



<u>Decision Ref:</u>	2021-0447
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to implement payment terms Dissatisfaction with customer service Arrears handling (non- Mortgage Arrears Resolution Process) Classification of borrower as non-cooperating
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Complainants' Mortgage account and the refusal of the Provider to implement a payment break due to the COVID-19 Pandemic.

The Complainants' Case

The First Complainant submits that he lost his source of income due to the COVID-19 pandemic and was in receipt of unemployment benefit and the Second Complainant's income was also much reduced. The Complainant says he was awarded Jobseeker's Benefit (Self-Employed) on **17 March 2020**.

On **23 March 2020**, the First Complainant wrote to the Provider requesting a mortgage payment break for three months for the Complainants' mortgage until the COVID-19 crisis was over. The First Complainant outlined in the letter that he had lost his job due to Covid 19 and that the Second Complainant's income was much reduced. The First Complainant submits that on **3 April 2020**, the Provider telephoned him to inform him that his request was declined.

The Complainants state that the Provider explained that this request was denied because their account was already in difficulty before **29 February 2020** and not due to Covid 19 situation.

The Complainants say that on **3 April 2020**, they received a letter to inform them that on three occasions, they had not made their monthly payments in full and they did not have an alternative repayment arrangement in place. It outlined the consequences of being classified as non-cooperating under the provisions of the Mortgage Arrears Resolution Process, including the potential for legal proceedings to be initiated.

The First Complainant made a query to his local Teachta Dála (TD) regarding his complaint and on **4 June 2020** he received a response on the issue of his mortgage payment break. A complaint was made to this Office on **26 May 2020**.

On **4 June 2020**, the Complainants made a complaint to the Provider concerning the Provider's decision to deny their request for a mortgage payment break. The Provider wrote to the Complainants on **30 June 2020** pointing out that the Complainants had been in arrears and indebted, prior to COVID-19 and a payment break on their account would lead to an overall greater indebtedness because deferred payments are not waived, and interest will continue to be applied.

The Complainants state that despite the country being shut down due to COVID-19 restrictions, they were required to pay their mortgage, despite barely having enough to live on. The Complainants submit that they had no income, apart from living expenses and queried how a payment break was not suitable for their position. The Complainants submit that the Provider was not acting in their best interests, by asking them to pay at a time when they had no money due to a government-imposed lockdown.

The Complainants have submitted that the Provider has not adhered to the Central Bank guidance on COVID-19 pandemic payment breaks.

The Provider's Case

The Provider noted the Central Bank Guidelines on the availability of payment breaks for affected borrowers.

The Provider submits that it deemed the Complainants' account to have fallen into arrears and noted that they were not in a performing restructure arrangement. The Provider says the arrears stood at €145,580.18 (one hundred and forty-five thousand, five hundred and eighty euro and eighteen cent) at close of business on **29 February 2020**.

In its letter dated **30 June 2020** to the Complainants, the Provider stated that the Complainants' payment difficulties arose prior to the COVID-19 situation and if the Provider were to apply the Covid-19 payment break to an account, the deferred payments would not be waived and would remain owing. The Provider also stated that interest would also continue to be charged on the account, with the overall costs of the credit increasing.

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The Provider submits that the options open to the Complainants were (i) their payment would be increased on a monthly basis, following the expiry of the payment break to address the deferred payments or (ii) their payments would remain unchanged, but the term for the mortgage would be increased by the same period of time as the payments had been deferred.

The Provider contends that by applying the COVID-19 payment break on the Complainants' account, there would have been an increased indebtedness and credit due on the Complainants' account. The Provider states it did not consider a payment break to be suitable short-term support for the Complainants in the circumstances. The Provider contends that it suggested to the Complainants that it would work with them to assess what options were available to them, with a view to addressing the arrears on the account.

In the Provider's letter to this Office on **21 January 2021**, it argued that the Central Bank Guidelines meant a payment break was to be considered on a case-by-case basis and granted if it was an appropriate short-term support, in the circumstances. The Provider says it assessed the circumstances of the Complainants and it contends that it found that a payment break was not an appropriate short-term support for the Complainants' circumstances.

The Provider submits that it is satisfied that it acted in accordance with guidance provided by the Central Bank in relation to COVID-19 forbearance.

The Complaints for Adjudication

The Complainants' complaint is that in March/April 2020, the Provider wrongfully and/or unreasonably refused their request for a three month payment break, due to existing arrears on their mortgage account.

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.

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A Preliminary Decision was issued to the parties on **2 November 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

TIMELINE

In **February 2020** the Provider purchased the Complainants' mortgage loan from the previous owner.

On **17 March 2020**, the First Complainant received a letter which confirmed that his application for Jobseeker's Benefit for self-employed persons, was successful. He would be paid a weekly rate of €377.50 (three hundred and seventy-seven euro and fifty cent).

On **23 March 2020**, the First Complainant telephoned the Provider to indicate that he could not make the mortgage repayments. The Complainant stated to the Provider during this call that the Second Complainant and he are both self-employed and were recently approved for the Jobseeker's Benefit COVID-19 payment. The First Complainant sought to avail of a three-month mortgage payment moratorium. The Provider stated "*that hasn't been offered yet, and that is still in talks*". The Provider's agent stated that at the moment all he could do was to refer the matter to the Provider's main office, and that office would be in contact with the Complainants. The First Complainant stated he would not be paying his mortgage for the month of March 2020. The Provider stated it "*understands it is going to be a difficult time in an unprecedented situation and [the Provider] would be monitoring it on an ongoing basis*" and "*contact us if you need anything*".

The Complainants have stated that they actually subsequently paid €200 (two hundred euro) per month during the three months of lockdown, despite what the First Complainant had stated during this call.

On **25 March 2020** the Provider received a letter from the Complainants requesting a COVID-19 payment break. The letter outlined that the First Complainant had lost his work. The letter also indicated that the First Complainant's income was "*much reduced*".

On **26 March 2020** the Provider sent a letter to the Complainants stating, "*Further to your contact with us on 23rd March 2020 we wish to confirm that we are dealing with the matter you raised and will revert to you in due course.*" This was followed up with the telephone call between the First Complainant and Provider on **3 April 2020**, when the Provider confirmed to the First Complainant that no forbearance would apply to the mortgage.

An audio recording of this telephone conversation, has been submitted in evidence and included the following exchange:

Provider Agent: *"...I understand you made contact with [the Provider] in relation to Covid-19 financial payment break?"*

First Complainant: *"That's correct"*

Provider Agent: *"Just ringing to say unfortunately we cannot offer at this stage any forbearance options based on the fact the criteria for forbearance requires that there are no arrears at the end of Feb[ruary]"*

First Complainant: *"How are we meant pay any if we're on unemployment benefits?"*

Provider Agent: *"That's understandable, we obviously understand that this is a very difficult time with the crisis causing severe difficulties. And whilst we understand your income is reduced, we recommend you continue to pay what you can, when you can, toward your mortgage. When the [inaudible] situation passes, which I'm sure it will do, and your income returns to its normal level, we'll start to work with you to assess what options are available, with a view to paying the arrears on the account."*

First Complainant: *"- Ok -"*

Provider Agent: *"-which will probably require a Standard Financial Statement and we kind of work through the key criteria that it doesn't meet so we can't offer the options but we certainly will be engaging with you when it's appropriate and the income returns to normal...just to work on the arrears."*

First Complainant: *"OK"*

Provider Agent: *"Just to reiterate to pay what you can, when you can on the account...appreciate the difficult time. Obviously, any unpaid amount will increase your level of arrears and will result in the overall cost of credit ultimately. I've probably stated the obvious there..."*

First Complainant: *"Ya"*

Provider Agent: *"I would recommend, if you can, make what you can now"*

First Complainant: *"Will do"*

Provider Agent: *"OK"*

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On **03 April 2020**, the Complainants received a letter from the Provider dated 1 April 2020, concerning their mortgage, with account number of *****3503. The letter stated that *“Arrears on balance as of 01 April 2020: €148,005.73 (one hundred and forty-eight thousand, and five euro and seventy three cent)”*. The letter stated the following:

“You have not made your monthly payment in full on three occasions and you do not have an alternative repayment arrangement in place.

We are required by the Code of Conduct on Mortgage Arrears to inform you of the potential for legal proceedings for repossession of your property where you are considered not to be co-operating.

The implications of being classified as not co-operating are as follows:

- a. Your case will be managed outside of the Mortgage Arrears Resolution Process (MARP) and the protection of MARP will no longer apply.*
- b. We can commence legal proceedings against you to repossess your property.*
- ...*
- c. Being classified as not co-operating may render you not eligible for a Personal Insolvency Arrangement in accordance with the Personal Insolvency Act 2012 [as amended].”*

The letter from the Provider went on to state:

“Additional information:

You should note that interest is charged on capital and interest in arrears at the rate of interest on your mortgage account, in accordance with the terms and conditions of your facility letter.

...

We urge you to act immediately on this notification and to contact our Arrears Support Unit (ASU) 01 2096300 or 1850 818 000 if you have not already done so.”

This letter was dated **1 April 2020**, and had been sent prior to the telephone call on **3 April 2020**.

On **5 May 2020**, the Complainants gave written permission for a Third Party to make enquiries about their mortgage account on their behalf. On the same day, the Third Party emailed the Provider setting out the position regarding COVID unemployment. The email also sought information as to what *“processes [the Provider] have in place to facilitate reduced payments for customers temporarily unemployed for the period of the pandemic and how Alternative Payment Arrangements are being treated for the duration of the shutdown.”*

On **26 May 2020**, a complaint was made to this Office.

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On **29 May 2020** the Provider confirmed receipt of the Complainants' Third Party Authority Instructions. Under Chapter 3, paragraph 8 of the Code of Conduct on Mortgage Arrears (CCMA), the Provider was required to liaise with the Third Party nominated by the Complainants, which the Provider duly did.

On **4 June 2020**, the First Complainant raised a query to his local TD regarding his complaint and when the TD sought information regarding the situation, he then replied to the Complainants with the following response on the matter which included information which was later that week, included in an Appendix to the "Dear CEO" letter from the Central Bank of Ireland dated 8 June 2020

"The Central Bank have stated that payment breaks should be a generally available option to affected borrowers, including those borrowers already in financial distress, forbearance and/or in an Alternative Repayment Arrangement (APA).

Those borrowers in arrears but not in a performing restructure should be considered on a case by case basis, and be granted a full payment break if that is an appropriate short-term support for their circumstances. Regulated firms should ensure approaches are consistent with existing arrears strategies and operations. The Central Bank of Ireland (the Central Bank) expects all banks, retail credit and credit servicing firms to take a consumer-focused approach and to act in their customers' best interests."

On **4 June 2020** the Complainants sent a complaint to the Provider concerning the Provider's response to the COVID-19 payment break situation. On **11 June 2020**, the Provider acknowledged this complaint and stated it was investigating the matter.

On **12 June 2020**, the Provider telephoned the Third Party to discuss the Complainants' mortgage account. The Third Party stated that the Complainants had been making monthly payments of €1,200 (one thousand two hundred euro) on their mortgage but due to reduced income this had been reduced to €200 (two hundred euro) and they were "*wondering what that meant for the agreement they had in place at the moment and what the Central Bank is doing at the moment*".

The Provider stated it was "*aligned to the industry*" in respect of forbearance being applied, and this was "*for the purpose of preventing cases that were already up to date from falling in arrears, primarily.*" The Provider stated that the repayment of the €1,200 (one thousand two hundred euro) "*was not a formal agreement*". The Provider further added that "*any arrears on an account that were prior to February 2020 would have been deemed as not caused by Covid.*" The Provider also advised that the Complainants had exited the MARP with the previous owner of the mortgage loan in **October 2019**. The Provider made reference to the earlier telephone conversation between the First Complainant and the Provider on **3 April 2020**, stating to the Third Party "[the First Complainant] *certainly didn't raise any issue on that call...so from that perspective we didn't have any other option to have further discussion with him.*" (In their evidence to this Office, the Complainants reject the comment that they did not raise any issue during that call, stating the First Complainant "*did and they point blank refused to help me!*").

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The Third Party stated during the telephone call that they were looking for a resolution of the matter and that the Complainants were “engaging”. The Provider stated that the Complainants were “not necessarily eligible of the COVID forbearance” but that does come down to the provisions of the MARP.

The Third Party stated he would try to get the Complainants to “think about the [standard financial statement] ...when the [Complainants] were back working as normal”. The Provider stated it “did not think COVID forbearance is going to solve it long-term.”

The Complainants made reference to the content of the telephone of **12 June 2020** call in correspondence with this Office for the purpose of their complaint. In particular, the Provider’s comment that forbearance would only be “sticky plaster” on the situation. The Complainants argued they had “been paying [the Provider] €1,200 (one thousand two hundred euro) per month without fail and we then found ourselves without adequate income through no fault of our own.”

The Complainants also submitted that, in response to the Provider stating that it was in-line with industry guidelines “if they were in line with industry guidelines, why did they not give us forbearance during a time when we had little income”.)

The Third Party also emailed the Provider on **12 June 2020** seeking any other documents that the Provider required the Complainants to complete, including the SFS. On **15 June 2020**, the Provider wrote to the Third Party in relation to the Complainants’ mortgage account. The letter included the following:

“We enclose a copy of our Standard Financial Statement (SFS). Please complete the attached SFS form with the borrower(s) and return it to us before 1 July 2020 so that we can assess their current circumstances and consider the options that may be available them.”

The letter went on to say:

“The Central Bank of Ireland have produced a consumer guide, Mortgage Arrears – A Consumer Guide to Completing a Standard Financial Statement, and this is available on their website, www.centralbank.ie.”

And finally:

“It is important you engage with us by completing the SFS to enable us to assess their financial circumstances and for them to avail of their protections of the Mortgage Arrears Resolution Process (MARP)”

It is noted that this letter also enclosed a copy of the Provider’s SFS to be completed. On **15 June 2020**, the Provider sent a separate letter to the Third Party enclosing documentation which had been sought, including a mortgage statement since drawdown in 2008, and a copy of the “Provision 45” letter, issued by the previous owner of the mortgage loan.

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On **30 June 2020**, the Provider set out its reasons for refusing the Covid-19 payment break (as referenced above).

On **3 July 2020**, the Provider telephoned the Third Party to discuss the Complainants' mortgage account. The Provider confirmed with the Third Party that there was a complaint made to the Provider by the Complainants regarding the refusal of forbearance on the mortgage account payments.

During this telephone call, the Provider stated "*the monthly repayment would be €2,425.55*" for the mortgage since **February 2020** and that these monthly repayments "*were on a variable rate of 4.50%*". The Provider stated that the "*arrears on the account ...have been on the account since May 2011.*"

The Provider further stated during this telephone call that there had been a temporary arrangement for the Complainants' mortgage account to assist in repaying the arrears, but that this had expired in **September 2019**. The Provider also stated that the Complainants were paying "*roughly €1200 since August 2018.*"

The Third Party requested that the Provider outline the options available to the Complainants and that the Complainants "*would have to be put into some sort of arrangement*". The Provider informed the Third Party that it still did not have any SFS, to which the Third Party stated: "*I will emphasise that with [the Complainants]*".

The Provider also stated during this telephone call that the previous owner had issued a non-cooperation letter under provision 3 of the MARP in **March 2014**. (The Complainants have made specific reference to this comment submitting that they had "*cooperated at all times*".)

The Code of Conduct on Mortgage Arrears (CCMA) sets out how mortgage lenders must treat borrowers in or facing mortgage arrears, with due regard to the fact that each case of mortgage arrears is unique and needs to be considered on its own merits. At paragraph 28 of the CCMA it provides:

"Prior to classifying a borrower as not co-operating, a lender must write to the borrower and:

- a) inform the borrower that he/she will be classified as not co-operating if he/she does not undertake specific actions within at least 20 business days of the date of the letter to enable the lender to complete an assessment of the borrower's circumstances;"*

The Provider did not classify the Complainants as non-co-operating (outside of this brief reference during the **3 July 2020** telephone conversation). Under the CCMA, it must first write to the Complainants and allow them time to undertake specific actions.

As a result, there is no evidence before me to indicate that the Complainants have been deemed to be non-co-operative with the Provider, within the meaning of the CCMA in respect of their conduct relevant to this investigation. Indeed, the Provider has not attempted to classify the Complainants as non-co-operating, in any of its correspondence with this Office, or in its written correspondence with the Complainants.

On **30 July 2020**, the Provider wrote to the Third Party and stated that that the Complainants had been issued with a “No Options” letter in **September 2019** from the previous owner’s agent. The letter also said that the Complainants had had a six-month Moratorium of €863.83 (eight hundred and sixty three euro and eighty three cent) in **July 2016**. The Provider stated in the letter

“As the borrowers are now outside of MARP (Mortgage Arrears Resolution Process), once we have the revised SFS (Standard Financial Statement), we will assess for all options suitable to the Borrowers.”

I note that on **21 August 2020**, the Provider telephoned the Third Party to discuss the Complainants’ mortgage. The Third Party stated during the call that it was not aware of the complaint to this Office. The Provider stated that it:

“would be willing do another Standard Financial Statement ...and certainly look at if circumstances have changed and if they are able to meet repayments...we can certainly look at that as well.”

The Provider went to state: *“the full repayments haven’t been met since ... November 2019”*.

The Complainants submitted to this Office that they *“find it unbelievable given what is happening in addition they told us by phone they aren’t giving any breaks to mortgage arrears that were in arrears.”* In response to the Provider stating that the payment break was not suitable for the Complainants, the Complainants argued *“We had no income, apart from living expenses. How can they say this was not suitable for us?...Perhaps they mean it was not suitable for them.”*

Analysis

On 8 June 2020, the Central Bank of Ireland communicated its supervisory expectations regarding payment breaks during COVID-19. The Provider has referred to the document as the “the Central Bank Guidelines”, which at Appendix I state as follows:

“The Central Bank expects that:

- 1. Regulated firms act in a way that protects the best interests of borrowers and in line with the relevant codes and regulatory requirements.*
- 2. Regulated firms give appropriate support to borrowers whose incomes and affordability have been affected by COVID-19.*

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3. *Payment breaks should be a generally available option to affected borrowers, including those borrowers already in financial distress, forbearance and/or in Alternative Repayment Arrangement (ARA). Those borrowers in arrears but not in a performing restructure should be considered on a case-by-case basis, and be granted a payment break if that is an appropriate short term support for their circumstances. Regulated firms should ensure approaches are consistent with existing arrears strategies and operations. It is expected that all borrowers are allowed to make partial repayments where they wish to, while availing of a payment break”.*

[Underlining added for emphasis]

The Central Bank Guidelines at Appendix II set out the information that it expects will be provided to borrowers including:

“b. That repayments are zero for the duration of the payment break, or include clear monetary amount of the repayment agreed between the borrower and the firm, as relevant.

...

f. The borrower’s account will not go into arrears due to availing of the payment break.

...

i. How the interest is treated during and after the payment break.

j. Individualised repayment amounts and cost of credit after the payment break term, along with explanation as to why these amounts have increased. This is to provide the borrower with individualised amounts to facilitate borrower decisions on whether to extend the term of the loan, or to retain the original tenor of the loan. While these are not the only options that are available to the borrower, at a minimum, individualised repayment amounts and cost of credit should be included for both these options. Where an option has been chosen by the borrower only that cost of credit should be provided.”

Although the Provider has not referenced dates for the Central Bank Guidelines, I note from Central Bank website that:

- Appendix I was communicated to the Banking & Payment Federation Ireland (BPF) on 26 May 2020.
- Appendix II was communicated to the Banking & Payment Federation Ireland (BPF) on 8 June 2020.

Accordingly, because these Guidelines were only communicated after **3 April 2020**, they were not in place when the Provider declined in early April 2020, to apply a mortgage payment break to the Complainants’ borrowing, because of COVID-19.

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Having considered the correspondence between the parties, I accept that the Complainants were borrowers *“in arrears but not in a performing restructure”* and so it was open to the Provider to allow *“a payment break if that is an appropriate short term support for their circumstances”*. There was no mandatory obligation on the Provider to do so, and rather, it was up to the Provider to take such decisions on whether to apply a payment break on a *“case by case basis”*. The Complainants were going through a very difficult time, due to their inability to work during the COVID-19 lockdown, but it was a matter for the Provider’s own discretion as to whether or not to agree to a payment break.

I note that the **26 March 2020** telephone call may have caused some initial confusion for the Complainants as the Provider stated *“we recommend you continue to pay what you can, when you can toward your mortgage.”*

Though this was somewhat cleared up when the Provider reiterated *“Obviously any unpaid amount will increase your level of arrears and will result in the overall cost of credit ultimately”*, the Provider could in my opinion, have been clearer during this call in explaining its decision to refuse the COVID-19 payment break. The reasons for refusing the COVID-19 payment break were first explained in detail in its **30 June 2020** letter, which I note was only sent after complaints were made to both this Office and to the Provider itself, by the Complainants.

When a borrower is deemed to be in arrears, the MARP provides that:

In order to determine which options for alternative repayment arrangements are viable for each particular case, a lender must explore all of the options for alternative repayment arrangements offered by that lender. Such alternative repayment arrangements may include:

- a) interest only repayments on the mortgage for a specified period of time;*
- b) permanently reducing the interest rate on the mortgage;*
- c) temporarily reducing the interest rate on the mortgage for a specified period of time;*
- d) an arrangement to pay interest and part of the normal capital amount for a specified period of time;*
- e) deferring payment of all or part of the scheduled mortgage repayment for a specified period of time;*
- f) extending the term of the mortgage;*
- g) changing the type of the mortgage;*
- h) adding arrears and interest to the principal amount due;*
- i) equity participation;*
- j) warehousing part of the mortgage (including through a split mortgage);*
- k) reducing the principal sum to a specified amount; and*
- l) any voluntary scheme to which the lender has signed up e.g. Deferred Interest Scheme.”*

The Provider indicated in its correspondence that once an SFS was furnished by the Complainants it would then be in a position to “*assess options suitable to the Complainants*”. The options available under MARP are as set out above, and though I cannot comment on what available options may be applied to the Complainants, the Provider has confirmed in its correspondence that it will engage with the Complainants.

Finally, the Consumer Protection Code (CPC) states at para 8.3:

“8.3 Where an account is in arrears, a regulated entity must seek to agree an approach (whether with a personal consumer or through a third party nominated by the personal consumer in accordance with Provision 8.5) that will assist the personal consumer in resolving the arrears.”

I note that there was a lack of engagement on the part of the Complainants in providing a completed SFS, and it was possible for the Provider to “*explore all of the options for alternative repayment arrangements*”, only when the documentation requested was supplied by the Complainants.

I note that when declining the Complainants’ application for a payment break on **3 April 2020**, the Provider’s agent on this call stated:

“ When the [inaudible] situation passes, which I’m sure it will do, and your income returns to its normal level, we’ll start to work with you to assess what options are available, with a view to paying the arrears on the account [...] which will probably require a standard financial statement and we kind of work through the key criteria that it doesn’t meet so we can’t offer the options but we certainly will be engaging with you when it’s appropriate and the income returns to normal...just to work on the arrears” [emphasis added]

However, no SFS or documentation regarding alternative repayment arrangements was sent to the Complainants by the Provider, until it was specifically prompted by the Third Party in **June 2020**. Providers, under the MARP, are obliged as follows:

*“31. In relation to all MARP cases, a lender must:
a) provide the borrower with the standard financial statement at the earliest appropriate opportunity;”*

In my opinion, notwithstanding the letter of September 2019 from the previous owner’s agent, referred to as the “No Options” letter, the Provider should have issued the SFS to the Complainants when they made contact at the end of March 2020, with a view to ensuring that the Complainants were aware of the information which the Provider needed.

I am conscious that in early 2020, the country faced an unprecedented situation and in April 2020, following the engagement of the Central Bank of Ireland with the industry body for banks, the main banking entities indicated a willingness to extend certain payment breaks where appropriate, for borrowers directly impacted by the COVID-19 emergency situation.

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I am satisfied however that notwithstanding the difficult situation which the Complainants found themselves in, the Provider was entitled in its discretion to decline the Complainants' payment break requested at the end of March 2020, because of very substantial arrears already appearing on the account at that time.

I am conscious that the information given by the Provider to the Complainants during the telephone call on 3 April 2020 was accurate because although it was certainly true that the COVID-19 situation had a financial impact on the Complainants, they were nevertheless in very substantial arrears already, at the time when this emergency struck.

I am also satisfied that the advice given by the Provider agents to the Complainants at that time, that they pay what they could, when they could, during this ongoing situation, was appropriate.

Whilst the Complainants were unable to pay more than approximately €200 per month towards a monthly liability which stood at €2,425 at that time, nevertheless this ongoing payment enabled them to demonstrate a willingness during very difficult circumstances to continue to engage with the Provider in relation to their debt.

I am also satisfied that shortly after the Central Bank of Ireland communicated the contents of its Dear CEO letter and Appendices to the industry on 8 June 2020, the Provider telephoned the third party representing the Complainants regarding this matter and on foot of that conversation, the SFS was sent to the Complainants for completion and return.

Accordingly, whilst I am satisfied that the Provider should, by way of compliance with the Mortgage Arrears Resolution Process, have issued a Standard Financial Statement to the Complainants for completion, at the beginning of April 2020, at the time of the parties' discussions, nevertheless I recognise that in what was realistically an evolving situation, there was a risk that if the SFS had been issued to the Complainants at that earlier time, that this might not have been sufficient in due course for the Provider's regulatory requirements, once the Central Bank of Ireland finalised its communications regarding its expectations.

Accordingly, whilst the parties' communications during this initial period of the COVID-19 pandemic, display a technical breach of the Provider of the provisions of the MARP, nevertheless, in the overall circumstances, taking account of the fact that this complaint is that the Provider wrongfully refused the Complainants' request in March 2020 for a 3 month payment break, I do not consider that this warrants the upholding of the complaint.

For the reasons outlined above, I am satisfied that the Provider had an overall discretion in its consideration of the Complainants' request and taking account of the substantial arrears apparent on the account which demonstrated that the arrears situation had existed long before the COVID-19 pandemic, I am not satisfied that if the Provider had issued an SFS to the Complainants for completion, at the end of March 2020/early April 2020, this would have resulted in a different outcome for them.

Accordingly, for the reasons outlined above, I do not consider it appropriate to uphold this complaint.

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Conclusion

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

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



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

25 November 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.