An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0176
Sector:	Banking
Product / Service:	Tracker Mortgage
Conduct(s) complained of:	Arrears handling - Mortgage Arears Resolution Process Delayed or inadequate communication Dissatisfaction with customer service
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a mortgage loan which the Complainants hold with the Provider.

The Complainants' Case

The Complainants state that they were having difficulties in paying the mortgage due to a change in their financial circumstances. The Complainants state that they submitted a Standard Financial Statement (SFS) to the Provider. The Complainants submit that they previously restructured their mortgage repayments with the Provider and had been paying €1075 per month for a number of years. The Complainant states that following the SFS submission, the Provider suggested they pay €750 for a couple of months in the hope that their situation improved in the interim.

The Complainants state with that when they were preparing the SFS, they met with a mortgage adviser employed by the Provider. The Complainants submit that they discussed their change in circumstances and how it was affecting their income. The Complainants submit that several options were discussed with two rough calculations worked out by way of examples. The Complainants state that, at this stage of the consultation, they believed that deferral on repayments for a period of time appeared to be the option that suited them best; however there were advised that this option would require a referral to the Provider's head office for approval.

The Complainants submit that the adviser they were in consultation with was considerate of their circumstances and understood that they were already living under the pressure of a restructured mortgage caused by austerity and the main earner having to take a reduction in take-home pay. They further submit that the second Complainant has been sick for a six-year period and was in the process of returning to work with her employer. The Complainants submit that the second Complainant is also pursuing a grievance procedure relating to the employer's handling of her return to work.

The Complainants state that upon receipt of the new repayment offer, they visited the Provider to communicate their new developments. The Complainants state that there were informed that the mortgage adviser they previously dealt with have been relocated and a new mortgage adviser would be dealing with their affairs, with a meeting arranged for a week later on 31 May 2019. The new adviser requested a week to permit time to discuss the Complainants' situation with the previous adviser and bring themselves up to speed with the Complainants' case. The Complainants state that on the morning of 31 May 2019, the adviser contacted them to state that the appointment had been cancelled and that the new adviser would not be meeting with the Complainants again and, instead, the Complainants would need to deal with the Provider's head office going forward.

The Complainants submit that the basis of the complaint centres on the decision to refer the file to head office and also that the option to offer a repayment break was ignored, despite the contention that this was the best available option at the time. The Complainants state that they weren't given any explanation for the Provider's decision to ignore this option.

The Complainants contend that when the Provider cancelled the meeting at local branch, there was no facility for them to discuss their options so that a comprehensive analysis of the situation was denied and ignored. The Complainants submit that this contravenes the Provider's paperwork which refers to "working together to find resolutions". The Complainants state that there is a confidentiality agreement laid out in the Provider's Mortgage Arrears Resolution Process (MARP) booklets. They submit their belief that other customers of the Provider have been treated more favourably than they have.

The Complainants contend that the process is taking too long and has resulted in stress for the family as they feel they are in "*limbo land*". The Complainants further contend that the Provider could be more proactive and states they first contacted the Provider in December 2018 in anticipation of the potential financial issues. The Complainants state by the date of the submission to this Office (5 July 2019) they believe that the request for a reduction of approximately €1000 in mortgage payments had not been considered by the Provider. They argue that the request has been kicked around in paperwork.

The Complainants state their belief that neither the Provider nor their third party representative have ever truly considered their position, including the education requirements of their children who require specialist education due to enormous talent displayed by those children.

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The Complainants state that their need for a mortgage restructure is also necessary as a result of the issues the second Complainant has experienced with her employer. The Complainants submit that the second Complainant was out of work and receiving long-term sick benefit every fortnight. The Complainants states that there were numerous examples where this benefit payment was stopped with no prior notification and that the payments are subject to periodic review.

The Complainants want the Provider to adhere to its own MARP booklets and work with the Complainants in considering the best options for their mortgage repayments and to offer a workable solution for their needs. They also seek compensation in light of the Provider's asserted lack of ethics and conduct.

The Provider's Case

In response to questions raised by this Office, the Provider has submitted a detailed chronology of its engagement with the Complainants between December 2018 and August 2020. It argues that it performed a detailed assessment of the Complainants' circumstances and offered them an alternative repayment arrangement (ARA) which was suitable to those circumstances.

The Provider submits that, by way of background, the Complainants first went into arrears in June 2013 and were assessed for forbearance in September 2015. The Complainants were offered a term extension including arrears capitalisation which arrangement was accepted by the Complainants on 18 September 2015. Prior to this long-term extension, the Complainants were previously approved for six months of fixed repayments at €754 per month from July 2014.

The Provider states that on 7 March 2019, its Arrears Support Unit (ASU) received a completed SFS from the Complainants. It states that this was submitted through the local branch which also provided that a "Mortgage Forbearance Branch Report". It states that additional documentation was supplied under covering memo from the branch on 20 March 2019. It states that at this point, the ASU had sufficient documentation to allow for an assessment to be completed. The branch report confirmed that the second Complainant was in the midst of a grievance procedure with her employer in relation to the stoppage of sick pay benefits which had resulted in a significant drop in income for the Complainants who had all children attending specialist schools. The branch confirmed that the Complainants are seeking a six-month moratorium or, if the ASU was not in a position to prove this, 12 month interest only repayments. The branch confirmed that [number redacted] of the Complainants' children had been identified as "exceptionally gifted" and the Complainants were reluctant to impede the relevant education, even for a short period of time. The branch confirmed that the Complainants had endeavoured to reduce their expenses, including those relating to the specialist education, and monthly expenditure was not excessive.

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The Provider states that it relied on the information provided by the customers in their SFS and supporting documentation. Based on this information, the Provider calculated the Complainants' total monthly net income at €4,125.

In the Complainants' SFS, the Provider states that the Complainants declared a total monthly expenditure of €4,411 which included school and college fees at €1,032. It was noted in the assessment that the fees were on hold, reducing the total expenditure to €3,397. The Provider argues that this meant the Complainants' monthly expenditure was less than the guideline expenditure per month for a family of their composition under the Insolvency Service of Ireland (ISI) guideline of €3,404. As such, for the purpose of the assessment, the ISI guideline amount was used.

The Provider asserts that taking income of €4,125 and expenditure of €3,404 left the Complainants with €721 to service the debt. At the time of the assessment, the contractual repayments due on the mortgage were €1075.61 a month. As the Complainants did not have affordability to meet the contractual capital and interest amount, the Provider agreed to sanction fixed repayments of €721 for a period of six months. This was to allow time for the second Complainant to complete required training prior to returning to work as discussed on a telephone call between the Provider and the second Complainant on 10 April 2019. The Provider states that the Complainants submitted a form to decline this arrangement under a cover letter of 7 June 2019.

The Provider argues that branch staff do not get involved in the assessment process completed by the Provider's ASU. The ASU is a dedicated unit established to deal with customers in arrears and with assessments. It argues that in cases where a customer completes an SFS through the branch, the branch staff can make a recommendation to the ASU supporting the customer's application for forbearance but have no further involvement. It states that this is what occurred in the Complainants' case.

The Provider states that on 30 May 2019, the first Complainant called to the local branch and requested a meeting with the mortgage adviser on foot of a letter received from ASU. It states that the relationship manager spoke with the first Complainant briefly and confirmed that it was her first week in the role and she had no prior knowledge of the Complainants' case. The relationship manager took a copy of his letter and agreed to meet a later date after she had a chance to familiarise herself with the application. The Provider states that on 31 May 2019, the relationship manager reviewed the content of the letter provided by the Complainants and determined that she would not be able to assist the Complainants as they were unsatisfied with the outcome of the Provider's ASU assessment. The relationship manager discussed the matter with the branch manager who confirmed that the branch cannot interfere with or influence the ASU decision and, as such, the branch was not in a position to help so the Complainants should contact the ASU directly as outlined in the letter. As the relationship manager did not wish for the Complainants to make a futile journey to the branch, it states that she made a telephone call to the first Complainant to communicate this message.

The Provider argues that branch staff do not get involved in the assessment process completed by the ASU. At the Complainants were unhappy with the ASU assessment, they

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were correctly advised to contact the ASU with further queries and had been informed of that in the letter from the ASU.

The Provider rejects the contention that it did not consider the Complainant's financial circumstances. It argues that the Complainants were sanctioned a term extension and arrears capitalisation on the mortgage account in September 2015. It argues that it completed a further assessment of their circumstances based on financial information provided in the SFS and offered an arrangement of €721 per month for a period of six months. Since then, the Provider states that has an up-to-date SFS on file and is awaiting supporting documentation to carry out a further assessment.

The Provider argues that it acted in a timely manner in the handling of the Complainants' case. It further argues that it has worked with the Complainants in an effort to find a sustainable solution agreeable to both parties and will continue to do so.

The Complaints for Adjudication

The complaint is that the Provider:

1. Cancelled a scheduled meeting with the Complainants on 31 May 2019 and instead referred all correspondence relating to the Complainants' mortgage loan to its head office which has complicated attempts to restructure the mortgage payments in light of the reduction in the household income;

2. Has not considered the best option for the Complainants in relation to the requirements for a mortgage restructure, which has led to financial difficulties and undue stress incurred by the Complainants and the family;

3. Has not the adequately explained to the Complainants the reasons for the outcome of the SFS assessment;

4. Is treating the Complainants less favourably than other customers; and

5. Is taking too long in finding a resolution to the issues at hand despite weekly phone calls from the Complainants.

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.

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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 11 May 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

It is important that the outset to point out the limitations of the jurisdiction of this Office in complaints regarding mortgages. This Office cannot investigate the details of any renegotiation of the commercial terms of a mortgage which is a matter between the Provider and the Complainants, and does not involve this Office, as an impartial adjudicator of complaints. I will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of section 60(2) of the Financial Services and Pensions Ombudsman Act 2017.

Further, the jurisdiction of this Office is to investigate complaints relating to the provision of financial services to individual complainants. This Office is not in a position to investigate any generalised allegation that the Complainants were treated less favourably than other unidentified customers of the Provider in question. This Decision will therefore deal with the Provider's conduct in respect of the Complainants only.

The first Complainant informed the Provider in December 2018 that the current repayments on the Complainants' mortgage account were likely to be unsustainable due to a change in the Complainants' financial circumstances. The primary reason for this change appears to be that the second Complainant was on extended sick leave for a period of approximately six years. When she tried to return to her role her employer required that she complete a period of training before she could recommence her role due to regulatory requirements. It appears that difficulties arose between the second Complainant and her employer and a complaint was made to the Workplace Relations Commission (WRC) in respect of her recommencement of employment. From the timelines I have been provided with, it appears that it took approximately a year and half for the second Complainant to work through these issues with her employer before she was in a position to recommence her role in [date

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redacted] 2020. This ongoing difficulty experienced by the second Complainant in returning to work after extended sick leave was a source of considerable (and understandable) frustration to them at that time.

For the period between approximately [Date redacted] 2019 and [date Redacted] 2020, in light of the cessation of her sick leave payment and the difficulties she experienced in recommencing her role, the second Complainant had no income whatever. It is apparent to me that this created a difficult position for the Complainants and their family with regard to the repayment of the mortgage and other financial commitments that they had at the time, including the payment of school fees for their children. It appears that all of the Complainants' children are enrolled in specialist schools due to talents which the Complainants wish to support. [Number redacted] of the children have been described as "exceptionally gifted". This is the context within which the Complainants' difficulties in coming to a suitable alternative repayment arrangement (ARA) at the relevant time arose.

Between January 2019 and March 2019, the Complainants were supported by their local branch in submitting a Standard Financial Statement (SFS) with required supporting documentation. The paperwork was submitted by the branch to the Provider's Arrears Support Unit on 7 March 2019 along with a branch recommendation. Further supporting documentation was requested by the ASU and supplied in March 2019 and a drive-by valuation of property was conducted in early April. This valuation had no impact on the assessment and I do not propose to deal with the Complainants' recent comments in respect of this, as it did not form part of the initial complaint.

On 10 April 2019, an employee of the Provider's ASU spoke to the second Complainant in relation to her ongoing employment grievance. The agent also spoke to the first Complainant in relation to the costs associated with the private school referred to above. From my consideration of the recording of that call, I am of the view that confusion arose between the first Complainant and the Provider's agent in respect of the payment of fees to that school. The first Complainant explained that the school had agreed to provide the Complainants with some 'leeway' in respect of the fees, in that the school was happy to have received a partial payment in respect of fees with the balance still owing. The agent in question appears to have understood from the conversation that the school fees were on hold and so not payable in the immediate future.

On 29 April 2019, the first Complainant phoned the Provider and had a long conversation with the Provider's agent in respect of the family's financial circumstances and in particular the ongoing difficulties experienced by the second Complainant in respect of recommencing employment. The first Complainant explained that they had not 'gotten rid' of the obligation to pay fees but had simply delayed payment. He explained that they would pay gradually and that there was approximately €3,000 in outstanding fees. The agent explained his understanding that the Provider should therefore exclude the fees from the assessment as the fees were on hold, though he understood that they would have to be paid at some point. The first Complainant raised no objection to this proposal.

The cumulative effect of these two phone calls in my view seems to have caused the difficulties which the Complainants then encountered in respect of the ARA offered to them.

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As had been notified to the first Complainant on the call of 29 April 2019, the Provider's ASU assessed the Complainants' expenditure as excluding sum of €1,032 per month which they were due to pay in respect of school fees.

By excluding that sum, the assessment concluded that the Complainants had capacity to repay €721 per month. On that basis, the Complainants were offered an ARA which involved the payment of the fixed amount of €721 for a period of six months. It is apparent from the assessment that all parties were then of the view that the second Complainant ought to have recommenced her employment within the sort-term.

I have reviewed the evidence submitted by the Provider in respect of its assessment of the SFS submitted by the Complainants in March 2019. Taking aside the issue of the school fees as detailed above, I am satisfied that the full circumstances of the Complainants were considered by the Provider in that assessment and that all available ARA options were considered by the Provider.

On the basis of the financial information (excluding the school fees), the assessment indicated affordability for the repayment of €721 per month. I do not consider there to have been anything unreasonable in respect of the assessment that was made at ASU level nor do I accept the argument that the Complainants' circumstances were not taken into account in the offer that was made to them. Rather I am of the view that the confusion that arose was as to the continuing obligation to pay private school fees. I will return to the question of school fees later in this finding.

The Provider has argued that the first Complainant called to the local branch on 30 May 2019 and requested a meeting with the mortgage adviser on foot of the letter received from the ASU dated 15 May 2019 which offered the ARA in question. The Provider's evidence is that the relationship manager spoke to the first Complainant briefly but as she was new to the role and no prior knowledge of the Complainants' case, she agreed to meet the first Complainant on a later date. The Provider's evidence is that when the relationship manager reviewed the content of the letter provided by the Complainant from the ASU the following day, 31 May 2019, it became apparent that she would be unable to assist the first Complainant as he was unsatisfied with the outcome of the Provider's ASU assessment and he was obliged to follow up in that regard directly with the ASU. As a result, the evidence provided by the relationship manager is that she wished to prevent the first Complainant from making a futile journey to the branch simply to be told that she was unable to assist him and redirect him to the ASU. She states therefore that she made a telephone call to the first Complainant and communicated this message to him. A recording of this branch call is not available, though the direct evidence has been submitted by the relationship manager in question.

The Complainants' account of this is that a meeting was arranged approximately one week after he first met the relationship manager and that he received a call the morning of the scheduled meeting to cancel the meeting and was informed that he had to contact the Provider's head office.

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I have no reason to doubt the account of the cancellation of this meeting as described by the relationship manager. While it may have appeared as a snub or roadblock to progress to the first Complainant when the relationship manager was not prepared to meet with him, it would appear from her account that the relationship manager did not wish to waste his time as she was unable to assist him in respect of an ASU assessment. I accept the Provider's evidence that its ASU assesses applications for ARAs, albeit that the local branch can make recommendations in that regard. Indeed, it is apparent from the evidence before me that the local branch made a recommendation to the ASU on behalf of the Complainants in March 2019 in support of their application for temporary forbearance. I further accept that once the ASU have assessed a mortgage account, further queries in respect of the assessment or any appeal of the assessment must be dealt with directly with the ASU and not with the local branch which has no involvement is the assessment of ARAs.

Approximately one week later on 7 June 2019, the Provider made a follow-up call to the Complainants following the first Complainant's visit to the local branch. The agent in question confirmed that the ARA offer letter of 15 May 2019 contained a decline option if the Complainants did not wish to accept the arrangement. The agent advised the Complainants that if they wished to appeal the ASU's decision, they must first sign the decline section and drop it into the branch. Further information in respect of the appeal process, including the correspondence which the Complainants could expect to receive on foot of a decision to decline the ARA, was provided by the agent on this call.

Thereafter the Complainants formally declined the new arrangement and the parties had a number of calls. The Provider sent the Complainants letters in line with regulatory obligations under the Code of Conduct on Mortgage Arrears (CCMA).

On 16 July 2019, a letter was received from the Complainants dated 10 July 2019 outlining the Complainants' appeal of the ASU decision. The letter of appeal indicated that the Complainants were in the process of recalculating their SFS and would forward an SFS for reassessment. It indicated that the second Complainant had taken out an educational loan from a credit union to deal with their expenses around their children's education. It also noted that they had lost some income in the form of a children's allowance and would put these additional changes in their circumstances into the SFS calculations. The appeal letter indicated that it was clear to them that *"€1000 per month has been removed from the monies coming into a family with [number] children, and the family is already on the restructured mortgage*". The letter further indicated that the second Complainant was in the process of trying to return to work through training and that a permanent position was available and on hold for her when the training was complete.

On 18 July 2019, the Provider's mortgage appeals office issued a letter to the Complainants outlining that the Provider noted that there had been a change in their circumstances. The Complainants were requested to return an updated SFS to the Provider's ASU for assessment. The Provider stated that the appeal was now closed.

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There are two aspects of this correspondence of 18 July 2019 which are noteworthy. First, the decision to request updated financial information from the Complainants and to reassess their financial circumstances demonstrates an ongoing commitment by the Provider to work with the Complainants in respect of the financial difficulty. If the Complainants had followed up on the request to submit an updated SFS at that time, this could have remedied the difficulties that arose between the parties in respect of the Complainants' obligation to pay school fees as the position could have been clarified. The outcome of the appeals process therefore remedied the issue that had arisen in respect of fees confusion in my view.

The second noteworthy aspect of this letter is that it was lacking in the kind of detail that the Complainants might have expected in response to an appeal. It is not altogether clear from this correspondence what prompted the Provider's decision to close the appeal and seek a new SFS – whether it was the credit union loan, or the loss of a child benefit.

It may be that following this letter, the Complainants felt somewhat demoralised by the process, while (on my reading) this letter represented a positive development for them in that the Provider was willing to reassess their financial circumstances and, potentially, offer a new ARA.

The next call between the parties occurred on 6 January 2020, although a series of messages were left by the Provider in July 2019 requesting that the Complainants call it, presumably in respect of the updated SFS that it wished to receive from them. Arrears correspondence also issued to the Complainants during the relevant period as arrears continued to accumulate on the account.

On the call 6 January 2020, the first Complainant advised the Provider that the second Complainant was nearly back to work as her training had been completed. She was merely awaiting approval of the commencement of work. Between January 2020 and July 2020, the parties had a number of calls whereby the Complainants updated the Provider in respect of the continuing problems that the second Complainant was experiencing in obtaining a start date for new employment. In the meantime, in March 2020, the Provider's ASU received a completed SFS from the Complainants. On 8 April 2020, the Provider acknowledged receipt of the SFS, and on 27 April 2020 it issued correspondence to the Complainants seeking further supporting documentation for the purposes of the assessment.

In the meantime, on a call on 20 May 2020, the Provider informed the first Complainant that the Provider would be unable to come to an arrangement with the Complainants until such time as the second Complainant returned to work. By that stage the second Complainant had received an email from HR to welcome her back but had been given no specific information in respect of the date of the return to work. After a further call between the parties on 16 June 2020, the Provider made several unsuccessful attempts to call the Complainants in June and July 2020. On 31 July 2020, the first Complainant informed the

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Provider that the second Complainant would return to work in August and her first payment would be received at the end of August.

In light of this account of the dealings between the parties between December 2018 and August 2020, I propose to deal with the complaints raised by the Complainants in the order that they are set out above.

First, in relation to the complaint about the cancellation of the scheduled meeting on 31 May 2019, as set out above I accept the explanation of the Provider that the meeting was cancelled as the relationship manager in the branch was unable to assist the Complainants in respect of a query or appeal of an assessment carried out at ASU level. I accept the Provider's explanation for the cancellation of the meeting on 31 May 2019 and do not consider it to have acted in any way unreasonably towards the Complainants in directing that they make direct contact with the Provider's ASU in respect of the assessment rather than dealing with the assessment of branch level. I do not accept that the mere fact that the Provider deals with assessments of potential ARAs at ASU level rather than at branch level means that the Provider is not committed to finding sustainable solutions to mortgage arrears with customers in the position of the Complainants.

In respect of the second complaint that the Provider did not consider the best option for the Complainants in relation to their requirements for a mortgage restructure, I reiterate what was set out at the outset of my determination of the present dispute – that this Office does not investigate the details of any renegotiation of the commercial terms of a mortgage. Further, customers in mortgage arrears are not entitled to dictate the terms of an ARA to be offered to them, even if they feel that one type (for example, a 6-month break in payments) is the most suitable to their circumstances. On the facts of this case as set out above, I do not consider that the Provider's conduct in this case was unreasonable, unjust, oppressive or discriminatory in its application to the Complainants. While I am of the view that there was a breakdown of communication between the Complainants and the Provider in April 2019 in respect of the Complainants' obligation to pay private school fees, I am of the view that this confusion was remedied by the appeal process and the opportunity given to the Complainants to submit an updated SFS. I do not criticise either party for the confusion that arose on the basis of the details of the phone conversations that occurred in April 2019. Furthermore, I note that the assessment that was carried out was by reference to the ISI guidelines in respect of a family of the Complainants' size and so, on one view, there was repayment capacity for the reduced sum of €721 offered by way of ARA for the six month period. Having said that, I am of the view that the Provider did not make a decision in this case that it expected the Complainants to cease payments to the private school and rather that the situation which arose was the result of miscommunication between the parties.

Turning to the third complaint that the Provider failed to adequately explain to the Complainants the reasons for the outcome of the SFS assessment, while customers are not entitled to a detailed rationale of why the ARA they have requested is not to be offered, they are entitled to details of the rationale for the ARA that is being offered to them.

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The ARA of fixed repayments of €721 for 6 months was offered to the Complainants by letter dated 15 May 2019.

By way of explanation for the ARA being offered, the letter noted simply that:

> *"In assessing the individual merits of your case, we used the information provided by you in the Standard Financial Statement and the relevant supporting documentation.*
>
> *Following assessment of your case we are offering you the following alternative repayment arrangement which we believe is both appropriate and sustainable.*
>
> *The reason why this offer is considered both appropriate and sustainable for you is that you will not be required to meet your existing repayment obligations in accordance with the original terms and conditions of your acceptance pf the facility letter for the period detailed below*."

There was further information provided in the letter in respect of the detail of the repayment arrangement offered and advantages and disadvantages of the ARA but there was no further information given in respect of why precisely the Provider felt that the proposed repayment arrangement was suitable for the Complainants, other than the generic reference to their financial circumstances as set out above.

I further note that in a response to complaints raised by the Complainants at this time in respect of the assessment, a similarly generically worded letter in response dated 5 June 2019 was sent to Complainants which assured them that a full assessment had been carried out based on the figure submitted by them.

In light of the very detailed assessment that was actually conducted by the Provider in respect of the individual circumstances of the Complainants, and as submitted by the Provider in evidence, it is surprising that such a lack of information was provided to the Complainants on the rationale for the ARA offered. As set out above, the Provider did consider all of the Complainants' financial circumstances in offering the ARA in question, subject to confusion that arose in respect of school fees. Having said that, the ARA offer letter, appeal decision notification letters and final response letters were utterly devoid of information. It seems unlikely that the Complainants ever understood that the ARA offered to them had been on the basis of the Provider's then understanding that they were not paying school fees as the fees were 'on hold'. If the Provider's correspondence had been clearer (that is, if the Provider set out the basis for its calculations or offered some insight into its rationale for the affordability of €721 per month), the parties may have been able to resolve this issue much more promptly.

Under CCMA 2013, a mortgage Provider is obliged to explain the rationale for offering a particular ARA to a customer as follows:

> "42. Where an alternative repayment arrangement is offered by a lender, the lender

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must . . . Provide the borrower with a clear . . . of how the alternative repayment arrangement works, including:

> a) the reasons why the alternative repayment arrangement(s) offered is considered to be appropriate and sustainable for the borrower as documented by the lender in compliance with Provision 40, including demonstrating, by reference to the borrower's individual circumstances, the advantages of the offer for the borrower and explaining any disadvantages"

While I accept that the advantages and disadvantages of the ARA were set out in the letter of 15 May 2019, I do not accept that the Provider set out the reasons why the ARA offered was considered to be appropriate and sustainable for the Complainants as documented by the lender by its (obligatory) consideration of all of the relevant alternative repayment options offered by that lender. I further do not consider that it demonstrated, by reference to the borrower's individual circumstances, the advantages of the offer for the Complainants. The full rationale for the offer was documented by the Provider in its assessment of the Complainants' circumstances but it failed to communicate this to them at any point.

The Provider's failure in this regard was compounded by a failure to provide an adequate explanation of or some further insight into the assessment proceed when in its responses to complaints raised by the Complainants regarding the ARA offered to them.

On the fourth aspect of the complaint that the Complainants were treated less favourably than other customers, this is not an issue that this Office can inquire into.

In respect of the final issue that it was taken too long to find a resolution to the issues at hand despite weekly phone calls. There were ongoing and detailed communications between the parties in respect of the financial difficulties experienced by the Complainants between January 2019 and July 2020. The Complainants are to be commended for their ongoing commitment to keeping the Provider appraised of the efforts of the second Complainant to recommence employment. The Provider is also to be commended for the supportive and patient approach adopted by all of the agents who dealt with the Complainants in the numerous calls between the parties.

It is apparent to me that both parties were actively engaged in attempting to reach a resolution. While I accept that the Complainants were frustrated by the fact that they submitted an SFS in March 2019 and had not received the type of resolution that they hoped for promptly, I am satisfied that the Provider assessed their ARA with efficiency and further communicated efficiently at all times with the Complainants in respect of all decisions and in respect of any further documentation or other information that was required.

In my view, the delay that occurred between July 2019 and March 2020 when the new SFS was submitted was due to the Complainants' own failure to submit the updated SFS requested of them by letter dated 18 June 2019. I further note that it appears that they

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failed to return several phone calls to the Provider around the same time. Between April 2020 and August 2020, it is apparent from the phone conversations that the Provider was awaiting an update in respect of the start date of the second Complainants' employment so that it could properly assess their financial circumstances based on their full income.

In my view, the ongoing delays experienced by the second Complainant with respect to the recommencement of her employment was the real source of delay and not any action or inaction of the Provider.

On the basis of the Provider's failure to explain its rationale for its offer for an ARA in May 2019 and its continued failure to do so in response to complaints raised by the Complainants, I partially uphold this complaint and direct that the Provider pay a sum of €3,000 to the Complainants in compensation.

Conclusion

My Decision is that this complaint is partially upheld, pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, on the grounds prescribed in ***Section 60(2)(a) that the conduct complained of was contrary to law*** and ***(f) an explanation for the conduct complained of was not given when it should have been given.***

I direct pursuant to **Section 60(4)** and **60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay a sum of €3,000 to the Complainants in compensation, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

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

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

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

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

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2 June 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, and

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