An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0014
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Arrears handling - Mortgage Arears Resolution Process Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Failure to process instructions in a timely manner Classification of borrower as non-cooperating
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the administration of the Complainant's mortgage loan account.

The Complainant's Case

The Complainant held a mortgage loan account with the Provider. The complaint is in relation to poor customer service, complaint handling, and maladministration allegedly shown by the Provider in respect of the Complainant's mortgage loan account from **July 2016** until the property was sold (and the account paid off) in **November 2018**. It is stated that the loan account was incepted in 1993 in respect of a family home. The Complainant also asserts that the Provider has continually breached provisions of the mortgage arrears resolution process (MARP) set out in the Code of Conduct on M*ortgage* Arrears (CCMA).

The Complainant states that following a period of illness, she *"had the benefit of the cover of a Moratorium up to and including the month of July 2016"*. The Complainant says that she completed a new SFS over the telephone on Saturday **24 September 2016**.

She goes on to state that at that time a third party intermediary had assisted her with the SFS. A proposal of €200.00 per month was put forth by her, however the Provider suggested that *"funds were there to meet the full mortgage repayment amount"*, which was stated as being approximately €2,000.00 per month. The Complainant states that it became apparent that an error had occurred with the inputting of the figures, and the Provider *"instantly"* rejected her proposal.

The Complainant says that she complained to the Provider in her letter dated **26 September 2016** and states that she did not receive an acknowledgement of her complaint until **15 February 2017**. Following a series of holding letters from March 2017 to November 2018, the Complainant states that she was informed the matter was being investigated. It is submitted that she continued to try to contact the Provider during this time. The Complainant states that she then received a letter from the arrears support unit (ASU) dated **20 November 2018** deeming her as not co-operating. She states that *"the paradox here is that earlier the same day [the Complainant] was with her solicitor to pay off the outstanding mortgage to the Provider"*, having just sold the property. On **20 December 2018** the Complainant states she received a call from an employee of the Provider who stated *"he'd been out of the country and that the [Complainant's] customer care complaint had sat and remained un-actioned by that division of the [Provider] until his return"*.

The Complainant is critical of the Provider, saying that she was not given the option to put a *"temporary repayment structure in place while the ASU considered its decision"* as she says *"18 months later, the arrears situation has worsened"*. The Complainant cites *"numerous calls"* and abnormal delays in processing her SFS as having impacted on the arrears situation – circa €10,000 at the end of 2018 – which in turn has impacted on her credit rating. The Complainant disputes any suggestion that she was not co-operating and submits that both her intermediary and she herself tried to clarify her financial position and query how the Provider considered her able to commit to a monthly repayment of €2,000. She states that *"it took six months to change the third party approval, something that is meant to take only days"*. The Complainant goes on to stay the *"dysfunctionality of their internal processes means that whilst stuck in their customer complaints process since February 2017"* the Provider's ASU wrote to the Complainant on **17 October 2018** to appoint a relationship manager.

Furthermore, the Complainant contends that *"failures of communication both within the [Provider Head Office] Inter departments, on an operational and procedural basis and also between the [Provider's] other support services outside [of Ireland] [have] impact heavily on the customer/borrower"*.

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The complaint is that the Provider:

1. Breached the provisions of the both the Consumer Protection Code 2012 (CPC) and the CCMA;

2. Failed to respond to the Complainant's complaint in a satisfactory and timely manner;

3. Delayed in investigating the Complainant's complaint and in putting a new alternative repayment arrangement (ARA) in place – taking 15 months.

The Complainant wants the Provider to compensate her for breaches of the MARP and the CPC, for the effect this had on her final redemption figure, and for the adverse effect same has had on her credit rating.

The Provider's Case

The Provider's Final Response Letter of **2 January 2019** apologises for assessing repayments made in July 2017 for 3 months as underpayments. It explains that the repayments were deemed underpayments due to the figure for insurance not being encompassed within the total repayment amount, thereby resulting in the ARA being deemed broken. In recognition of this, the Provider made an arrears adjustment of €3,715.75 on the Complainant's account and stated that it would update the Complainant's credit record for the period July-December 2017.

The Provider states that it issued a letter (the date is not specified) regarding the expiry of an existing arrangement and normal monthly repayments being calculated at €830.74. The Provider states that, on **24 September 2016** it proposed a 6 month repayment option to the Complainant whereby arrears would be recapitalised, which the Complainant declined. The Provider states that, as there was no forbearance arrangement in place, arrears continued to accrue on the account each month.

The Provider submits that it reviewed the phone call of **24 September 2016** and states that the SFS was completed correctly with the figures provided by the Complainant over the phone. The Provider repeats that the Complainant declined the repayments proposed by it, preferring that the Provider accept the repayment offer proposed by her of €200.00, which was not acceptable to the Provider.

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The Provider addresses further points in relation to correspondence and delay. It states it received a letter from the Complainant in **November 2016** but states that this letter did not meet the definition of a complaint, and so was not treated as such. The Provider states that it wrote to the authorised third party (ATP) on **2 December 2017** seeking further documentation necessary to complete and consider the SFS. It states that a complaint was received on **10 February 2018**.

The Provider offered the Complainant redress of €250 on **26 July 2018** in response to her complaint – in respect of the repayment error which occurred from July to December 2017. On **2 January 2019** the Provider increased this offer of redress to €600. In its final submissions to this office, dated **10 October 2019** it has increased this offer to €2,500, which it confirms remains open to the Complainant to accept at any time.

Decision

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

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

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 15 January 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.

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Further to the issue of my Preliminary Decision, a substantial number of communications/ submissions were received by this Office from the Complainant over a protracted period of time, copies of which were transmitted to the Provider for its consideration.

The Complainant also arranged for a third party to submit copies of certain documentation to this Office on 26 August 2021, a copy of which was also transmitted to the Provider for its consideration.

The Provider under cover of its e-mail to this Office dated 15 September 2021, advised that it had no further submission to make.

Having considered all of the post Preliminary Decision submissions and all submissions and evidence furnished by both parties (and the third party on behalf of the Complainant), I set out below my final determination.

The Complainant has, in a post Preliminary Decision submission, stated that:

> "*Firstly, the fact that this* [Preliminary Decision] *does not acknowledge my honesty & integrity in my financial dealings, or indeed of those who have assisted me through this process, alarms me greatly. However, I am quite certain that if the reverse were also true where I was a dishonest individual, I would perhaps expect such an outcome from your investigation and the resulting preliminary decision, as the inevitable outcome befitting such a character description".*

This Office does not comment on the character or integrity of parties to complaints to this Office. Therefore, I have made no judgement or comment in relation to the Complainant's character or integrity or the character or integrity of the various individuals who have assisted her over the course of her dealings with the Provider.

The Complainant has also, as part of her post Preliminary Decision submission, made statements regarding this Office's role and responsibilities. The Complainant has stated that:

> "*This is part of your function based on your mission statement as the consumer protector with role responsibilities of supervision and enforcement of regulated policies & procedures function"*
>
> "*Part of your responsibilities as Ombudsman is the supervision and enforcement of regulated policies & procedures function"*

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> "*yet the Central Bank cannot find evidence in support of the process errors lasting many months, 9 to be specific, and I am asking* ***WHY you have not asked for an explanation either?"***

The Complainant also refers to, and quotes from various reports of the Central Bank of Ireland. These reports have no bearing on my adjudication of this complaint.

Furthermore, I must highlight to the parties that this Office is not a regulatory or supervisory body, nor is a part of the Central Bank of Ireland. The Office of the Financial Services and Pensions Ombudsman is an independent and impartial complaint resolution service.

This Office can investigate the procedures undertaken by the Provider regarding the CCMA. However, it will not investigate the details of any re-negotiation of the commercial terms of a mortgage loan which is a matter between the lender and borrower and falls within the commercial discretion of the lender.

The Complainant drew down a mortgage loan with the Provider on **1 March 2002** for IR£74,000 to be repaid over 25 years.

On **2 April 2015** the Provider wrote to the Complainant advising her that an alternative repayment arrangement was due to expire and the Provider had unsuccessfully attempted to contact her.

On **13 May 2015** the Provider wrote to the Complainant advising that her ARA was due to expire, with monthly repayments of €719.63 due to commence on 27 May 2015. Arrears on that date were stated at €666.00.

On **4 June 2015** and following the completion and assessment of a standard financial statement (SFS), the Provider issued a letter confirming that a new ARA had been agreed. This ARA of €30.00 per month was applied for the period from **27 June 2015** to **27 October 2015** inclusive.

On **8 July 2015** the Provider wrote to the Complainant to advise her that an ARA was due to expire on 27 October 2015.

On **29 October 2015** the Provider acknowledged receipt of the SFS and offered a 6 month moratorium based on its contents. This 6 month repayment moratorium was applied for the period from **27 November 2015** to **27 April 2016** inclusive. This letter noted that if insurance cover is payable in addition to the loan repayments, that amount would remain payable each month.

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On **2 March 2016** the Provider wrote to the Complainant to advise her that an ARA was due to expire on 27 April 2016.

On **3 May 2016** the Provider wrote to the Complainant advising that her ARA was due to expire, with monthly repayments of €807.53 due to commence on 27 May 2016.

On **25 May 2016** the Provider acknowledged receipt of an SFS and offered a 3 month moratorium based on its contents. This 3 month repayment moratorium was applied for the period from **27 May 2017** to **27 July 2016** inclusive. This letter noted that the monthly insurance premium payment of €19.03 remained payable.

On **10 June 2016** the Provider wrote to the authorised thirty party for the accountholder, and enclosed recent correspondence issued to the Complainant. Included in this was the 1 June 2016 letter from the Provider advising that the current ARA was due for review and an updated SFS would be required.

On **2 August 2016** the Provider wrote to the Complainant advising that her ARA was due to expire, with monthly repayments of €830.74 due to commence on 27 August 2016.

On **29 August 2016**, the Provider debited €830.74 from the Complainant's account by way of direct debit. However, the Complainant had cancelled the direct debit instruction in August 2013. The Provider reversed this debit on **12 September 2016** having been advised of the issue by the Complainant.

The Complainant has in her post Preliminary Decision submission detailed that "*that this action taken by* [the Provider] *under Irish Law which is in fact ILLEGAL especially as there was no valid direct debit mandate on file*" the Complainant's submission continues and she details that "[p]*art of your responsibilities as Ombudsman is the supervision and enforcement of regulated policies & procedures function".*

I would reiterate that this Office is not a regulatory or supervisory body, nor is a part of the Central Bank of Ireland.

On **24 September 2016** the Complainant telephoned the Provider and provided details for an updated SFS. This is the telephone call where matters came to a head.

It was explained that there was an arrears balance of €464. The Complainant said that she did not believe there were any arrears on the account as she has had ARAs in place. The August direct debit issue was the reason for those arrears. This does not appear to have been a sticking point – the Complainant would have believed that whatever arrears were there would be resolved by backdating an ARA.

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The Complainant explained that her circumstances had changed in that she had income from a student accommodation rental of €640 per month, and that her income from work had picked up. The Complainant was placed on hold so that she could be transferred to an appropriate staff member to go through the SFS figures. The call was transferred and the SFS discussion began.

The Complainant explained that she had a draft SFS and wanted to go through the figures before sending it back. She noted the August direct debit issue that had occurred. There was some confusion as to whether the SFS had in fact already been sent back to the Provider by the Complainant's representative. It was clarified that an SFS had not been received so it could now be discussed on the telephone.

The Complainant was anxious to progress the ARA application. The Complainant confirmed she had 2 dependent adult children, both in full time education. The property itself was discussed, maintained to a good condition, and the Complainant estimated the value at €300,000 roughly. The Complainant explained that she is self-employed and was currently on an assignment since the middle of that month. The Complainant noted that she was not sure what a payment of €20 coming out of her account was, and it was explained that this was likely the insurance premium for payment protection.

The Complainant explained that she had not yet been paid for the work assignment she was currently undertaking, she explained that she received a monthly social welfare benefit of €943.80, and a student accommodation rental income €640. The Complainant explained that her income from the assignment was uncertain, and the income would not be received this month. The issue of the August direct debit and the ensuing arrears arose again. It was explained to the Complainant that a backdating to resolve the arrears would be unlikely to be agreed before the next repayment date (3 days later). However, it does not seem that the Provider's agent was precluding the possibility of a backdating arrangement being put in place if and when an ARA was agreed.

The Complainant estimated the income from her current assignment at €1,000 per month, she did note however that her income from this type of work was subject to negotiation. Ultimately, the figures of €1,000 plus €640 plus €944 were put to the Complainant as the monthly income for the next month, and the Complainant agreed with these figures.

While the Complainant has, in her post Preliminary Decision submission, disagreed with the above statement and has questioned "*how [the FSPO] deduce*[d] *that I agreed with the figures from this call is beyond me, especially if it has been listened to?* ***I never agreed with the figures*** *on this call".*

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From my review of the call, it is clear that when the agent of the Provider detailed the above figures at more than one point in the call the Complainant confirms them.

At around 25 minutes into the call the agent of the Provider states "*income is then 640 rental income from the room, 944 social welfare* yeah?"

To which the Complainant responded, "yeah you rounded it up [referring to the 944] that's fine yes no problem".

The Provider's agent then asked "*what sort of invoice-based income are you expecting as an average ongoing*?"

The Complainant responded that "*she* [referring to the Complainant's representative] *hasn't included on this* [referring to the physical SFS] *there will be an additional one thousand*".

The Provider's agent then asks "*is that just average figure each month*?"

To which the Complainant responded "*well it would be based on, you have to negotiate each contract with what's involved and that is what has been agreed*".

The Provider's agent asks "*would that be a net figure?*"

To which the Complainant confirms "*that would be net figure yes*".

At around 27 minutes into the call the agent of the Provider states "*so I have got as from sort of next month then salary about 1000, rental income still be 640 social welfare would still be 944 yeah?"*

To which the Complainant responded "*yeah*".

I believe any reasonable interpretation of the content of this call supports the view that the Complainant's responses were in agreement with the figures listed by the Provider's agent during the call.

The monthly outgoings were set out by the Complainant. There is no dispute about these monthly outgoing figures.

The Complainant explained that she believed if she was permitted to pay €200 for the next 6 months, then in 6 months' time her work income would have increased (thereby enabling her to return to full monthly repayments).

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The Provider's agent explained that an arrangement would take effect from October onwards, and if a backdating arrangement for the current arrears (which the Complainant noted arose out of the August direct debit issue) was to be put in place she would have to refer the matter back through her third party representative.

No agreement was reached on this issue, the Complainant insisted that any arrangement would have to be backdated, and that she was entitled to this. It was explained to the Complainant that there was not enough business days before the next repayment due date to have a backdated arrangement in place. No more progress was made on this issue.

The Provider's agent moved back to the ARA proposal and advised that the proposal of €200 per month repayments was not acceptable, that based on the figures provided there was affordability to meet the normal monthly repayments, and on that basis the Provider's agent proposed that the Complainant make normal monthly repayments.

The Provider's agent was somewhat confused about the direct debit mandate that was in place.

This confusion arose because the ARA had expired in July, a full payment was called for in August. The Complainant advised that she had already corresponded with the Provider (with her third party representative) that due to staff shortages in the third party there was a delay in agreeing a new ARA, and the full August repayment ought not have been due or called for.

The Provider's agent repeated that the figures provided demonstrated affordability for the full repayment. The Complainant asked "*for the full 800*?" and the Provider confirmed this figure. The Complainant explained that she was only starting out in business and she would not be able to afford it. The Provider's agent confirmed that the figures demonstrated affordability for the full repayments from October onwards, and noted that if the full repayments were made for a period of, for example, 6 months in a row, the arrears (if indeed they had validly arisen) could be recapitalised then. The Complainant stated that she could not commit to the full repayments until such time as she had more certainty with her self-employed income, and that the prudent thing to do would be to accept repayments of €200 as per her proposal.

There then arose an issue where the Complainant mentioned her credit card, and the Provider's agent noted that the Complainant had not mentioned her credit card debt earlier when discussing outgoings. The Complainant stated that she had not understood that short term debt would include a credit card.

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The figures for the credit card debt were furnished and the Provider's agent applied them to her monthly assessment and confirmed that the Provider's assessment was still that the Complainant had demonstrated affordability for the full monthly repayments. The Complainant stated that her self employed assignment income was not guaranteed "*right now as we speak*".

The agent explained that she could only go on the figures that were provided to her. The agent recited a script to the Complainant regarding the Complainant's refusal to accept the Provider's repayment proposal (such as it was).

The Complainant confirmed that she was not agreeable to make full repayments, that her proposal was for €200 per month and that her third party representative had already negotiated this on her behalf in order to allow time to see how her new working arrangements went. The call ended.

On **26 September 2016** the Complainant wrote to the Provider *"to express [her] concerns"* regarding the call that had taken place two day previously. This letter stated the Complainant's belief that an error had occurred in assessing the income and expenditure figures, thereby resulting in the Provider deeming the full repayments to be affordable when the Complainant insisted that they were not. The letter ended with a request that the Provider carry out a *"review of the SFS to establish what has gone wrong here and a consideration of the original proposal presented by me"*. The letter included a signed SFS (dated 26 September 2016) which omitted the estimated €1,000 income from the Complainant's ongoing work assignment.

This is the letter that the Complainant has characterised as a "complaint", but the Provider did not treat as such. The Provider now, in its responses to this office, acknowledges that (leaving aside whether this letter constituted a complaint or not) a complaint was raised by the Complainant by telephone shortly after this letter was sent but was not logged as such. It has apologised for what it describes as a falling down in the communication with the Complainant.

On **29 September 2016** the Provider issued a letter to the Complainant stating that it has assessed her SFS and was offering her an ARA consisting of full monthly repayments for a period of 6 months. It noted that the current outstanding arrears would remain outstanding.

Also on **29 September 2016** the Provider issued a letter stating that the Complainant had rejected this ARA proposal.

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Arising out of the telephone call of 24 September 2016 (in which the Complainant estimated an income of €1,000 from her work assignment, albeit uncertain) and the letter of 26 September 2016 (which disclosed no income from the work assignment), the Provider emailed the Complainant's third party representative on **8 November 2016** to ascertain what income would in fact be obtained from this work assignment.

The email states:

> *"Can you please confirm the levels of income [the Complainant] will be receiving from her new business? I realise from her letter that this is difficult to quantify, however we need to understand this.*
>
> *[The Complainant] told my colleague in July that her net monthly income from self employment would be around €1k, however this has now dropped to €0. Surely this should be somewhere in between, or does she expect to earn nothing and only receive the basic social welfare payment. I'd be grateful if you could help me to understand.*
>
> *[The Complainant] has proposed to pay €200pm to the mortgage, based on the detail of the new SFS there is insufficient affordability to meet this payment. This would also be below the IO amount."*

On **8 November 2016** a different branch of the Complainant's third party representative wrote to the Provider (enclosing a letter of authority) noting that the Complainant had been making repayments of €200 per month for the previous 3 months and asked the Provider to consider accepting repayments of €200 for the next six months in order to allow time for the Complainant to get her business "*off the ground*".

On **9 November 2016** the Provider sent an email to the previous branch of the third party representative advising "*All I need to know is realistically what she will be getting from her business and why the estimate of this went from €1k per month to €0.00 per month. We would not consider anything longer than 6 months at this stage but we need to understand how she will return to [full monthly repayments] before recommending and [sic] proposals to our underwriters".* That third party representative branch responded stating that it no longer acted for the Complainant.

On **28 November 2016** the Provider issued a letter confirming the different branch of the third party representative as an authorised third party.

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An ARA of €105 per month was agreed and applied from **27 July 2017** to **27 September 2017**. During this ARA, the insurance repayment was not included in the €105 figure. This resulted in the arrangement being deemed "broken" and arrears mounting. However, in July 2018 the Provider acknowledged this as an error and adjusted the arrears down by €3,715.75 to reverse the effect of that error.

On **11 October 2017** the third party representative sent an up to date SFS to the Provider. This SFS listed income as €693 from "other e.g. pension, room rent" and €724 from back to work enterprise allowance. No income was set out from employment / assignments. The income and expenditure set out on this SFS described a monthly surplus of €178.13.

From **27 January 2018** to **27 September 2018**, an ARA was in place whereby the Complainant made repayments of €41.65 per month.

The Complainant's mortgage loan account was redeemed on **29 November 2018** following the sale of her house.

Analysis

This mortgage loan account had been rolling from one forbearance arrangement to another for a number of years.

In August 2016, an ARA expired and a full monthly repayment for €830.74 fell due on 27 August 2017. Although the Complainant disputed this, where no ARA has been agreed the full repayment will be due. The third party representative may have been in contact with the Provider on her behalf but there is no evidence before me to find that an arrangement had been agreed in time for the 27 August 2016 repayment.

However, the Provider wrongly applied a direct debit for the full monthly repayment as it did not have a valid direct debit mandate in place – the Complainant had cancelled the mandate in August 2013.

The erroneous direct debit was reversed on 12 September 2016. By the time the telephone call of 24 September 2016 took place there were arrears of €464 on the account – the Complainant had made a reduced repayment but as no ARA had yet been agreed arrears accrued. Again, the Complainant disputed this but, even if the direct debit issue had not arisen, where no ARA is in place only a full repayment will be sufficient to avoid arrears accruing.

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This direct debit issue was clearly troubling for the Complainant, but the reality is that if an ARA had been agreed, these arrears would likely have been recapitalised at some point.

The call of the 24 September 2016 runs to over an hour. From the content of this call, I can find no evidence that the Provider sought repayments of circa €2,000 as the Complainant asserts in her complaint form.

I can also find no evidence that the Provider made an error in relation to the figures used for the SFS on that date – the Provider's agent worked with the figures that she was given by the Complainant on that phone call.

The Complainant has detailed in her post Preliminary Decision submission that "[the Provider's] *Agent assumed the 1,000 was for* ***ongoing work*** *(and incorrect) and I am referring to a payment that is solely* ***for a three-week assignment****, albeit with a future possibility of a possible opening".*

However, from my review of the call recording I note that the Provider's agent had asked "*what sort of invoice-based income are you expecting as an average ongoing?*"

The Complainant responded that "*she* [referring to the Complainant's representative] *hasn't included on this* [referring to the physical SFS] *there will be an additional one thousand*".

The Provider's agent then asks "*is that just average figure each month?*"

To which the Complainant responded "*well it would be based on, you have to negotiate each contract with what's involved and that is what has been agreed*".

The Provider's agent asks "*would that be a net figure?*"

To which the Complainant confirms "*that would be net figure yes*".

The parties then continued to complete the SFS.

It is clear that in this instance the parties may not have clearly understood each other, from my review of the call it was clear the Provider's agent was asking about ongoing monthly expected income from the Complainant's employment. The answer given by the Complainant to this question could reasonably be taken as indicating that the €1,000 was expected to be ongoing.

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In the absence of demonstratable errors in the figures used, this Office will not interfere with the commercial discretion of a provider when deciding whether or not to offer an ARA, or on what terms.

The Complainant's insistence that she be allowed to repay €200 per month for a period of six months was not deemed acceptable to the Provider. That was a decision the Provider was entitled to make.

From this point onwards, negotiations continued, and numerous telephone calls were exchanged. The net issue remained the same; the Provider's assessment of an SFS did not make it agreeable to accepting the Complainant's proposal for repayments of €200 per month. In my Preliminary Decision I stated that on the one hand, when the Complainant had estimated her monthly income from her business at €1,000, this demonstrated a surplus of more than the full monthly repayments (€800-850).

On the other hand, when the Complainant declared zero income from her business, this demonstrated an insufficient surplus to meet the proposed repayments (and left the Provider in the dark as to how the Complainant proposed ultimately to return to full repayments).

The Complainant has detailed in her post Preliminary Decision submission that the above is in incorrect, the Complainant details that it was a "*temporary work assignment of 3 weeks duration paid earnings of circa 1,000 in **October**, not **per month** as you have documented in your report.*

Meaning thereafter the following months continued as follows, Nov 16 - Jan 2017 – ZERO from earnings".

However, as detailed above the Complainant during the call did not make it clear that the €1,000 would not be applicable the following month. I appreciate that perhaps the Complainant did not know at the time what her possible income could be following October. However, based on the question asked by the agent and how the Complainant responded, I believe it was reasonable of the Provider to take the view that the €1,000 was expected to be ongoing.

I can find no evidence of the Provider having unduly delayed in appointing an authorised third party to the account.

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No ARA was agreed from August 2016 up until July 2017. However, I am not satisfied that this 11 month delay was attributable to wrongful conduct on the part of the Provider. Other than its own discretion as to whether or not to agree an ARA, a large portion of time appears to have been spent by it attempting to obtain clear information from the Complainant regarding the income from her business and how, in the long term, the Complainant planned to return to full monthly repayments.

The Complainant took exception to being described as "not co-operating", when the evidence clearly shows that she was engaging with the Provider consistently over a sustained period of time.

The term "not co-operating" is a defined term in the Code of Conduct on Mortgage Arrears (CCMA), where a borrower fulfils certain criteria. It is not a personal attack and while I understand the Complainant's concern, I have been provided with no evidence to find that she was wrongly classified as "not co-operating" within the meaning of that term as set out in the CCMA.

The Provider furnished extensive submissions to this office in response to questions regarding compliance with the CCMA and Mortgage Arrears Resolution Process (MARP). There is no evidence that the Provider has acted in breach of its obligations under the CCMA or MARP procedures.

Eventually, an ARA was agreed for €105 per month from July 2017 to October 2017. This arrangement was deemed broken as the insurance premium was not included in the €105, so the Provider's systems were set up to expect €124.03. This was accepted as an error by the Provider, and it recapitalised the arrears that arose as a result in February 2018.

The Provider received an email from the Complainant's third party representative indicating agreement to an ARA proposal on 13 December 2017, but this was not entered into its system until 20 December 2017, which meant that it was not implemented in time for the December 2017 repayment due date. The Provider acknowledged this error in February 2018.

I am also satisfied that the Provider failed to log a complaint made by the Complainant by telephone during October 2016, after the Complainant had written her letter of 26 September 2016 to the Provider. I am not satisfied that the Provider acted wrongfully in treating that letter as a request for a review or an appeal of a decision, rather than as a complaint. I am not, however, satisfied that the delay in processing the complaint had any bearing on the efforts to agree an ARA.

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It appears that the Complainant was also given the impression that her complaint was essentially on hold while the agent dealing with it went on holiday. This was not acceptable.

When considered in isolation, these errors were relatively minor in nature. However, in the context of the Complainant's circumstances – spending a year attempting to agree an ARA, and then facing the loss of her home – I consider them to be very serious failures by the Provider. One might come to the view that the Complainant's loan was not sustainable, and the Provider's failures did not ultimately cause her to lose her home. However, when a customer is facing the prospect of losing their home, errors of this nature made by a Provider are magnified and add enormously to an already extremely difficult and stressful situation.

Both the Complainant and the Provider have had to devote an enormous amount of resources to what was, in essence, a relatively straightforward complaint. That it became so complicated was due to an effective breakdown in the constructive relationship between Provider and Complainant, where the Provider made legitimate decisions not to agree to an arrangement that the Complainant was insisting upon. That said, the Provider and Complainant continued to deal with each other in a civil and polite manner, despite the fact that (in terms of the negotiation for an ARA) they were at an impasse from September 2016 onwards.

It was most unfortunate that, against the background of forbearance negotiations which ultimately proved unsuccessful, the Provider made a number of customer service errors.

The failures were admitted by the Provider in its Final Response Letters dated 26 July 2018 and 2 January 2019:

a) Failing to log a complaint arising out of a telephone call in October 2016;

b) Causing the July 2017 to December 2017 ARA to be deemed "broken" in error,

c) Thereby causing arrears to accrue;

d) Failing to implement an ARA that had been agreed on 13 December 2017 until 20 December 2017, thereby causing a repayment date to be missed.

I note and welcome that these errors were identified, admitted and (to a certain degree) remedied prior to a complaint being made to this office.

I also note that the Provider offered redress of €250.00 (26 July 2018), €600.00 (2 January 2019) and €2,500.00 (11 June 2020).

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On the basis that I believe the offer of €2,500.00 to be reasonable in the circumstances, and in circumstances where it remains available to the Complainant, 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

7 January 2022

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

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