



<u>Decision Ref:</u>	2021-0177
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Wrongful consideration of forbearance request Failure to implement payment terms
<u>Outcome:</u>	Rejected

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

The Complainants hold a number of mortgage loan accounts with the Provider. The Complainants submitted several requests to the Provider for an alternative repayment arrangement in respect of their loans. These requests were declined by the Provider's Arrears Support Unit and again by the Provider's Appeals Board.

The Complainants' Case

The Complainants explain that they entered a Personal Insolvency Arrangement (**PIA**) which ended in **May 2018** and after the PIA they were unable to keep up the mortgage loan repayments that they had been making during the period of their insolvency agreement.

The Complainants say they contacted the third party representative, and with its assistance, submitted three Standard Financial Statements (**SFSs**) to the Provider in the 12 month period prior to their complaint to this Office. The Complainants say each proposal submitted to the Provider has been *"a realistic sustainable repayment until the maturity of our main mortgage."*

The Complainants have provided the following timeline in respect of their SFSs:

June 2018	SFS submitted and declined
July 2018	Appeal lodged
August 2018	Appeal declined

September 2018	SFS submitted
December 2018	Proposal declined and appeal lodged
January 2019	Appeal declined
March 2019	SFS submitted
April 2019	Proposal declined and appeal lodged
May 2019	Appeal declined

The Complainants say that an SFS was submitted in **March 2019** because their financial situation improved, and they were able to increase their proposed repayments. The Complainants also advise that they continued to make their loan repayments throughout this process.

The Complainants say they are asking the Provider to enter an arrangement with them for €1,499.00 per month until the maturity of their main mortgage loan, as this is the maximum amount they state they can realistically afford. The Complainants explain this proposed repayment amount exceeds the interest being applied to their main mortgage loan and two top-up loans. The Complainants say that their proposal appears to be in line with the long term arrangements that the Provider offers as part of its standard practice and has been petitioning borrowers to enter. The Complainants say such an arrangement is published by the Provider in its MARP Booklet as a long term resolution and on its website. The Complainants explain they understand that such an arrangement is designed to allow a borrower to pay the full interest on a mortgage loan and make part payments towards the capital amount, and any outstanding balance will be due at the end of the mortgage loan. The Complainants say such an arrangement would enable them, over the remaining term of their loan, to clear a significant portion of the outstanding capital balance, thus making it feasible for them to downsize.

The Provider's Case

The Provider says that in **2015** it agreed to accept a PIA proposal of a 'Part Capital and Interest Restructure Arrangement' on each of the Complainants' mortgage loan accounts and issued a Restructure Arrangement to the Complainants on **8 June 2015** on all three loans. The Provider has set out the terms of each of the Restructure Arrangements in its Complaint Response, each of which was subject to review after three years.

In **June 2018**, the Provider says the Complainants submitted an SFS and advised they could no longer afford the current arrangements of part capital and interest repayments. The Complainants also advised the Provider that their adult daughter had returned home to live in the mortgaged property and was now making financial contributions to the household. The Complainants further advised that they had both retired and their only source of income was their pensions.

Following a full review of all information to hand, the Provider says its Arrears Support Unit (**ASU**) assessed that there was insufficient disposable income available to service the loan repayments under any of the alternative repayment arrangements offered by the Provider. In light of this, the Provider says it was unable to offer a further alternative repayment arrangement to the Complainants on their loan accounts. The Provider says this decision was issued to the Complainants on **2 July 2018**.

On **27 June 2018**, the Provider says phone contact was made with the First Complainant where it was confirmed that the outcome of the assessment was a 'decline' due to insufficient disposable income to service repayments under any of the alternative repayment arrangements offered by the Provider and that a letter to this effect would be issued to the Complainants. The Provider says the First Complainant indicated that he would be appealing this decision.

On **24 July 2018**, the Provider says it received correspondence from the Complainants dated **20 July 2018** advising that they had approached their local third party representative's office and it was their intention to appeal the Provider's decision.

On **10 August 2018**, the Provider says it received correspondence from the Complainants dated **6 August 2018** advising that they intended to begin making repayments of €964 per month across all three loan accounts, in accordance with the figures outlined in the Provider's letter of **2 July 2018**. The Provider says the Complainants submitted that it was their understanding that this figure reflected a part capital and interest restructure arrangement and that they would agree to accept such an arrangement.

On **23 August 2018**, the Provider says it telephoned the Complainants to discuss their correspondence and informed them that its letter of **2 July 2018** did not outline a part capital and interest restructure arrangement, and that its assessment had deemed there to be insufficient disposable income present to service the repayments to the loan accounts under any alternative repayment arrangement offered by the Provider. However, the Provider says it advised the Complainants that it would accept payments to the loan accounts on a without prejudice basis. The Provider says the Complainants advised the Provider that they would appeal its decision as stated in their previous correspondence.

The Provider advises that although the timeframe for submitting an appeal had elapsed, it agreed to accept the Complainant's letter of **6 August 2018** as a formal appeal, which was logged on **27 August 2018**. The Provider says that an acknowledgment letter issued to the Complainants on **30 August 2018**.

On **13 September 2018**, the Provider says its Appeals Board Reviewed the Complainants' appeal. The Provider says on reviewing all information to hand, the Appeals Board found that there was insufficient affordability present to service loan repayments under any of the alternative repayment arrangements offered by the Provider and therefore, deemed the Complainants' loans to be unsustainable. In light of this, the Provider says the Appeals Board decided to uphold the decision of the ASU and rejected the Complainants' appeal.

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The Provider says it issued correspondence to the Complainants on **18 September 2018** advising them of the outcome of their appeal.

On **2 November 2018**, the Provider says it received correspondence from the Complainants dated **30 October 2018**, enclosing a completed SFS for assessment. The Provider says the Complainants outlined a proposal to pay €964 per month across all three loan accounts which they believed to reflect a part capital and interest restructure arrangement as outlined in the Provider's MARP Booklet. The Provider notes that at this time, the combined arrears on the loans stood at €11,248.75.

Following a review of the information to hand, the Provider says its ASU assessed that there was insufficient disposable income to service loan repayments under any of the alternative repayment arrangements on offer by the Provider. In light of this, the Provider says it was unable to offer an alternative repayment arrangement to the Complainants, and this decision was communicated to the Complainants on **27 November 2018**.

On **11 December 2018**, the Provider says it received correspondence from the Complainants dated **8 December 2018** appealing the Provider's decision. The Complainants submitted that they had affordability to meet repayments of €964 per month and requested that the Provider offer a long term alternative repayment arrangement in line with this repayment amount. The Provider says it logged a formal appeal on **11 December 2018**, issued an acknowledgement letter to the Complainants on **17 December 2018** and an update was issued to the Complainants on **11 January 2019**.

On **16 January 2019**, the Provider says its Appeals Board reviewed the Complainants' appeal and on reviewing the information to hand, the Appeals Board found that there was insufficient affordability to service the loan repayments under any of the alternative repayment arrangements offered by the Provider and therefore, deemed the loans to be unsustainable. In light of this, the Provider says the Appeals Board decided to uphold the decision of the ASU and reject the Complainants' appeal. The Provider says it issued correspondence to the Complainants on **22 January 2019** advising them of the outcome of their appeal.

On **26 February 2019**, the Provider says it received correspondence from the Complainants dated **22 February 2019** enclosing a completed SFS for assessment. On **27 February 2019**, the Provider says it issued correspondence to the Complainants requesting copies of supporting documentation to allow for a full assessment to be completed which was submitted to the Provider on **15 March 2019** together with an SFS dated **14 March 2019**.

Following a full review of the information to hand, the Provider says its ASU assessed that there was insufficient disposable income available to service the loan repayments under any of the alternative repayment arrangements on offer by the Provider. In light of this, the Provider says it was unable to offer an alternative repayment arrangement to the Complainants and this decision was communicated to the Complainants on **27 March 2019**.

On **15 April 2019**, the Provider says it received correspondence from the Complainants dated **11 April 2019** appealing its decision. The Complainants advised that their circumstances had improved and they were in a position to make repayments of €1,499 per month across all three loan accounts for a period of 33 months to coincide with the remaining term of mortgage loan account ending 3731. The Provider says the Complainants requested an alternative repayment arrangement in line with this repayment amount, which they understood to cover the full interest amount and approximately €36,000 towards the principal balance outstanding on their loans. The Provider says the Complainants acknowledged the equity in their property and advised that it would be their intention to sell the mortgaged property on maturity of the loan accounts. The Provider advises that it logged an appeal on **15 April 2019** and issued an acknowledgement letter to the Complainants on **23 April 2019**, and an update letter issued to the Complainants on **15 May 2019**.

On **22 May 2019**, the Provider says its Appeals Board reviewed the Complainants' appeal and on reviewing all information to hand, found that there was insufficient affordability present to service repayments under any of the alternative repayment arrangements offered by the Provider and therefore, deemed the Complainants' loans to be unsustainable. The Provider says it issued correspondence to the Complainants on **29 May 2019** advising them of the outcome of the appeal.

The Provider says that it rejects the Complainants' contention that it wrongfully refused their proposal for an alternative repayment arrangement in **2019**. The Provider says it received a completed SFS dated **14 March 2019** and supporting documentation on **15 March 2019**, where the Complainants proposed that they could afford monthly repayments of €1,499 across all loan accounts and requested that the Provider offer them an alternative repayment arrangement in line with this repayment amount. The Provider says the Complainants acknowledged that this would involve a significant 'balloon' payment at the end of the loans' terms and also acknowledged that the mortgaged property was currently in positive equity.

The Provider says its ASU fully assessed the Complainants' SFS together with all supporting documentation provided, including the repayment history on the Complainants' loan accounts. The Provider says its ASU noted that the Complainants three loan accounts were currently on a part capital and interest restructure arrangement with restructured payments totaling €3,028 per month across all three loan accounts. The Provider says it was evident that this restructured repayment amount was not being met and that arrears in the amount of approximately €19,000 had accrued across all three loans. Further to this, the Provider says the combined outstanding balances on all loan accounts totaled approximately €193,576 and that the mortgaged property was valued at €425,000. The Provider also notes that there would be a combined outstanding balance of approximately €75,000 due at the end of the loan terms which would need to be addressed.

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The Provider says its ASU took all of the above into consideration when assessing the Complainants' circumstances with a view to ascertaining if a suitable alternative repayment arrangement could be offered.

The Provider says it had no sustainable alternative repayment arrangement available to facilitate the proposed payment amount of €1,499 per month. The Provider says it was also noted that both Complainants were retired and unlikely to re-enter the workforce. In light of this, it was deemed unlikely that the Complainants' financial situation would improve in the future. The Provider says its ASU further noted that there was no evidence to suggest the Complainants had the resources at that time to address the outstanding balances due at the end of the terms of their loans. It was because of this, the Provider says, that it was unable to offer an alternative repayment arrangement to the Complainants, as the loans were deemed to be unsustainable. The Provider says it was satisfied that this was the most appropriate decision based on all the information to hand.

On receipt of the Complainants' appeal in **April 2019**, the Provider says as part of their appeal submission, the Complainants again proposed that they would be in a position to make repayments of €1,499 per month across all three loan accounts for a period of 33 months. The Provider says the Complainants advised that it was their intention to sell the mortgaged property at the end of the loan terms, however, they felt if they were to sell immediately, they would not achieve a sufficient sales price to purchase another property in their chosen locality.

The Provider advises that its Appeals Board reviewed the Complainants' appeal on **22 May 2019** and the case was assessed again with all information provided being reviewed by the Appeals Board. Following a full assessment, the Provider says the Appeals Board found in favor of the ASU and agreed that it was not appropriate to offer an alternative repayment arrangement to the Complainants as the loan accounts were unsustainable.

The Provider says it is satisfied that the decisions of both the ASU and the Appeals Board were the most appropriate based on all information to hand and, for this reason, rejects the Complainants' position that it wrongfully declined the proposal in **2019**.

The Provider says it is satisfied that all options were explored when assessing the Complainants' circumstances for an alternative repayment arrangement on each occasion. The Provider says it considered all restructure options when assessing the Complainants' SFSs dated **14 June 2018**, **30 October 2018** and **14 March 2019**. On each occasion, the Provider says its ASU deemed the Complainants' loans to be unsustainable as there was insufficient disposable income present to service repayments under an alternative repayment arrangement offered by the Provider.

Similarly, the Provider says as outlined in the Appeals Board assessment notes, it fully reviewed the Complainants' appeals received on **27 August 2018**, **11 December 2018** and **15 April 2019**. On each occasion, the Provider says following a full review of all information to hand, the Appeals Board deemed the ASU's decision not to offer an alternative repayment arrangement to be appropriate as the loans were unsustainable.

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The Provider says that while it is obliged to document its assessment decisions in accordance with the ***Code of Conduct on Mortgage Arrears 2013*** (the **CCMA**), it is important to note that its underwriting decisions are commercial in nature.

The Provider says while it is obliged to review all options for an alternative payment arrangement when assessing a borrower's SFS, it is not obliged to accept a borrower's proposal of an alternative repayment arrangement.

The Provider outlines its assessment of each SFS submitted by the Complainants and the subsequent appeals as they arose as follows.

Assessment of SFS dated 14 June 2018

The Provider says the Complainants submitted an SFS dated **14 June 2018** requesting an affordable alternative repayment arrangement. The Provider says its ASU reviewed all information to hand and deemed the Complainants' loans to be unsustainable. The Provider says there was insufficient disposable income to service the loans under any of the alternative repayment arrangements on offer by the Provider.

In reaching this decision, the Provider says its ASU took several factors into consideration. The Complainants were both retired and therefore their financial circumstances were unlikely to change in the future and, as well as their retirement, the Complainants' monthly income had been reduced by approximately €3,400 per month. The Provider says the Complainants' noted their adult daughter had recently moved into the mortgaged property and had begun making contributions of €500 per month. The Provider says the monthly repayment was set at €3,028 across all three loan accounts and while there were currently no arrears on the accounts, it was evident that the repayments were being met by reducing the Complainants' savings. The Provider says there was no evidence to suggest that the Complainants had the means to repay a long term alternative repayment arrangement or to address the outstanding loan account balances at the end of their terms.

The Provider says that as there was equity in the mortgaged property and insufficient disposable income present to service any of the alternative repayment arrangements offered by the Provider, the Provider deemed the loan accounts to be unsustainable. The Provider says that it issued correspondence to the Complainants on **2 July 2018** informing them of this decision and outlining the closure options of Assisted Voluntary Sale and Voluntary Surrender in accordance with Provision 45 of the CCMA.

Appeals Board decision issued on 18 September 2018

The Provider says its Appeals Board reviewed the Complainants' appeal on **13 September 2018** and a full review of all information to hand was completed.

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The Appeals Board reviewed the decision of the ASU to deem the loan accounts unsustainable and could evidence from the documentation provided that the decision was appropriate to the Complainants' circumstances. Accordingly, the Provider says the Appeals Board upheld the decision of the ASU and declined the Complainants' appeal.

Assessment of SFS dated 30 October 2018

The Provider says the Complainants requested a long term part capital and interest restructure arrangement with repayments set at €964 per month. The Provider says the Complainants noted that the proposed repayment amount was based on the Provider's letter of **2 July 2018** in which the Provider documented the Complainants' capacity to meet loan repayments.

The Provider says the ASU reviewed all information to hand and deemed the Complainants' loan accounts to be unsustainable. The Provider say there was insufficient disposable income present to service the loan repayments under any of the alternative repayment arrangements on offer by the Provider.

In reaching this decision, the Provider says its ASU considered the Complainants' and their circumstances, based on all information to hand. The Provider says as per the Complainants' previous SFS assessment, the Complainants were retired and their employment status was unlikely to change in the future. It was also noted that the loan accounts were currently billing on a part capital and interest restructure arrangement with restructured repayments set at €3,028 per month across all three accounts and arrears had accrued in the amount of approximately €11,249. The Provider says the full monthly capital and interest billing amount was calculated at €5,169 per month across all loan accounts and the Complainants' free cash flow was calculated at €916 per month (for assessment purposes, the Provider says it sets the available free cash flow amount at 95% of the overall free cash flow figure). The Provider says it could not offer a sustainable alternative repayment arrangement to the Complainants with the payments of €916.00 per month.

In light of the above assessment, the Provider says it deemed the loan accounts to be unsustainable. The Provider says it issued correspondence to the Complainants on **27 November 2018** informing them of this decision and outlining the closure options of Assisted Voluntary Sale and Volunteer Surrender, in accordance with Provisions 45 of the CCMA.

Appeals Board decision issued on 22 January 2019

On **11 December 2018**, the Provider says it received an appeal dated **8 December 2018**. The Complainants submitted that they could afford monthly repayments of €964 across all three loan accounts which they understood to represent a part capital and interest restructure arrangement repayment amount.

The Provider says the Complainants noted that this proposed amount was based on the Provider's correspondence of **27 November 2018** in which the Provider had documented the Complainants' capacity to meet loan repayments.

The Provider says the Appeals Board reviewed the Complainants' appeal on **16 January 2019** and a full review of all information to hand was complete. The Provider says the Appeals Board reviewed the decision of the ASU to deem the loan accounts unsustainable and could evidence from the documentation provided that the decision was appropriate to the Complainants' circumstances. Accordingly, the Appeals Board upheld the decision of the ASU and declined the appeal.

Assessment of SFS dated 14 March 2019

The Provider says the Complainants submitted correspondence dated **22 February 2019** enclosing a completed SFS for assessment. The Provider says it responded to the Complainants on **27 February 2019** requesting the necessary supporting documentation so that an assessment could be completed. On **15 March 2019**, the Provider says it received a completed SFS dated **14 March 2019** together with the required supporting documentation. The Provider says the Complainants requested an alternative repayment arrangement with repayments set at €1,499 per month across all three loan accounts.

The Provider says the ASU reviewed all information to hand and deemed the Complainants' loan accounts to be unsustainable. The Provider says there was insufficient disposable income present to service the loan account repayments under any of the alternative repayment arrangements offered by the Provider.

In reaching this decision, the Provider says the ASU considered the Complainants' circumstances based on all information to hand. Again, it was noted that the Complainants were both retired and unlikely to commence employment in the near future. The Provider says the ASU noted that the loan accounts that were currently billing at a part capital and interest amount of €3,028 per month in total, and this repayment amount was not being met by the Complainants. The Provider says arrears had accrued across all three loan accounts in the amount of approximately €19,000. The outstanding balance owing on all three loan accounts was €193,576 and the mortgaged property was valued at €425,000. The Provider says an outstanding lump sum balance of €75,000 was due to become payable at the end of the term of the loans. The Provider says it was noted that the Complainants had proposed a repayment amount of €1,499 per month, however, there was no long term alternative repayment arrangement on offer by the Provider with restructured repayments set at that amount.

In light of the above assessment, the Provider says it deemed the loan account to be unsustainable. The Provider says it issued correspondence to the Complainants on **27 March 2019** informing them of this decision and outlining the closure options of Assisted Voluntary Sale and Voluntary Surrender in accordance with provision 45 of the CCMA.

Appeals Board decision issued in 29 May 2019

On **15 April 2019**, the Provider says it received an appeal from the Complainants dated **11 April 2019**. The Provider says the Complainants submitted that they could afford monthly repayments of €1,499 across all three loan accounts, which they understood to represent a part capital and interest restructure arrangement repayment amount.

The Provider says the Complainants noted that this proposed amount was based on the Provider's correspondence of **27 March 2019** in which the Provider documented the Complainant's capacity to meet loan repayments. The Provider says the Complainants proposed to repay this amount for a period of 33 months at which point they would consider selling the mortgaged property.

On **22 May 2019**, the Provider says the Appeals Board reviewed the Complainants' appeal and a full review of all information to hand was completed. The Provider says the Appeals Board reviewed the decision of the ASU to deem the loan accounts unsustainable and could evidence from the documentation provided that the decision was appropriate to the Complainants' circumstances. Accordingly, the Provider says the Appeals Board upheld the decision of the ASU and declined the Complainants' appeal.

Referring to the Complainants' proposal from **April 2019**, the Provider says it did not accept this proposal nor was it obliged to. The Provider submits it assessed the Complainants' loan accounts to ascertain if a long term sustainable alternative repayment arrangement could be applied to the accounts to suit the Complainants' financial circumstances.

The Provider says it will offer an alternative repayment arrangement to a borrower if it is deemed an appropriate, affordable and sustainable solution to a mortgage arrears situation. In the Complainants' case, the Provider says that their financial situation was unlikely to change and there was no plan in place (savings, investment portfolios, pension lump sum etc.) to address the lump sum balance of €75,000 due at the end of the loan terms. Further to this, the Provider says the loan accounts were being billed on a part capital and interest basis and both had already fallen into significant arrears. In light of this, the Provider says it assessed that it was unable to offer the Complainants an alternative repayment arrangement. The Provider says it outlined closure options to the Complainants including Voluntary Surrender and Assisted Voluntary Sale, as it deemed the sale of the mortgaged property would be the most appropriate course of action for the Complainants to address their arrears situation. The Provider says selling the mortgaged property would allow the Complainants to redeem the loan accounts in full and have sufficient surplus funds to purchase another property.

The Complaint for Adjudication

The complaint is that the Provider refused the Complainants' proposals for an alternative repayment arrangement in respect of their mortgage loans.

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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 Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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.

The Complainants submitted an SFS to the Provider dated **14 June 2018**. On the final page of this SFS, the following is noted by the Provider's agent:

"[The Complainants] ... wish to put an alternative affordable arrangement in place going forward. Customers income consists of State pension, [foreign] pension and [pension provider] pension. Their adult daughter has come back from [abroad] and has just moved in with them ... [The First Complainant] finished work [redacted] and received recently a final settlement of 4250.00 which he has paid the mortgage from. ..."

The Provider wrote to the Complainants on **2 July 2018** following its assessment of their SFS, as follows:

“... Our summary of your payment capacity is as follows:

	SFS	Mortgage Assessment
Total Monthly Income¹:	€2,716.00	€3,213.00
Total Monthly Expenditure²:	€2,249.00	€2,249.00
Capacity to meet Monthly Debt Repayments³:	€467.00	€964.00

...

We explored all alternative repayments arrangements offered by the bank for your case. Regrettably, we are unable to offer an alternative repayment arrangement for your mortgage.

The reason for this is as follows:

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

I note from the Provider’s correspondence dated **26 July 2018** that the Complainants’ total loan repayments stood at €3,028 with arrears of approximately €4,500.

The Complainants wrote to the Provider by letter dated **6 August 2018**, as follows:

“Upon review of your payment capacity assessment we accept your suggestion outlined in your letter, a payment of €964.00 per month.

This would meet with the Part Capital and Interest arrangement as suggested, on your website, as an alternative long term payment arrangement.

We shall amend our current payments from the end of August to reflect the above.

Please confirm your acceptance of this agreement at your earliest convenience.”

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The Appeals Board wrote to the Complainants on **18 September 2018** informing them of the outcome of their appeal as follows:

“I regret to inform you that the Appeals Board has declined your Appeal and upheld the decision made by our ASU.

Based on the information provided in your completed Standard Financial Statement (SFS), the Appeals Board has concluded there is insufficient disposable income available to service payments to your Mortgage under any alternative repayment arrangements offered by [the Provider]. ...”

On **30 October 2018**, the Complainants wrote to the Provider requesting a sustainable arrangement and enclosed a completed SFS, with the following proposal:

“Our Proposal: Payment of €964.00 per month

We believe this proposal to be in line with [the Provider’s] – Part Capital and Interest Long Term Arrangements stated in your MARP Booklet and understand any outstanding balance at the end of the mortgage term will be due.

...

And also refer to your letter dated 02/07/2018 which outlines [the Provider’s] belief that the above figure is our capacity to meet monthly debt repayments.

As you can see from your records we have instituted the proposed figure of payment in anticipation of formally entering this arrangement.

We feel that the proposal represents the best outcome for all concerned. And ask that you give serious and sympathetic consideration to proposal ...”

In response to the Complainants’ proposal and SFS, on **27 November 2018**, the Provider wrote to the Complainants in essentially identical terms as its letter of **2 July 2018**.

The Provider’s letter set out the following summary of the Complainants’ payment capacity:

	SFS	Mortgage Assessment
Total Monthly Income¹:	€3,213.00	€3,213.00
Total Monthly Expenditure²:	€2,249.00	€2,249.00
Capacity to meet Monthly Debt Repayments³:	€964.00	€964.00

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It appears from the Provider's correspondence dated **24 December 2018**, that the Complainants' total loan repayments stood at €3,028 with arrears of approximately €15,000.

By letter dated **8 December 2018**, the Complainants wrote to the Appeals Board, as follows:

"We the above wish to lodge a formal appeal regarding the decision outlined in your letter dated 27/11/2018 ... on the grounds you do not offer an ARA in line with our current payment capacity.

*We have the capacity to make payments totaling €964 permanent to **8th December 2018** our mortgage accounts. As you can see from your letter dated 27/11/2018 your ASU has concluded the same.*

You have however declined to enter into an ARA stating that "there is insufficient disposable income available to service payments to your mortgage under any of the alternative repayment arrangements offered by [the Provider]."

We disagree as the proposed payment we have made, and are paying, constitutes a Part Capital and Interest Arrangement (per your own definition).

As per your website: Part Capital and Interest Arrangement – This arrangement allows you to pay the full interest on your mortgage as well as make repayments towards your mortgage balance. At the end of the mortgage term, the outstanding mortgage balance will be due.

According to your own rough calculations the full interest on Mortgage 3731 would be approximately €123 paramount; Mortgage 4389 approximately €139 per month and Mortgage 5745 would be approximately €180 per month. This would mean that interest only for all three accounts would total in the region of €442 per month.

We are proposing (and paying) €964.00 per month which means that approximately €522.00 is being cleared off the capital balance of our accounts thus we are already making a part capital and interest payment.

We request to enter into a Part Capital and Interest Arrangement for the duration of our mortgage and are aware that when the loan matures that the remaining balance is due. ..."

By letter dated **22 January 2018** (the correct date would appear to be 22 January 2019), the Appeals Board wrote to the Complainants informing them of its decision to decline their appeal and uphold the decision of the ASU on the basis of insufficient disposable income.

On **22 February 2019**, the Complainants wrote to the Provider enclosing an undated SFS and informed the Provider of "a significant increase in household income."

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In this letter, the Complainants explained, as follows:

“As demonstrated in the SFS our payment capacity has increased to €1499.00 per month. We ask that you enter into an arrangement for the above amount for the remaining duration of our loans.

We understand that entering into such an arrangement would mean any remaining balances would be due in full when the agreement ends/mortgage matures.

We know that our property is in positive equity and we anticipate that this will continue to be the case for the foreseeable future.

Entering into such an agreement would allow us to remain in our family home whilst we continued to reduce our overall outstanding capital balance. ...”

The Provider requested certain supporting documentation from the Complainants by letter dated **27 February 2019**. This was subsequently furnished by the Complainants together with an SFS dated **14 March 2019**.

In response to the Complainants’ proposal and SFS, on **27 March 2019**, the Provider wrote to the Complainants in essentially identical terms as its letter of **2 July 2018**.

However, this letter contained the following summary of the Complainants’ repayment capacity:

	SFS	Mortgage Assessment
Total Monthly Income¹:	€4,324.00	€5,076.00
Total Monthly Expenditure²:	€2,825.00	€2,725.00
Capacity to meet Monthly Debt Repayments³:	€1,499.00	€2,351.00

I note from the Provider’s correspondence dated **26 March 2019** that the Complainants’ total loan repayments stood at €3,028 with arrears of approximately €22,000.

By letter dated **11 April 2019**, third party representative (on behalf of the Complainants) wrote to the Appeals Board with the following proposal:

“The couple are proposing the following which will see you recoup the full outstanding balance of the above accounts:

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An agreement to pay 1499 per month to be distributed across the three accounts referenced above for the next 33 months which we believe to be in line with the maturity date of the main mortgage. We note this payment will cover the interest and pay down in the region of 36k of the capital (less interest) against the aforementioned loans.

At the conclusion of this agreement my clients have stated their intention to sell the above property.

Estimated value of the property is currently €320,000 as demonstrated by the sale agreement on [a comparator property]. Therefore we conclude the [Complainants] could potentially net them in the region of 120k after fees if they were to sell their home now. However, to purchase an apartment in [locality] they estimate that they would need a minimum of €150k. The above agreement would enable them to realise the shortfall.

The above agreement proposes to clear the outstanding mortgage and give them the ability to purchase an apartment and stay in their family. We feel that this proposal represents the best outcome for all parties concern (sic) and look forward to your written reply.”

By letters dated **28** and **29 May 2019**, the Appeals Board wrote to the third party representative advising that it was declining the Complainants’ appeal due to there being insufficient disposable income available to service repayments.

Analysis

The evidence shows that the Complainants were unable to afford their current monthly part capital and interest repayments of approximately €3,000. I note that both Complainants were retired with their only source of income being pension income. However, I note the SFS submitted in **February 2019**, indicated that the First Complainant had been in employment for the previous two months but this was noted as not being on a permanent basis. Separately, I also note that the Complainants’ daughter was assisting them with the monthly repayments.

In its Complaint Response, the Provider has set out the basis for its decision to decline the Complainants’ requests/proposals for alternative repayment arrangements.

The Provider has also submitted Assessment Notes in respect of each of the SFSs submitted by the Complainants together with the Appeals Board Notes in respect of each of the Complainants’ appeals. Having reviewed these notes, I believe the Provider has shown that it engaged in a detailed assessment of each of the Complainants’ requests for alternative repayment arrangements and their subsequent appeals.

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In seeking an alternative repayment arrangement, the Complainants are seeking to re-negotiate or alter the terms of their loan agreements. While the Provider is required to consider any such requests or proposals, it is not required to accept them or offer an alternative repayment arrangement. A decision of this nature is a matter within the commercial discretion of the Provider.

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

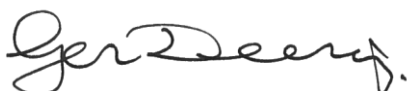
Although the Complainants are dissatisfied with the Provider's decisions, they have not identified anything wrong with the manner in which the Provider assessed their requests/proposals, the subsequent appeals or the basis for the decisions of the ASU or the Appeals Board. Furthermore, simply because the Complainants were willing to pay an amount that would cover the interest portion of their loans together with an amount towards the capital balance does not mean that such an offer should be considered an acceptable part capital and interest arrangement that should be accepted or offered by the Provider, even in circumstances where the Complainants indicated their intention to sell the mortgaged property on the maturity of their loans.

Accordingly, I do not consider that the Provider's conduct in declining to offer an alternative repayment arrangement to the Complainants or declining to accept their proposals to have been unreasonable, unjust, oppressive or improperly discriminatory. Therefore, I do not uphold this complaint.

Conclusion

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

2 June 2021

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

(a) ensures that—

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

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

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

