reluctance on the part of [the Provider]”* and that the resultant stress has been a major contributory factor in the relapse of his illness. The Complainant states that every time he moved, he updated the Provider of details promptly. He states that he contacted the Provider in both **2013** and **2014** to try to discuss a financial arrangement and this shows his *“good faith and integrity”*. The Complainant also disputes the Provider’s claim that he failed to make payments in **2014** and claims in this email that he made a payment to his mortgage loan account of CAD\$2,300 (Canadian dollars) in **February 2014**. He stated that this money should have reached his mortgage account on **19 February 2014** and that it would have covered his overdraft.

Furthermore, the Complainant states in his email dated **5 January 2020** that in **March & April 2019**, he repeatedly requested a copy of all correspondence sent to him by the Provider from **2014** onwards and was initially ignored on multiple occasions before being directed to make a request in writing in the United Kingdom under a ‘Subject Access Request’. He states that he submitted that request on **17 April 2019** but has not received an acknowledgement or a reply to it.

The Complainant also states that no adequate explanation was offered to him for the declination of the complaints he made to the Provider in **2015**, nor was he offered an opportunity to appeal the decision to reject his complaints.

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The Complainant stresses in his email dated **5 January 2020** that the decision to re-categorise his mortgage was made with a lack of evidence and was *“unacceptable”*. He states that this decision was *“devastating”* for him and when he called the Provider it was *“enormously unhelpful”*. He alleges that the Provider told him that it was not in a position to deal with him because his mortgage had been referred to a third party provider. The Complainant states that this third party provider was sending letters and phoning him demanding settlement of the entire mortgage within a 7 day timeframe.

The Complainant also states that his mother was *“bombarded with similarly threatening phonecalls as well as cars parking outside of her home for hours with a sole male occupant”*.

The Complainant further states in his email dated **5 January 2020** that letters have continued to be posted by the Provider to incorrect addresses and that this is *“entirely unacceptable”* and has meant that the Complainant states that he is not sure *“of how much I owe on the mortgage”*.

The Complainant also states that there is a *“very significant gap”* (732 days or 104+ weeks) in correspondence from **3 March 2016** right up until **5 March 2018** where the Provider failed in its requirements to send the Complainant at least quarterly arrears letters.

The Complainant states that despite his following of the Provider’s procedure of requesting address changes in writing, the Provider continues to send correspondence to incorrect addresses.

The Complainant also states that since he has returned to work in Ireland, he has started paying his monthly mortgage (€1,265) plus a substantial amount towards the arrears (€735).

The Complainant states that *“to imply that I was not engaging with [the Provider] because I would not answer security questions from phone calls appearing always as UNKNOWN NUMBER is offensive”*. The Complainant states that the MABS guide is very clear in its description of the rights of the consumer in relation to completion of a Standard Financial Statement and he met in person with a representative of the Provider on **4 April 2019** who went over the written submissions and confirmed them with the Complainant. He states that he was advised that it would take up to 15 business days for the Provider to formulate an agreement, however, approximately 20 business days later, the Complainant received a Standard Financial Statement from the Provider which had been significantly altered on a unilateral basis. The Complainant states that the Standard Financial Statement attributed a second property to the Complainant which he has never had any links to.

The Complainant made further submissions to this Office via email on **4 February 2020**. He states in this email that he did send a Subject Access Request on **17 April 2019** to the address quoted by the Provider in its correspondence and attaches a copy of same to the email. In this email, the Complainant states that the Provider has engaged *“nebulous tactics”* by denying receiving letters and failing to send correspondence to the Complainant at the correct address.

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The Complainant also points to inconsistencies in the Provider's correspondence, alleging that the Provider states that the re-categorisation of his mortgage was important for the purpose of tax relief at source while also claiming that tax relief at source is a matter for Revenue and not the Provider. Furthermore, the Complainant states that *"it is very clear that [the Provider] were well aware of my living arrangements far in advance of Sept 2014 – having agreed to a reduced payment schedule in 2013, and having been sending their correspondence to [foreign country No. 1] during that time period"*. The Complainant also states that he has provided evidence that he made the **February 2014** payment to the Provider and remains *"very uneasy as regards where that money may have gone"*.

The Complainant asserts that the actions of the Provider have caused him stress and inconvenience and have impacted negatively on his wellbeing to the extent that he is no longer able to work.

In his Complaint Form, dated **9 September 2018**, the Complainant states that he wants *"an apology from [the Provider], with acknowledgment of their wrongdoing"* and *"appropriate financial redress, to compensate for the exceptional distress"* imposed upon the Complainant by the Provider. In his email of **5 January 2020**, the Complainant states that he has quantified *"his loss of earnings etc at approx. €750,000, for which I was previously willing to accept a settlement of cancellation of my arrears plus €75,000"*. He further states that due to his mental health relapse as a result of the ongoing stress as well as the *"blatant contempt"* with which he continues to be treated by the Provider, he is seeking a figure as close to €750,000 as is feasible within the constraints of this adjudication process.

The Provider's Case

In its Final Response Letter to the Complainant dated **20 December 2018**, the Provider has sought to identify and address the elements of the Complainant's complaint. The Provider apologises that the nearest appointment for the Provider's Resolution Assessment Team to complete a standard financial statement with the Complainant was on the **29 June 2018** and states that the delay was due to the high volume of requests within its team at the time. The Provider also notes that the Resolution Assessment team called the Complainant on **29 June 2018** in order to complete a standard financial statement, however, the Complainant refused to complete the required security questions at the time and as a result the call was unable to be continued. The Provider states that the letter it received from the Complainant dated **31 May 2018**, was treated as a complaint rather than an appeal. Similarly, it states that the letter it received from the Complainant on **14 July 2015** was dealt with as a complaint rather than an appeal.

In response to the assertion in the Complainant's Complaint Form that the Complainant has been *"fobbed off"* by the Provider, the Provider states that all the letters that the Complainant has sent have been responded to with the exception of the letter dated **26 February 2018**. The Provider states that it did not receive this letter dated **26 February 2018**.

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The Provider states that the Complainant changed his address in **2014** and the Arrears support team changed the mortgage from a PDH to a BTL. The Provider states that its agents did try to contact the Complainant in relation to the change but when there was no response, the mortgage was then transferred to a BTL. The Provider apologises that the process was completed without making the Complainant aware of the process and accepts that there was an *“error where [the Provider] changed [the Complainant’s] property from a PDH to a BTL incorrectly”*. It accepts also that there was a *“delay in issuing [the Complainant] a response to this matter”*.

It apologises for the stress and inconvenience caused by the error in changing the mortgage from a PDH to a BTL and states that it will reimburse the Complainant for the fee incurred in swearing the affidavit to effect the reversion of the mortgage account to a PDH.

The Provider also states in its final letter that it engaged a third party provider to manage the Complainant’s account on its behalf. It also states it has the right to assign the Complainant’s loan facilities to a third party provider. Furthermore, it states that the address it holds for correspondence for the Complainant has been updated in accordance with the Complainant’s request.

The Provider also offered the Complainant €750 by way of compensation in its Final Response Letter.

In its written submissions to this Office, dated **9 December 2019**, the Provider goes into further detail concerning the process that resulted in the re-classification of the Complainant’s mortgage loan from being a PDH mortgage to being a BTL mortgage. The Provider states that the Complainant’s mortgage account fell into arrears on **1 June 2013** and following this a reduced repayment arrangement was put in place for the Complainant for the period **1 August 2013 to 1 December 2013**. The Provider states that its records from **16 December 2013** show that it did not have an up-to-date telephone number for the Complainant as the change of address request from the Complainant dated **4 July 2013** did not give a telephone contact number for the new address in [foreign country No. 2] The Provider state that on **10 February 2014**, during a telephone call received from the Complainant, the arrears position was discussed and asserts that the Complainant states that he would transfer funds from [foreign country No. 3] where he was residing at that point. The Provider notes that at this time mortgage repayments were not being made by the Complainant and had not been made since **1 June 2013**. The Provider states that during this telephone call, the Complainant provided his change of address and telephone number details to the Provider’s agent. The Provider states that unfortunately, despite the Complainant being assured that the new address and landline telephone number would be updated on the Provider’s system, it transpired that the Complainant’s address did not change on the Provider’s system until such time as the Provider received the Complainant’s written instructions on **12 September 2014**. The Provider states that it must receive written instructions from customers in order to change correspondence address on their mortgage account. The Provider accepts that the Complainant was advised that the Provider would change its contact details during the telephone call on **10 February 2014** and acknowledges that this information was incorrect.

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The Provider states that it visited the property of the Complainant on **19 March 2014** when the arrears stood at €4,737. On **31 March 2014**, a telephone call was held with the Complainant and the Provider's Arrears Support Unit. The notes of this conversation, among other things, state that the property is rented and states that the Complainant is ignoring correspondence. The Provider states that its representative was not aware at this point that the arrears correspondence was being posted to the Complainant's previous address.

Between **10 February 2014** and **19 September 2014**, the Provider states that arrears correspondence was sent to the Complainant's previous address.

The Provider states that as a result of this, including confirmation that the property was being let out and the Complainant confirming that he was living in [foreign country No. 3]; the Provider changed the property from a PDH to a BTL on **25 September 2014**. The Provider states that customers who have a PDH mortgage account benefit from tax relief at source but that this relief is not available to customers who have a BTL mortgage account.

The Provider states that subsequent to this, a reduced repayment arrangement was put in place for the Complainant for the period **1 November 2014** to **1 April 2015**. The Provider states that on the expiry of this reduced repayment arrangement, the Provider contacted the Complainant on **7 April 2015**, stating that it had determined that his property was a BTL property. The Provider accepts that this letter of **7 April 2015** was sent to an incorrect address for the Complainant and apologise for this. However, it states that *"it is clear that the Complainant received the letter of 7 April 2015 within a couple of weeks of the date of said letter"* as the letter was referenced in the letter the Complainant sent to the Provider dated **22 April 2015**.

The Provider states that the Complainant raised a complaint with the Provider on **20 July 2015** and enclosed with this letter a sworn affidavit that the property was the only property that he owned in the Republic of Ireland. The Provider states that its complaint handler reviewed the complaint and the enclosed affidavit and then arranged to have the mortgage loan account classified back to a PDH mortgage. The Provider states that on **9 September 2015**, it wrote to the Complainant stating that it was re-classifying his mortgage as a PDH mortgage and therefore he would continue to benefit from MARP. The Provider states that this was also notified to the Complainant by way of letter dated **7 October 2015** which said letter also includes an apology for the fact that the mortgage account has been categorised as a BTL mortgage.

The Provider, in its submissions to the Office dated **9 December 2019**, states that *"all information and evidence pointed to the fact that the Complainant was not residing in the secured property. Rather, he was living abroad and renting the secured property out to tenants. The [Provider] was not in possession of any evidence to show that the secured property was the Complainant's only residential property in the Republic of Ireland"*. The Provider also states that under the General Conditions relating to Home Loan Advances by the Provider, the Complainant is obliged to get the written consent of the Provider to rent his property to tenants. The Provider states that the Complainant did not seek the consent of the Provider to rent the property to tenants.

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In response to a question from this Office concerning the compliance of the Provider with Provisions 16-55 of the CCMA 2013, which provisions set out the requirements applying under the MARP, the Provider states as follows:

- It has in place a Mortgage Arrears Resolution Process framework for handling cases as specified in Provision 18;
- It has met its obligations under Provision 20 but concedes that the letter dated **7 April 2015** pertaining to compliance of this Provision was sent to an incorrect address for the Complainant at the time;
- Pursuant to provisions 21-25, the Provider states that it is satisfied with the level and content of the communications issued to the Complainant;
- Pursuant to provision 26, the Provider states that it is satisfied with the reason and execution of the Complainant's property visit on **19 March 2014**;
- Pursuant to provision 27, the Provider states that it complied fully with the provision in its letter to the Complainant dated **3 March 2014**, at which stage the Complainant's mortgage account was 3 payments in arrears;
- Its records show that a combined Provision 28/Provision 29 letter was issued to the Complainant on **10 March 2013**;
- It refers to the telephone call recording of **1 October 2014** supplied to this Office, together with supporting file notes dated **1 October 2014** and **3 October 2014**, in which the Standard Financial Statement was prepared with the Complainant during the recorded telephone call with an agent of the Provider. Therefore, the Provider states that it is satisfied it complied with Provisions 30-34;
- Pursuant to provisions 35-38, the Provider states that it is satisfied with the assessment of the standard financial statement;
- Pursuant to provisions 39-40, the Provider agreed to a practical temporary solution for the Complainant when putting in place the alternative repayment arrangements, considering the Complainant's circumstances and states that it confirmed these arrangements in writing to the Complainant;
- Pursuant to provision 41, the Provider states that it never sought to remove the Tracker Rate from the Complainant's mortgage;
- The Provider states that it is satisfied it complied with provisions 42 & 43 as evidenced in the evidence submitted to this Office;
- The Provider submits that provisions 44-47 are not applicable;

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- In relation to provision 48, the Provider states that the management of the Complainant's mortgage continued;
- In relation to provisions 49-55, the Provider states that these are not applicable as an appeal was not made to the Provider's appeals board in accordance with the Provider's process.

The Provider states that the Complainant did not appeal a decision made by the Provider in response to a request for forbearance rather he disputed the Provider's decision to call for immediate repayment of funds on his mortgage account, therefore this was not deemed an Appeal.

The Provider apologises for the delay in issuing its response to this complaint and states that this was due to the receipt of a significant amount of complaints at the time the Complainant's complaint was received, due to the debt sale process completed at the time. The Provider has stated that it has noted the amount of time it took to issue the Final Response Letter, with the objective of identifying improvements in the Provider's processes and allowing it to respond to customer's complaints more efficiently and effectively.

The Provider states that based on the information it had available to it and its inability to make contact with the Complainant to discuss his mortgage account, the Provider cannot see evidence that it breached the Consumer Protection Code 2012 (as amended) ("the CPC")

In relation to the Complainant's credit rating, the Provider states that it is the Complainant's operation of his mortgage account which caused the adverse impact to his credit rating. The Provider stresses that the date on which the arrears first appeared on the Complainant's mortgage account was **1 June 2013**, which pre-dates the time period of the subject matter of the complaint. Accordingly, the Provider categorically rejects that the reclassification of the Complainant's mortgage account was the cause of the adverse impact on the Complainant's credit rating and states that this was due to the failure of the Complainant to make his mortgage repayments.

In relation to its request for repayment of the mortgage monies in **July 2015**, the Provider states that this was because over €15,000 had accumulated in arrears, which dated back to **June 2013**, and the Provider was not satisfied with the engagement from the Complainant in addressing the situation. The Provider states that the request for repayment of mortgage monies had no bearing on whether the mortgage was classified as a PDH or a BTL, rather it was based on the repayment history of the mortgage account up to **July 2015**, which was outside the terms and conditions outlined in the mortgage contract. The Provider states that its records support the Complainant's knowledge of his arrears and the deterioration of his personal financial circumstances. The Provider also states that its understanding is that the arrears relate directly to the Complainant's cost of living, his absence from work due to long term illness and the impact of his personal circumstances in maintaining his mortgage repayments.

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The Provider states that it had made the decision to transfer the Complainant's mortgage account to a new owner and communicated this to the Complainant in correspondences beginning **27 August 2018**.

In its submissions to this Office dated **9 December 2019**, the Provider increased its formal offer of redress to the Complainant to €1,500 in recognition of the service issues which have been identified and stated that this offer remains open to the Complainant for his consideration.

In further submissions to this Office dated **3 February 2020**, the Provider states that its Subject Access Request Team has confirmed that no Subject Access Request has been received from the Complainant. The Provider also states that the mortgage account statements show no payment of CAD\$2,300 was received into the Complainant's mortgage account in **February 2014**.

The Provider made further submissions to this Office dated **14 February 2020**, wherein the Provider states that the documentation submitted by the Complainant does not make any clear reference to a payment of CAD\$2,300 made by the Complainant to his mortgage account in **February 2014**. The Provider also disputes that the Complainant advised the Bank (Arrears Support Unit) that he had made a payment of CAD\$2,300 during his telephone call on **10 February 2014**. The Provider notes that there is a payment made of CAD\$2,300 on the Complainant's personal banking statement, however, this payment was made on **31 January 2014** (pre-dating the phone call on **10 February 2014**) and does not prove that the funds were sent to the Complainant's mortgage account/to the Provider.

The Complaints for Adjudication

The complaints for adjudication are as follows:

- That the Provider wrongfully re-classified the Complainant's mortgage loan as a BTL mortgage when it should have remained classified as a PDH mortgage;
- That the Provider has failed to properly engage with the Complainant in relation to the arrears on his mortgage loan account;
- That the Provider has not dealt with the Complainant's complaint on a timely basis;
- that the Provider has not afforded the Complainant an adequate and acceptable level of customer service; and
- That the Provider has failed to recognise the payment of CAD\$2,300 made by the Complainant in **February 2014**.

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Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information.

The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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 6 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 my Preliminary Decision, the Provider made a further submission under cover of its letter to this Office dated 24 July 2020, a copy of which was transmitted to the Complainant for his consideration.

The Complainant has not made any further submission.

Having considered the Provider's additional submission 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 at this point that in relation to MARP complaints, where issues of sustainability/repayment capacity are in dispute, this Office is only in a position to investigate a complaint as to whether the Provider, in handling a mortgage arrears issue, correctly adhered to its obligations pursuant to the CCMA and MARP. This Office will not interfere with matters that are within the Provider's commercial discretion, unless the conduct complained of is argued to be unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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Furthermore, in his Complaint Form, the Complainant states that he considers the Provider's actions in relation to the re-classification of his mortgage loan to be *"a criminal breach of their code of conduct"*. It should be noted in that regard that this Office has no jurisdiction to investigate any allegation of criminal activity.

In relation to the complaint that the Provider wrongfully re-classified the Complainant's mortgage loan as a BTL mortgage when it should have remained classified as a PDH mortgage, I note that the Provider accepts that there was an *"error where [the Provider] changed [the Complainant's] property from a PDH to a BTL incorrectly"* and apologises for the stress and inconvenience caused by this. I note that this incorrect classification of the property as a PDH to a BTL resulted in the Complainant not being entitled to a tax relief for a period of one calendar year when he would otherwise have had the benefit of such tax relief. The Provider also accepts also that there was a *"delay in issuing [the Complainant] a response to this matter"*. I accept the Provider's explanation that based on the information available to it as of **25 September 2014** (the property visit, the confirmation that the property was being let out and the confirmation from the Complainant that he was living in [foreign country No. 3]), the Provider had reasonable grounds for changing the property from a PDH to a BTL. However, it is unacceptable that the Provider did not notify the Complainant of this change in the status of the property until writing to him, at the wrong address, on **7 April 2015** (7 and a half months later), especially given the tax implications for the Complainant. This amounts to a breach of provision 2.6 of the CPC (obligation on the Provider to make full disclosure of all relevant material).

I note that once the Complainant brought to the Provider's attention that the property status should not have changed and supplied the Provider with a sworn affidavit averring to the fact that the property was the only property that he owned in the Republic of Ireland, the Provider reviewed the situation promptly and within 8 weeks had re-classified the mortgage as a PDH mortgage and written to the Complainant informing him of the re-classification.

In its post Preliminary Decision submission, the Provider details its reasoning and defence of classifying the Complainant's mortgage as a BTL and not a PDH.

The Provider submits that:

"The mortgage account effectively became a Buy to Let once the Complainant rented it (without the Bank's consent); the fact that the [named location] property was the Complainant's only residential property in the state gave him protection under the Code of Protection on Mortgage arrears 2013 ('CCMA'). However, this does not alter the fact that it became a Buy to Let mortgage account.

Therefore, the Bank does not consider that it was a mistake to categorise the mortgage account as a Buy to Let; the Banks shortcoming was not advising the Complainant that it re-categorised the account from Personal Dwelling Home to Buy to Let. The reasons why the Bank took this decision was outlined in the Scheduled of questions.

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However, we wish to iterate (sic) that it was always the Complainant's responsibility to seek the Bank's consent to rent the property to tenants, as noted in the General Conditions of Loan Offer".

It is not clear to me why the Provider deemed it necessary to make this point in a post Preliminary Decision submission as it simply repeats what I had set out in my Preliminary Decision and above.

In relation to the complaint that the Provider did not engage with the Complainant in respect of the arrears on his property, I note that when the Complainant's mortgage account first fell into arrears on **1 June 2013**, a reduced repayment arrangement was put in place for the Complainant for the period **1 August 2013 to 1 December 2013**. This reduced repayment arrangement was not adhered to by the Complainant and I further note that on **10 February 2014**, during a telephone call received from the Complainant, the arrears position was discussed and the Complainant stated that he would transfer funds from [foreign country No. 3] where he was residing at that point. During this phone call I note that the Complainant provided his change of address and telephone number details to the Provider's agent but, despite the Complainant being assured that the new address and landline telephone number would be updated on the Provider's system, the Complainant's address did not in fact change on the Provider's system. This resulted in arrears correspondence dated **3 March 2014, 3 April 2014 and 3 July 2014** not being received by the Complainant. I note that this amounts to a breach of provision 2.2 of the CPC for the Provider to act with due skill, care and diligence. The incorrect address issue was only resolved when the Provider received the Complainant's written instructions to change his address on **12 September 2014**. I note that the Provider has accepted in its submissions to this Office that the Complainant was advised that the Provider would change its contact details during the telephone call on **10 February 2014** and acknowledges that this information was incorrect. I further note that subsequent to this change of address being properly recorded in **September 2014**, a reduced repayment arrangement was put in place for the Complainant for the period **1 November 2014 to 1 April 2015**.

I also note that the mortgage fell further into arrears at this time. Furthermore, I note that from **May 2015 to September 2018**, the Complainant made no repayments to his mortgage account. I note from the Complainant and the Provider's submissions that the Complainant commenced payments of €2,000 per month from **October 2018**, however by this point the Provider had already decided to transfer the Complainant's loan account to a third party provider and had communicated same to the Complainant by correspondence dated **27 August 2018**. On the basis of the foregoing, I accept that the Provider did not engage properly with the arrears on the Complainant's mortgage account. Furthermore, the failure by the Provider to properly note the change of address of the Complainant resulted in the Complainant not receiving at least 3 letters relating to the arrears on his mortgage account. I also note that the evidence submitted to this Office discloses that the Provider failed to send quarterly arrears letters to the Complainant from **3 June 2016 to 3 December 2017** and no explanation for this failure has been furnished by the Provider.

/Cont'd...

I note that there is no corroborating evidence submitted to this Office to support the Complainant's contention that his mother received threatening phone calls or that the Provider arranged for a man to sit in a car outside of the Complainant's mother's house and therefore I will make no finding in relation to this.

In respect of the complaint that the Provider has not dealt with the Complainant's complaint on a timely basis, I note that the Provider accepts that there was a *"delay in issuing [the Complainant] a response to this matter"*.

In respect of the complaint that the Provider has not afforded the Complainant an adequate and acceptable level of customer service, as outlined above, I also accept that the Provider did not adequately communicate the Complainant's arrears to him or act properly in failing to record the correct address for the Complainant in **February 2014**. However, I accept the Provider's explanation that the nearest appointment for the Provider's Resolution Assessment Team to complete a standard financial statement with the Complainant was on the **29 June 2018** and find that this delay does not constitute inadequate customer service. I also note that the audio recording surrounding this matter evidences poor customer service and it is notable and disappointing that the representative of the Provider is unwilling to send written correspondence to the Complainant to arrange a meeting to compile the Complainant's Standard Financial Statement and recommends that the Complainant organise this by the Complainant clearly stating that he is not comfortable completing the Standard Financial Statement over the phone. The representative of the Provider initially requests that the Complainant tell him how the meeting to complete the Standard Financial Statement can be arranged if it is not to be arranged on the telephone, before finally acknowledging to the Complainant that the meeting can be arranged by the Complainant going into his local branch of the Provider. It is astonishing that the Provider would not engage fully and openly with the Complainant in respect of the avenues available to the Complainant to complete his Standard Financial Statement face-to-face, especially given the Complainant's understandable misgivings about discussing such sensitive financial and personal information over the telephone. This is a clear breach of provision 2.1 of the CPC by the Provider (obligation to act honestly, fairly and professionally).

The Provider, in its post Preliminary Decision submission, reiterates that *"the Complainant declined to complete the required security questions or allow the discussions to progress"*.

The Provider submits that:

"Unfortunately, because the Bank was previously unable to discuss the options for completing the Standard Financial Statement due to the Complainant's reluctance to proceed with the telephone calls on 5 June and 29 June 2018, the completion of the Standard Financial Statement could not proceed at that time".

The Provider further details that in relation to the phone call of 19 October 2018:

"the Bank considers that its agent was not purposefully behaving in a manner to prevent full and open engagement with the Complainant. The Bank's agent tried to address the Complainant's concerns around privacy..."

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The Provider states:

“It was the intention of the agent to explore the various options with Complainant during the discussion on 19 October 2018, with the aim of arriving at a mutually satisfactory outcome to the concerns which the Complainant had voiced. We regret if our discussions with the Complainant indicated that we were not trying to engage fully with the Complainant in addressing his concerns and we would like to assure the Complainant that this was not our intention”.

The Provider has not raised an additional point in its post Preliminary Decision that would alter my decision.

In respect of the asserted payment of CAD\$2,300 made by the Complainant in **February 2014**, while the evidence provided to this Office by the Complainant in the form of a copy of a personal banking account does disclose that a payment of CAD\$2,300 was made on **31 January 2014**, there is no evidence to show that this payment was made to the Provider or to the mortgage account of the Complainant. After considering the audio recording of the telephone call dated **10 February 2014** between the Complainant and a representative of the Provider, I do not accept that the Complainant advised the Bank (Arrears Support Unit) that he had made a payment of CAD\$2,300 during his telephone call on **10 February 2014**. This telephone call evidences that there was a conversation between the Complainant and the Provider which dealt with the options available to the Complainant to make international payments to his mortgage account but the Complainant did not state at any stage on this telephone call that he had made a recent payment of CAD\$2,300.

I have not been provided with any evidence that the Complainant made this mortgage payment in the manner he states he did.

It is important however for the Complainant to understand that not receiving arrears letters does not absolve him from his contractual obligation to pay his mortgage.

In the interests of clarity, I accept as reasonable the conduct of the Provider in treating the letters it received from the Complainant dated **14 July 2015** and **31 May 2018**, as complaints rather than appeals.

In the interests of completeness, I note that pursuant to paragraph 4(b) of the General Terms and Conditions of the mortgage account *“no tenancy shall be created of the whole or part of the Property without the previous written consent of [the Provider]”*. Therefore, the Complainant should have requested the permission of the Provider before renting the property to the local county council.

Furthermore, I note that the Provider has complied with the provisions of the CCMA and accept its submissions in relation to its compliance with the CCMA.

I note the Complainant is seeking compensation in the order of €750,000. There is no reasonable basis on which I could or should direct such compensation.

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It is important for the Complainant to understand that he remains contractually obliged to pay his mortgage.

I note the Provider has offered €1,500 *“in recognition of the service issues which have been identified”*.

I do not believe this offer to be adequate in the circumstances.

In my Preliminary Decision, I indicated that having regard to the particular circumstances of this complaint, in particular the failing on the part of the Provider to adequately record the address of the Complainant, the failure of the Provider to send quarterly arrears letters for a period of 18 months, the breaches of the Provider of the CPC, the delay from the Provider in issuing the Complainant with a response in this matter, and the loss of a beneficial tax relief to the Complainant for the period of one year, I intended to partially uphold the complaint and direct the Provider to make a compensatory payment of €4,000 (four thousand euro), plus the reasonable costs of swearing the aforementioned affidavit, to the Complainant.

In response, the Provider in its post Preliminary Decision submission submits that as the mortgage, in its view, was correctly classified as a BTL the Complainant would not have been entitled to the Tax relief at Source as:

“Based on Revenue rules, it is the Banks’s understanding that the Complainant could claim TRS while he was living in the Property, but he could not claim TRS once he started renting the property. In this regard, please note the Complainant has stated that he moved abroad in 2011 and it was not until May 2018 that he advised the Bank of his change of address back to the Republic of Ireland. Therefore, all information points to the fact that the Complainant was living abroad and renting his property to tenants for the intervening period, and of note, he was not residing in the secured property during the period in which the mortgage account was re-categorised (2014-2015).”

The Provider then submits that it:

“would therefore respectfully ask you to reassess the level of financial redress noted in the Preliminary Decision which related to the loss of a beneficial tax relief to the Complainant for the period of one year”.

While the amount I direct in compensation is in consideration of the overall complaint and the impact upon the Complainant, I accept that the Complainant would not have been at the loss of any potential tax loss. I will therefore, direct the Provider to pay a sum of €3,500, together with the reasonable costs of swearing the affidavit, to the Complainant.

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Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b) and (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 €3,500 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, together with the reasonable costs of swearing the affidavit, to the Complainant.

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

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 January 2021

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,

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and

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

