



<u>Decision Ref:</u>	2022-0023
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process Application of interest rate Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants' complaint relates to poor service experienced during the application process for an alternative repayment arrangement (ARA) in respect of their mortgage loan secured on their primary residence.

The Complainants' Case

The Complainants had entered into a mortgage agreement in April 2006, secured on their primary residence, with the Provider, for a loan amount of €1,383,200. The Complainants submit that they had entered into an ARA in or around April 2013 for 3 years which allowed them to pay all of the interest and a small amount of capital by making monthly repayments of €5,000.

That ARA was to expire in April 2016. The Complainants submit they could not afford to pay full capital and interest repayments which would have been approximately €7,500. They completed a new Standard Financial Statement (SFS) and made contact with the Provider in January 2016 to discuss applying for a new ARA in respect of the mortgage.

On 2 February 2016 the Provider's employee, Mr. F, requested that the Complainants furnish him with a number of documents required for a new ARA application. The Complainants submitted the documents as requested on the same date noting that the SFS would be sent by post.

The Complainants submit that the Provider's employee, on 24 February 2016, stated he could not process their case for review until the Complainants applied for forbearance in respect of a mortgage they had entered into with a third party provider, which was secured on an investment property. It appears that a temporary extension was put in place, by the Provider, on the existing arrangement up until July.

The Complainants contacted the Provider's employee on 15 April 2016 to inform him they had been granted forbearance in respect of their investment property mortgage from their third party provider. The Complainants submit they expected that their SFS and other information would be sent to the "*Credit Committee*" for review promptly.

The Complainants sought an update from the Provider's employee on 17 May 2016. Another employee of the Provider, Ms. L, responded, by email of 27 May 2016, that she had been appointed their relationship manager and that Mr. F had been transferred to another area of the Provider. She stated she would review their file and revert back with an update. The Complainants responded, by email of 27 May 2016, that Mr. F had informed them they were due to have received some feedback within a week or so of their last communication with the Provider. The Complainants were dissatisfied that they had not been notified that Mr. F had taken up his new role and that their case had still not been submitted for review by the "*Credit Department*". Ms. L agreed that she would review the Complainants' file and revert in short course.

Subsequently, Ms. P, a colleague of Ms. L, requested, by email of 2 June 2016, a new signed SFS, recent bank statements and payslips for the Second Complainant on the basis that the documents on file for the Complainants were, at that time, over 3 months old and the Provider required up to date information. The Complainants responded, by email of 3 June 2016, that they were extremely disappointed with her email of 2 June 2016 and that they had already/previously done everything requested of them in a timely manner and that the delays were unfair as well as it appearing that the Provider was requesting that they begin the process from the beginning.

Ms. P responded and apologised for the delay in assessing their case especially considering they had all of the requested documents submitted in a timely manner. She stated that the Complainants' request for an ARA and the supporting documentation had not been submitted to the Provider's credit department and she could only assume that it was due to Mr. F having transferred to another area of the Provider. Ms. P also stated that under the Code of Conduct on Mortgage Arrears, all documentation must be dated within the last 3 months and that therefore a new SFS was required. She stated that once it was received she and Ms. L would prioritise their case and progress it to their credit department as soon as possible.

The Complainants sent the requested documents by email on 7 June 2016. The Provider's employee responded, by email of 8 June 2016, that once the SFS was received the Provider would confirm by email and arrange to discuss the Complainants' proposal prior to submitting to the credit department for approval.

The Complainants sent an updated SFS by email on 8 June 2016. The Provider's employee acknowledged, by email of 9 June 2016, receipt of the updated SFS and she requested that the Complainants send the original SFS by post to Ms. L.

By email of 14 June 2016, Ms. L wrote to the Complainants proposing an extension of the temporary repayment arrangement for the month of July to allow time for the financial review to be completed and attached a letter requesting the Complainants to sign, date and return so as to extend the ARA which was already in place at the time. The Complainants returned the completed letter on 14 June 2016.

The Complainants submit that on 16 June 2016 Ms. L responded that the temporary arrangement letter they submitted was not acceptable because there was a discrepancy with the signature which was signed using the Second Complainant's marital name which did not match the name on the account which was her maiden name. The Complainants communicated their dissatisfaction regarding this event and that there had never been an issue raised previously by the Provider when documents had been signed using her marital name. Ultimately, the Complainants say they complied with the Provider's request regarding the Second Complainant's signature.

Ms. L called the Complainants on 30 June 2016 and they learned that their case had still not been submitted to the credit committee. The Complainants submit that during the phone call of 30 June 2016 Ms. L stated the monthly expenditure figures in the SFS were too high and that a figure of €3,105 monthly expenditure was what was allowed under the ISI guidelines. The Complainants disputed this, in their particular circumstances as well as Ms. L's assertions that the figures contained in their SFS were incorrect.

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The Complainants submit that they complained about the interest rate being charged on their mortgage during the phone call. The Complainants contend that the Provider's employee stated in her "*text account*" of the conversation which took place, that it was not possible for the Provider to offer a reduced interest rate. The Complainants say that the Provider's employee failed to advise or inform them that they could avail of a fixed rate charge on their mortgage which, they say, was available and would have been a lower rate. The Complainants dispute an account from the Provider's employee that they stated or had agreed the figures in the SFS were inaccurate. The Complainants submit that the Provider's employee also wrongfully and/or unreasonably suggested they go into the market for a negative equity mortgage, which they did not agree with as a suggestion. The Complainants contend that the employee's account of the call of 30 June 2016 and the call itself was inconsistent.

The Complainants submit that ultimately they felt they had no choice and that they completed the SFS for a third time. The Complainants submit that they proceeded to do as requested by the Provider's employee, along with obtaining a letter from the First Complainant's accountant estimating his tax liability which, they say, had already been submitted in April 2016. The Complainants' accountant and tax advisor contacted the Provider's employee, by letter of 15 July 2016, setting out a tax computation in respect of the First Complainant.

The Provider's employee, Ms. L, contacted the Complainants, by email of 20 July 2016, stating that during a telephone conversation on 30 June 2016 the First Complainant had advised that figures quoted on the Complainants' SFS were inaccurate and it was her understanding that the Complainants were to submit up to date details in order for the file to be prepared for credit committee review. She stated that on that basis she had not presented the Complainants' case to the credit committee for review. She listed a number of items which she stated had been discussed and requested during the telephone call on 30 June 2016. The Complainants accept that some of the items listed had been discussed and requested on the phone call of 30 June 2016 but dispute a number of the items had been requested during the call.

The First Complainant responded, by email of 21 July 2016, that he could not believe that nothing had happened since January 2016 despite the Complainants submitting their SFS twice since January 2016. The Complainants also disputed Ms. L's account in respect of a number of aspects discussed during the telephone conversation on 30 June 2016. He stated he would review expenditure but continued to dispute a number of the costs in the SFS.

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Around this time the Complainants appointed a representative to engage with the Provider on their behalf. The Complainants' representative, by email of 22 August 2016, sent a signed letter of authority in that regard to the Provider. The Complainants submit that the Provider's employee Ms. L responded that the wording of the letter of authority submitted was not acceptable to the Provider and had to include specific wording as prescribed by the Provider. The Complainants contend that this was deliberately obstructive so as to delay progress with their case. The Complainants' representative, by email of 26 August 2016, stated the letter of authority would be amended to ensure it complied with "*the Provider's internal conditions – that required wording being somewhat excessive*".

The Complainants submit that they terminated their representative's authority on 27 September 2016. In or around this time the Provider offered the Complainants a 12-month arrangement of a reduced repayment of €5,500 a month for 1 year. The Complainants accepted this offer. On 15 December 2017 the Complainants submitted a complaint to the Provider in respect of its conduct and handling of their application for an ARA.

The Complainants' complaint is that the Provider gave poor service during the application process for an alternative repayment arrangement. The Complainants seek "*financial compensation*" in respect of the "*severe stress*" suffered by them and in respect of the "*negative medical effects*" suffered by the First Complainant.

The Provider's Case

In its Final Response Letter of 18 September 2018, the Provider acknowledged certain lapses in the levels of services and offered compensation in the amount of €750, in recognition of its failings. This offer was rejected by the Complainants.

The Provider, by way of letter of 17 December 2019 through this office, made a further offer of €3,000, to the Complainants in full and final settlement of the complaint. This offer was also rejected by the Complainants. In its response to this office, the Provider further increased its offer of compensation to €4,000.

The Complaint for Adjudication

The Complainants' complaint is that the Provider provided poor service during the application process for an ARA over the course of January to October 2016.

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 23 April 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.

Following the issue of my Preliminary Decision, the Complainants made a submission under cover of their letter to this Office dated 12 May 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 27 May 2021 that it had no further submission to make.

Having considered the Complainants' additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

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Analysis

The Complainants, in their post Preliminary Decision submission of **12 May 2021**, state among other things:

“While you have outlined a large portion of our history with the Provider, it is unclear if our further submissions have been taken into account, specifically those dated 31st August 2020 and 2nd October 2020.

In arriving at my Preliminary Decision, I had taken all evidence and submissions into account, including the Complainant’s submissions of **31 August and 2 October 2020**. However, for completeness, I am happy to include further detail from these submissions in this Decision, notwithstanding that much of the content has already been dealt with.

The submissions of **31 August 2020** and **2 October 2020** that the Complainants refer to in their post Preliminary Decision submission were furnished in response to Provider’s submissions to this Office.

In the Complainants’ submission of **31 August** they declined the compensation offered by the Provider. They went on to state:

“Without labouring any of the points, as you are already in receipt of our claims and documentary evidence of same, we would just make the following comments:

- 1. We maintain that all documents for the initial SFS were received within the statutory 3 month timeframe. If the bank allowed them to become 'stale' by not acting upon them in a timely manner, we should not have suffered financial loss. Just to point out, we were paying 4.3% interest on a mortgage of approximately €1.35m at the time and we subsequently managed to get onto a fixed rate 3.2% in early 2017 (at which point our mortgage became, and has remained, sustainable) so the effect of any delays were extremely significant, the difference being about €15000 in interest along per annum.*
- 2. The bank point out that my SFS figures were different in June 2016. I had already explained to them that as a self employed [profession redacted], my income varies from month to month and is impossible to predict. The same would go for any other expenses. So, if we completed an SFS today, and another one in, say October, it will be different.*

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3. The bank state that on the telephone call of 30th June 2016, there was a difference of opinion of the assessment of pension contributions. This should not have been for any difference of opinion as the bank were in receipt of a letter from my accountant detailing my income, tax liability and tax liability with a maximum pension contribution. The issue was the failure of the bank employee to understand the effect of pension contributions upon preliminary tax for the following year, as well tax for the current year involved, which are payable at the same time. The letter from my accountant clearly stated that the effect of not allowing me make any pension contribution (which was to be €19,000) would result in an only an additional €3800 being available to service the mortgage. This position seems very unfair and unreasonable to me, as a self-employed individual.

4. In relation to point 8,1 disagree with the statement that I had the option to submit a fresh SFS and that I agreed to review the figures. While I did submit a fresh SFS and I did review the figures, I felt absolutely bullied into this course of action and was under the impression that I had no choice whatsoever but to do so in order to try to progress things.

5. In relation to point 12, it is our belief that to suggest a course involving making no pension contributions and extending the life of the mortgage beyond retirement age is negligent. This is by definition putting in place un sustainable solution. How would we pay the mortgage upon retirement? I do not believe the state pension would allow for this.

6. Finally, in relation to point 16,1 think any bank employee dealing with distressed borrowers or people in arrears should have knowledge of fixed interest rates available to borrowers, which may make a mortgage sustainable. To use an excuse such as another department in the bank deals with that is just not acceptable

The Complainants, in their submission of 2 October 2021 state, among other things:

"... We feel obliged to offer the following clarifications:

1. From January to October 2016, we were applying to the bank for forbearance as we could not afford the repayments. We proactively engaged with the bank in January 2016 as we knew that the arrangement we were on was coming to an end. A rate offer letter would outline rates on offer at a given time. As we were applying for an ARA at that time, we persisted with this process in the hope the bank would be in a position to offer us an ARA rather than investigate rates that were on offer on 30/04/2016.

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2. *The main point of our complaint in relation to the call of 30/06/2016 was that the bank employee did not advise us that we could have availed of lower fixed rates. As an employee working in the arrears support unit, it was her job to try to find solutions that would be affordable and sustainable for us. We did not suggest that she personally would have a role in setting bank rates, that is clearly not a realistic position. She should have advised us that we could obtain a lower interest rate by availing of a fixed rate. Rate Offer letters, as I am sure you are aware, are only valid for 10 days or so, so a Rate Offer Letter dated 30/04/2016 would clearly have been obsolete on 30/06/2016. As previously mentioned, it is just not credible that an employee working in the Arrears Support Unit would not be aware of lower fixed rates, which may make a mortgage affordable and sustainable, and not be able to advise customers in distress of their availability.*

3. *In relation to prioritising pension investments, not making a pension investment of €19,000, with the effect of tax relief on preliminary tax, would result in an additional €3,500 to service the mortgage. This is mean spirited but is not the subject of our complaint in relation to this. Our complaint is in relation to the suggestion from your employee that we cease pension contribution AND at the same time extend the life of the mortgage beyond retirement age and that this is an inappropriate suggestion as it is, by definition, unsustainable, and should not have been made. How would we service the mortgage after retirement? We have made this point multiple times.*

4. *By far, the most serious issue we take with [Mr E's] reply, is a flagrant breach of our confidentiality. We clearly outlined at the very start of our complaint that this complaint was in relation to our treatment at the hands of a number of [Provider] employees from January 2016 to October 2016.*

The Complainants in this submission also take issue with what they describe as the Provider's "disclosure" to this Office that a significant capital repayment was made against the mortgage, suggesting it is not relevant to their complaint.

The Complainants also suggest that the furnishing of this information to this Office "will significantly prejudice this complaint". I do not accept that the Complainants have in any way been prejudiced by the fact that this information was supplied in response to the complaint.

The Complainants have documented various discrete examples which they maintain substantiate their complaint. The Complainants' original letter of complaint to the Provider documented 13 areas where they were dissatisfied with the service they received.

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A significant amount of the detail of the various episodes in relation to which the Complainants complain was set out above in 'The Complainants' Case' section of both my Preliminary Decision and this Decision. In response to the Complainants' post Preliminary Decision submission, I have also added further detail supplied by the Complainants in their submissions.

The Provider, in its Final Response Letter dated 18 September 2018, accepted certain shortcomings in the service provided by it. This letter, which responded to each of the 13 matters highlighted by the Complainants, offered compensation in the amount of €750. The Complainants responded to this letter by way of their own letter dated 25 September 2018 wherein they rejected certain of the explanations furnished by the Provider and in which they further repeated their position.

Following the complaint being made to this Office, the Provider advanced an improved offer of €3,000 by way of email to this Office of 17 December 2019 which was communicated by this Office to the Complainants on the same date. This offer was rejected.

Thereafter, as part of its substantive response to this Office, the Provider increased its offer further to €4,000. This response, set out in a letter dated 31 July 2020, goes significantly further than the Final Response Letter in acknowledging shortcomings in the service provided to the Complainants. It acknowledged "*several service failings*". The letter, which seeks to justify certain of the time required to deal with the request for an ARA, nonetheless acknowledges "*delays in the process*" on the part of the Provider and offers multiple apologies.

In the circumstances, and in particular, where the Provider has accepted significant failings, my function is mainly to consider the adequacy of the compensation offered.

Recordings of a considerable number of calls between the First Complainant and various agents of the Provider have been submitted in evidence. I have listened to and considered the contents of these calls. During these calls the Complainants expressed frustration with the process and delays on the part of the Provider in processing their request for forbearance. Much of the content of the calls centred on the Provider's various agents endeavouring to explain to the First Complainant that the Complainants had a contractual obligation to pay their mortgage in accordance with the terms and conditions set out in the original agreement. The Provider's agents were also endeavouring to explain to the First Complainant that the details of the Complainants' income, as furnished by both the Complainants and their accountant did not support the Complainants' asserted inability to pay their mortgage.

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Despite these very lengthy calls, during which both parties accepted that they were “going around in circles”, the recordings demonstrate that all parties on these calls engaged with each other in a courteous and polite manner.

I consider it appropriate to make some observations regarding the phone call of **30 June 2016** which has formed the focus of a number of the comments made by the Complainants in their various submissions. A recording of this call has been submitted in evidence. I have listened to and considered the content of this phone call. The First Complainant has stated that he felt “*bullied*” by the Provider’s Agent on this call.

Having listened to the content and tone of this call, which lasted for slightly over an hour, I do not agree with this characterisation. I am satisfied that the Provider’s Agent was professional, measured and indeed patient and professional at all times. It is my view that she was trying to be helpful to the Complainants by explaining to the First Complainant that the figures that had been advanced by the Complainants in their Standard Financial Statement (SFS) would simply not result in a positive response from the credit committee. She very clearly stated that “*forbearance cannot be granted under these circumstances*”.

I note the Complainants, in their post Preliminary Decision submission of 12 May 2021, state:

“one of our specific complaints does not appear to have been adjudicated upon [in the Preliminary Decision]. This specific complaint is detailed in our initial complaint to the Provider and is no. 9.”

No. 9 which the Complainants refer to states:

“Why did [Ms L] advise me during the telephone call of 30/06/16 that there was no way [Provider] could offer a lower interest rate. She could have advised me there was fixed rates available. This is an extremely serious failing on her part.”

The Complainants go on to state:

“Our main objection in relation to the telephone call of 30th June 2016 was that the Arrears Support Unit staff member did not advise that lower fixed rates were available, which would have significantly reduced the financial burden for us. It is our position that an employee fulfilling this role ought to be aware of these options and has a duty of care to customers to advise them of such lower rates. Please see point no. 2 in our letter dated 2nd October 2020. It is our view that this is contrary, at a minimum, to section 60(2)(d) of the Financial Services and Pensions Ombudsman Act 2017, though that determination will be for you to judge.”

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While I believe I did deal with this matter in my Preliminary Decision, I will for the sake of completeness now set out the evidence on which I arrived at my decision in more detail.

In order to do so it will be necessary to set out some of the content of the call of **30 June 2016**. As this call went on for over an hour, and by the parties' own admission, went around in circles, I will only set out the initial ten minutes of the call as this was most relevant to the interest rate charged on the Complainants' mortgage that forms part of this complaint.

Following introductions, security checks and pleasantries the call commenced as follows:

Agent: Perfect ok, [First Complainant] listen I've reviewed your file in full ok and just before I go through it just to explain to you that we need to comply with the Central Bank guidelines when we are reviewing any files for forbearance right and the Central Bank give us em guidelines on what acceptable expenditure is for em you know different circumstances like families, couples eh single people ok. So when I review your expenditure in line with the ISI guidelines that we have to comply with right they are em, they are showing that there is no need for forbearance in your case based on the income that you have coming in em there should be enough money to make the mortgage repayment and that means that from [Provider's] point of view we are not in a position to provide any forbearance for you at this time.

First Complainant Well [Agent], I don't really know how you can come up with that. I'll just give you one example, for example in April my gross income was in and around €14,000 ok so you have my statements there. I had to put €8,000 away for my tax bill ok, I had to put €5,000 into our joint account for it to cover our mortgage, that's 13, I have a loan of €566 and then my credit card bill is usually around €200 or €300 so I had no money at all to spend in April ok, I had to use my overdraft in order to live ok, now I do accept that there are ebbs and flows but I really you know I mean I think the ISI guidelines I mean you know I mean in terms of the Insolvency Service of Ireland.

Agent: Hmmm

First Complainant: I mean they have, I am aware they have guidelines ok, but I also eh, you know am fully aware that you know like, I'll be honest with you and I am not looking for special treatment but you know, eh let's be honest you know the majority of people who utilise the ISI and the

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various different options don't have a mortgage of 1.4 million or whatever it is now 1.35 and don't earn you know like I mean I accept I have good earnings you know but unfortunately my tax situation is rather punitive but you know I mean you know I think it's you know we have documented all of our expenses I mean they are very much in line with eh what I submitted to [Provider] Bank three and a half years ago eh when eh you know when we did this process before so I'm not really sure you know kind of what has changed obviously our living expenses are a bit more, the children are older and they are going to be in school now etc. etc. so you know I don't really eh accept that eh I don't really know how you can say that we don't need forbearance like what is our, our, I mean the mortgage repayment would be am I right in saying about 7,500 per month

Agent: It's going to be 7,300 approximately right now it obviously needs to be recalculated so the latest recalculation

First Complainant: Ok, so so

Agent: is 7,352 but you see [First Complainant]

First Complainant: Yea

Agent: First of all just to explain to you right the ISI guidelines have to be adhered to ok and there are very strict guidelines for the Bank that we must comply with ok. There is no flexibility whatsoever on that ok. Our files are audited the strict guidelines em you know more so probably in the last 12-18 months than 3 years ago ok but basically what we need to work on right and we have, as I said, no flexibility on this at all ok, the what I'm going to

First Complainant: Well, I'll tell you can I just sorry the issue here, the main issue here is the absolutely, absolutely and you know without putting too strong a word on it disgusting interest rate that we are paying you know. I mean it is absolutely shocking the interest rate that we are being charged I think, what is the interest rate in any case we don't even know

Agent: Its 4.3% [First Complainant] and that's the standard variable rate that's available in the Bank

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First Complainant: Yea but, like, so would you accept that we are struggling with our mortgage? I mean we've been struggling since we took out the mortgage in 2006. OK? Now, that standard variable rate is 4.3%. I know that [Provider] if we had equity, OK? So, if we were in a much more comfortable position, we didn't have to devote like you know, sort of, 50, 60% of our disposable income towards servicing a mortgage, if we had let's say say 30% equity, I mean we could get a mortgage from [Provider] at a rate of about 3.2%. Is that not correct?

Agent: Well [First Complainant] I wouldn't know, I'm working in the ASU unit so I can't ...[inaudible]

As the Agent was endeavouring to explain that she did not deal with interest rates and did not know if the Complainants could get a different rate of interest the First Complainant continued to talk over her

First Complainant: Sorry, excuse me. We were sent out a list of all of the interest rates that were available about two months ago or something like that and you know there are interest rates available for people taking out mortgages of you know, you know, with a low loan to value ratio of 3.2%. OK? Now they are people, obviously, with a low loan to value ratio, obviously have equity, they would have equity in their home that are not struggling. OK? Em, we, they are people who are comfortable, we are struggling. Yet we are being charged a punitive interest rate which is way above, ah, what ah, you know what it should be when interest rates are historically low. It just doesn't, it's just pure profiteering. It really is. I mean I don't know how you can, how you can deny that. I'm not saying you are denying it. But that's what it is. It doesn't take a genius to see that. You know. If we were being charged a fair and reasonable interest rate, we wouldn't have a problem, we would be able to service it you know. Like I mean as well as that.

The Agent tries to interrupt

First Complainant: Sorry, can I just make one more point. You know if [Provider] are giving out mortgages at 3.2%, they are doing that and making a profit. OK? So, really it doesn't make any sense where the people who are struggling the most are being charged the highest interest rate. I mean, well, its subprime lending really you know.

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The Agent tries to interrupt

First Complainant: Like when you think, this mortgage when we took it out was ten times our combined earnings, ten times our combined earnings, we, like, I accept we took it out and we bear some of the responsibility for that but really, you know, It was highly irresponsible lending from [Provider] as well you know and that's why we are asking for some forbearance for another few years you know until my income can increase.

Agent: [First Complainant], I understand your frustration about the interest rate. Unfortunately, I'm not in a position to do anything about that interest rate. That's the standard variable and there are a lot of...

First Complainant interrupts:

Well, you are in a position to do something. Let's be, [Agent], you are, of course you are, you know. You're [Provider]. Of course, you are, you know, its just, I can tell you now [Agent], if our mortgage repayments go up to seven point... [inaudible] we will not be in a position to make a single repayment at that level. We won't have money to buy food to eat. That is the bottom line.

The Agent tries to interrupt

First Complainant: If you can explain to me how we can put food on our table at that level of payment I will be delighted to hear that.

The telephone call continues for over 50 minutes in a similar vein. The Provider's Agent endeavours time and again to explain that the Provider, based on the figures furnished by the Complainants and their accountant are of the view that the Complainants could afford the full mortgage repayments if they prioritised their mortgage over other spending. The Complainant disputes this and states that the Complainants are not willing to default on their buy-to-let mortgage and outlines his justification for other spending included on their SFS. The Provider's Agent queries specific items of spending. The Provider's Agent also reiterates the need to prioritise the mortgage on their principal primary residence. The conversation, by admission of both parties, goes around in circles and ends with a commitment from the First Complainant to relook at the figures when he returns from holidays but stating in clear terms that he would not be looking at the ISI Guidelines.

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Having considered all the evidence and submissions, including the post Preliminary Decision submissions, it remains my view that the evidence does not support the Complainants' assertion that there was an extremely serious failing on the part of the Provider's Agent in not advising them in relation to fixed or any other rates available. The First Complainant did not seek advice or information on interest rates available. Rather he was making sweeping and general statements on the rates charged by the Provider. These included describing the standard variable interest rate to which his mortgage was subject as "*disgusting*", describing the approach of the Provider as "*pure profiteering*", and describing the Provider as having engaged in "*highly irresponsible lending*". I accept that the purpose of the call was to discuss the Complainants' application for forbearance. This is very clear from the recording of the call.

I note at one stage the First Complainant refers to rates that he was aware were available from the Provider. I believe that it was a matter for the Complainants to request information in relation to fixed or other rates available to them should they wish request a move to a different rate. Whether or not an alternative rate was available to the Complainants was a matter clearly within the commercial discretion of the Provider. This Office will not interfere with the commercial discretion of a financial service provider unless it is exercised in a manner which is unreasonable, unjust or improper. I do not find the conduct of the Provider's Agent on the call of **30 June 2016** to have been unreasonable, unjust or improper. Nor do I accept that the conduct of the Provider or its Agent was based wholly or partly on an improper motive, an irrelevant ground or an irrelevant consideration as suggested by the Complainants.

In relation to the substantive matter and the purpose of the call of **30 June 2016**, the Provider's Agent made it very clear on repeated occasions that by reference to guidelines published by the Insolvency Service of Ireland (ISI), the monthly expenditure claimed by the Complainants in their SFS was too high. There was a separate issue regarding the funding of pension payments. With regard to the expenditure, the Provider's Agent listed off the various individual expenses that were too high or simply not acceptable, the example of the latter being the proposal by the Complainants to save an amount of €400 per month to put towards an annual holiday which the Agent described as "*unacceptable*". The First Complainant disagreed with this in stating that he would have thought that the funds involved were "*very average for a two-week holiday for a family of [number redacted]*". In stating this, it seems to me that the First Complainant was failing to grasp the point which was that, in the context of discussions surrounding a request for forbearance, the notion that funding a holiday might take priority over funding the mortgage was misconceived. As the Provider's Agent pointed out, "*a two-week holiday is fine once the mortgage is being paid but the mortgage cannot not be paid to allow you to go on holiday*".

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Ultimately, there was a stark difference of opinion between the First Complainant and the Provider's Agent as to what constituted reasonable expenditure. The Provider's Agent conveyed that monthly figures of €350 for clothing and footwear, €300 for household expenditure (maintenance and repairs), €250 for extra-curricular activities and €300 for lifestyle expenses were simply too high and were significantly higher than the ISI recommendations for a family the size of the Complainants.

The First Complainant disagreed and stated that the ISI guidelines were "*not designed*" for people in his position, specifically people with a €1.4M mortgage, people living in a 120-year old house, and people with a combined income of €250k - €280k. The First Complainant stated that his family couldn't "*survive*" on the ISI recommended expenditure (which amounted to circa €3,100 per month) and indeed concluded the call by confirming that he would not be looking at the guidelines despite being invited to do so.

My view is that the Provider was acting entirely appropriately in considering these matters. I also consider that there was something of a lack of understanding in the approach adopted by the First Complainant. He does not appear to accept or understand that he entered into a mortgage agreement that required certain payments be made on a monthly basis in order to comply with the Complainants' contractual obligations. He was pleading inability to pay those contractual repayments and seeking forbearance. In circumstances where the figures supplied by both the Complainants and their accountant indicated to the Provider that the Complainants had in fact the ability to pay their mortgage, if they prioritised it over other discretionary payments, I believe the Provider was entitled to seek information and question the Complainants' approach.

Insofar as the First Complainant takes issue with the nature of the conversation, I am of the view that it was his own approach and inability to comprehend his contractual obligations that led to his exasperation. I might also note that there appeared to be certain inconsistencies between the figures cited by the Complainants for net income in their SFS (completed some weeks prior to the phone call) and the figures to which the First Complainant made reference in the call.

With regard to the pension, the Complainants' SFS proposed ring-fencing €1,705 per month to put towards their pension. The Provider's position, to which the Complainants take grave exception, was that the funding of this investment (the pension) could not take priority over the mortgage. Whilst I recognise the prudence of the Complainants in seeking to fund a pension, and the ensuing tax advantages, the Provider was acting entirely within its rights in insisting that the mortgage take precedence. I can identify no fault in that approach.

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The Complainants agreed by contract to make certain repayments on their mortgage. They found themselves unable to meet their contractual obligations to the Provider and requested reduced repayments. In considering that request, the Provider was entitled to require that the debt to it should take precedence over all non-essential expenses. This, unpalatable though it may be to the Complainants, is the manner in which forbearance requests are addressed. With regard to a connected aspect of the Complainants' complaint, I do not consider the suggestion that the Complainants consider an extension to the term of the mortgage loan as unreasonable. The implication here was clearly that the Complainants, or one or other or them, could have considered working beyond the age of 66- such a scenario would not have been "unsustainable".

The Complainants, in their post Preliminary Decision submission, state:

Also, it is unclear why such extensive commentary was required on your part to our objection to ISI guidelines, which, including quotations, are rather unflattering to us (bearing in mind that we were in a distressed state at this time) It was 1 of 13 issues raised by us yet you have disproportionately devoted almost 30% of your analysis to this? It is unclear what this adds to your adjudication analysis of the complaint in its entirety. It is worth noting that following the initial response from the Provider, we did not challenge their explanation of this and therefore it should be deemed that we accepted their explanation in this regard (point number 8 in initial complaint). Our main issue with the content of this telephone call, as borne out in the above mentioned replies, was that the ASU staff member ought to have advised us that a lower interest rate would have been available to us (complaint no.9).

I would point out that this complaint arose because the Complainants were unable to meet their monthly mortgage commitments and were seeking forbearance. It was the manner in which the forbearance request was dealt with by the Provider that gave rise to the complaint. The application of the ISI Guidelines was fundamental to the outcome of that request and was a major point of contention between the parties. For this reason, it is important that all of the evidence is considered. I have dealt with the issue relating to the interest rate charged above.

I will turn now to the adequacy of the compensation offered by the Provider.

In their post Preliminary Decision submission, the Complainants state:

"In relation to complaint no.1, we have provided evidence that all documents were submitted and were dated within 3 months. 3 months is what the guidance states.

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It is not 2 months plus a bit. The provider was not entitled to rely upon their own tardiness in processing these documents and allowing them to 'become stale' and subsequently insist that we had to start the SFS process again. Everything requested of us was provided by 15th April 2016 (Approximately 2 months and 20 days hence). In fact, the provider had been in possession of most items since late January 2016, the only outstanding item being the agreement of another mortgage provider to reduce monthly repayments to €900/month on the NPPR. The agreement to this was communicated immediately on 15th April 2016. It is our view that this is contrary, at a minimum, to section 60(2)(b) of the Financial Services and Pensions Ombudsman Act 2017, though that determination will be for you to judge."

The Complainants were coming to the end of a three-year ARA in January 2016 when they began to engage with the Provider regarding a further arrangement. The further ARA was not ultimately put in place until September 2016. I accept that a significant part of this almost 9-month delay is attributable to service failings on the part of the Provider. Certainly, there were matters outside of the Provider's control that were responsible for part of the delay such as securing agreement from another bank to a separate ARA on an investment property (which required approximately seven weeks to secure).

The Provider was also entitled to examine the expenditure figures provided by the Complainants and indeed aspects of this examination can be viewed as beneficial from the Complainants' view insofar as a tailored approach can reduce the risk of outright refusal of a request for an ARA. There were also inconsistencies surrounding net income figures that warranted closer scrutiny.

On balance, I estimate that the Complainants might have expected to have their application processed to successful conclusion four months earlier than was in fact the case. The application could certainly have been processed faster than that, however it is important to note that the application as originally framed would most likely have been rejected had it been submitted to the credit committee unamended and without the further information ultimately evinced. Therefore, I believe it is reasonable to allow for additional time over and above the timeframe that might have been expected for a less complex application relating to a lower value loan. In other words, certain of the additional time incurred was to the Complainants' benefit in crafting a request for an ARA that ultimately met with a positive response.

It is important to point out that the Complainants were granted a number of short-term extensions to their expiring ARA pending the completion of the assessment of the new request and thus were not forced to return to full payments.

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I note the Complainants' suggestion the Provider's conduct in its dealing with their application for forbearance was unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants as provided for in section 60(2)(b) of the **Financial Services and Pensions Ombudsman Act 2017**.

I accept that the delays could be characterised as unreasonable. However, in all the circumstances of this complaint, I accept the Provider's offer of €4,000 to be a reasonable and fair attempt to resolve the complaint.

The Complainants, in their post Preliminary Decision submission, state:

"Like any citizen, in any financial situation, we are entitled to avail of the services of your office. We would ask you consider the above in an impartial manner when reviewing your preliminary adjudication.

We wish to point out that there have been numerous service failings in relation to this complaint, acknowledged by the provider and by yourself, and to date, we have not received any compensation for these. Therefore, it is our view that this complaint should be partially upheld and that compensation in the amount that you deem appropriate is directed to be paid by the provider to us."

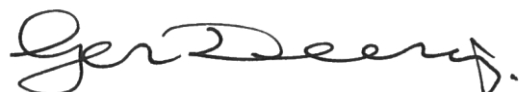
I can confirm that all of the evidence and submissions have been considered by me in an independent and impartial manner in arriving at this decision.

In circumstances where the Provider has acknowledged several of the "service failings" identified by the Complainants, and in circumstances where the Provider has offered compensation in an amount €4,000, that I consider to be reasonable and adequate, and on the basis that this offer remains available to the Complainants 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

11 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

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