



<u>Decision Ref:</u>	2022-0086
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the calculation of arrears accrued during periods when the Complainants say that Alternative Repayment Arrangements were in place.

The Complainants' Case

The Complainants entered into a joint buy to let mortgage agreement with the Provider in **2006**, with interest only payments to be made for the first two years.

The 'interest only' payment arrangement continued for a number of years, and was confirmed again by letter of the Provider dated **28 September 2010**, to continue until **11 September 2012**. The normal capital and interest monthly repayment was approximately €1,258.93 (one thousand, two hundred and fifty-eight Euro and ninety-three Cent), and the interest only payment was approximately €1,042.77 (one thousand and forty-two Euro and seventy-seven Cent).

The Complainants say that "[f]ollowing a payment being returned" by the Provider, they received a letter dated **13 May 2012**, stating that the Provider was terminating the Alternative Repayment Arrangement (ARA). The Complainants received a subsequent letter from the Provider, dated **15 May 2012**, which stated that the Complainants' monthly repayment amount had been increased to €2,136.07 (two thousand, one hundred and thirty-six Euro and seven Cent), and this arrangement would begin on **28 May 2012**.

The Complainants say that the two-day period between the letters did not allow adequate time for the Complainants to review their missed payment, or to work out a “*suitable solution*” with the Provider, as indicated in the letter of **13 May 2012**.

The Complainants say that they contacted the Provider on receiving this correspondence, and completed a Standard Financial Statement (SFS) via telephone. They say that they agreed to make repayments of €1,400 (one thousand, four hundred Euro) per month, in order to meet this missed instalment.

The Complainants held the understanding that “*the arrangement to pay €1,400 was acceptable to the Bank.*” They say that “[n]otwithstanding this agreement, the increase in loan repayments to €2,136.07 was applied immediately by the Bank.” The Complainants received correspondence from the Provider dated **11 June 2012** in this regard, and they contacted the Provider again. The Complainants say that they made another commitment to pay €1,400 (one thousand, four hundred Euro) per month “*to service interest and repay what was described as arrears due to the previously agreed arrangement (May 2012) not being implemented by the Bank.*”

The Complainants commenced payments of €1,400 (one thousand, four hundred Euro) in **July 2012**. They say that they completed a further SFS on **17 August 2012**, and again confirmed the arrangement of paying of €1,400 (one thousand, four hundred Euro) per month. It appears that this arrangement was not recorded on the Provider’s system, and the Complainants’ account continued to accrue arrears for the failure to pay €2,136.07 (two thousand, one hundred and thirty-six Euro and seven Cent) per month.

The Complainants note that the Provider says that arrears of €7,828.12 (seven thousand, eight hundred and twenty-eight Euro and twelve Cent) had accrued on their mortgage account by **25 September 2012**. They say:

“Had the Bank updated their systems to reflect the arrangement agreed in April 2012, the arrears figure would have been €3,900 by the Complainants’ calculations”

The Complainants say that they continued to receive arrears correspondence from the Provider on the basis of a monthly payment arrangement of €2,136.07 (two thousand, one hundred and thirty-six Euro and seven Cent) not being met. The first Complainant brought this error to the Provider’s attention on two occasions, by letter of **20 January 2014**, and by email of **29 September 2016**. The Complainants note that the Provider did make two adjustments in this regard.

In relation to the arrears figures submitted by the Provider, the Complainants say that the figures for **2012** reflect the failure of the Provider to reflect the agreement of **May 2012**. They say that *“in the worst case scenario”* they had met the missed repayments by **October 2014**.

The Complainants say that the Provider’s records show arrears for the months leading up to **November 2013**, and to **May 2014**, for which the Provider was required to make adjustments. They say that further arrears were shown for the months leading to **April 2015**. However, they say that they had completed an SFS with the Provider in late **January** or early **February 2015**, to allow for the continued payments of €1,400 (one thousand, four hundred Euro). They say that:

“A continuation of the arrangement was confirmed in writing on the 22nd April 2014 however the Bank’s systems do not appear to reflect this.”

The Complainants note that the Provider’s records show a missed repayment in **January 2016**. The Complainants submit that they made the payment via the Provider’s automated telephone payment service in either **February** or **March**, and it appears that this was not processed. They state that they were not informed by the Provider that this transaction was not processed. In a letter to the Provider of **26 March 2018**, they state that they made this payment on **5 January 2016**.

The Complainants submit that the Provider’s records show arrears in **May 2016**. However, they say that this is not accurate, as they held a revised arrangement in place. This situation was repeated in **September 2016**, as the Complainants had been assured in **August 2016**, that there was a revised arrangement in place.

The Complainants say that payments had been made to the Provider from **December 2016** to **February 2017**, and they refute the allegation that they were in arrears for a missed instalment of **January 2017**.

In a letter to the Provider dated **27 February 2018**, the Complainants submitted that they attempted to make a payment to the Provider via its automated telephone service on **25 March 2013**. However, this figure was not debited from the Complainants’ account.

In a letter to the Provider of **26 March 2018**, the Complainants submit that a repayment of **15 April 2013** had been missed because the Provider argued that there were insufficient funds in the Complainants’ account to allow for the transaction. The Complainants submit that there were sufficient funds, and note that they had not been contacted by the Provider when the payment had been missed.

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As a result of this *"inaccurate record keeping"*, the Complainants note that their account was passed to a debt collection agency, which demanded repayment of the debt. (This demand was withdrawn after the Complainants contacted the Provider.)

The Complainants submit that the inaccurate information regarding arrears was shared with the third-party financial institution, that acquired the Complainants' mortgage in **December 2016** ("the new owner").

In response to the Provider's reply to the formal investigation of this Office, the Complainant stated in a letter to this Office of **20 January 2021** that *"classification' or otherwise"*, their treatment as *"non co-operative"* had the effect of their loan being sold to the new owner. They submit that their initial ARA was terminated without reasonable notice, in a time of *"significant financial upheaval"*.

Regarding the ARA that the Complainants say was in place from **May 2012**, the Complainants state that the second Complainant called the Provider and spoke to [Agent A] to confirm that the loan was in arrears by one payment. The Complainants refer to an SFS dated **22 May 2012**, which they enclosed with their response, as showing a commitment to *"an arrangement that we believed to be agreed with the Bank's Officer."*

The Complainants note that the first Complainant called the Provider following its letter of **11 June 2012**, and spoke to [Agent B], to complete an SFS. The first Complainant stated that the figure of €1,400 (one thousand, four hundred Euro) came from his calls to the Provider's agent, and that the arrangement was verbally *"deemed acceptable"* to cover the months of **July to August 2012**.

The Complainants submit that the arrears were due to the Provider implementing a full capital and interest repayment arrangement, without their agreement. They note that this loan was documented as an *"Interest Only Loan"*.

In relation to the ARA of **2015**, the Complainants submit that this was completed in **February 2015** and as a result, the arrangement should have taken place from that month. They state that it *"appears to only have been decisioned in April 2015."*

The Complainants note that they received a demand for the full repayment of the debt on **7 April 2015** from a solicitor's firm acting on behalf of the Provider. The Complainants stated that they were in contact with the Provider immediately prior to this. They submit that they did not receive correspondence advising them of the expiry of the ARA in **February 2015**.

In relation to the call to the automated payment line of **15 April 2013**, the Complainants submit that this call was completed successfully, and a payment reference of xxxxxx1203 was given. The Complainants transferred funds into the account which, together with their overdraft, should have allowed for the payment figure to be met.

In relation to the arrears accruing throughout **2016**, the Complainants submit that it was *“extremely frustrating that they do not acknowledge the assurances given by their own staff that adequate time was available to renew the repayment arrangement in place.”* The Complainants note their understanding that arrears should not deteriorate on an account, where an arrangement was being put into place.

The Complainants submit that the reporting to the Irish Credit Bureau did not accurately reflect the arrangements in place with the Provider.

The Complainants submit that in relation to the term extension of **2016**, this offer was made with a view to capitalising the arrears after six months. As the loan was immediately sold following this extension, *“there was little chance this would happen”*. The Complainants were informed by letter of **14 October 2016** that the loan was sold, and there was no opportunity given to repay the arrears.

In a further response to the Provider’s submissions, the Complainants refer to a letter of **11 December 2006**, confirming the drawdown of the mortgage. This letter confirmed that the mortgage was ‘Interest Only’.

The Provider’s Case

2010

In the Provider’s final response to this Office, it submits that the Complainants had an ARA in force from **11 October 2010** for the Complainants to make ‘interest only’ payments for 24 months. The Provider stated that the conditions of this ARA, as set out in the letter of **28 September 2010**, that if any repayments were missed the arrangement would be deemed to be *“broken”*, and the *“standard arrears process will resume”*.

2011

The Provider says that the Complainants missed repayments for **September and November 2011**. At this time, the Complainants’ account was managed under the ***Code of Conduct on Mortgage Arrears*** (CCMA), and the Provider issued correspondence to the Complainants on **23 September 2011** in line with Provision 9. Thereafter, the Provider issued correspondence to the Complainants in relation to their missed payments on **24 October 2011, 24 November 2011, 29 December 2011, 24 January 2012, and 24 April 2012**.

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2012

On **13 May 2012** the Provider then wrote to the Complainants to advise them that the ARA had been broken. The Provider says it is therefore satisfied that it issued sufficient correspondence to the Complainants to advise them of the missed payments, prior to breaking the deal. It noted that the Complainants had been informed that the ARA could be broken if any payment was missed. The Provider stated that it enclosed a SFS with the letter of **13 May 2012** for the Complainants to complete and return. The Provider attempted to call the Complainants on **5 June 2012**, but there was no option to leave a voicemail. It says that:

“There is no record in the system notes of the SFS being completed. (sic) returned by or discussed with the Complainants in May 2012.”

In relation to the SFS of **August 2012**, the Provider states that an ARA was proposed in **October 2012** for 12 months, for the Complainants to pay €1,400 (one thousand, four hundred Euro) per month. This ARA was put in place in **December 2013**, to last for 16 months, to allow the Complainants to complete another SFS, and backdated to **October 2012**. An adjustment to the arrears was completed on **6 December 2013** in this respect, and it had the effect of returning the arrears to €7,828.12 (seven thousand, eight hundred and twenty-eight Euro and twelve Cent), which was the figure before **October 2012**.

The Provider states that for the months from **May 2012** to **September 2012**, there was no ARA in place and no written confirmation issued to the Complainants that there was an ARA in place. In addition to this, it notes that if there had been an ARA in place, it would have been broken by the Complainants, owing to the non-payment in **May** and **June 2012**.

The Provider says that consequently, the full normal monthly repayment of €2,136.07 (two thousand, one hundred and thirty-six Euro and seven Cent) fell due. The Provider states that it did not write to inform the Complainants of each individual repayment that was missed, but issued correspondence to the Complainants on **9 July 2012**, **24 July 2012**, and **24 October 2012** in line with the CCMA and the **Consumer Protection Code 2012** (CPC). The Provider has not supplied this Office with a copy of the letter of **9 July 2012**, or a copy of the letter of **24 July 2012**.

2014

The Provider says that an ARA was again put in place in **June 2014**. This was backdated to **February 2014**, and an adjustment was made to remove the arrears that had accrued, in that four-month period.

2015

The Provider says that it did not receive any SFS in **January** or **February 2015**. By this point, the Complainants' account had been transferred to a third-party financial institution for it to be managed on behalf of the Provider. This institution attempted to contact the Complainants on the expiry of their ARA in **January 2015**, and was unsuccessful. The Complainants completed an SFS in **April 2015**, and an ARA for a payment of €1,400 (one thousand, four hundred Euro) per month took effect from **May 2015** to **April 2016**.

2016

In relation to the Complainants' assertion that owing to the Provider's error, the repayment for **January 2016** was not processed by the automated telephone system, the Provider referenced the note of the successful payment of **26 January 2016**. The Provider's timeline of events does not reference any payment being made in **February 2016**, and the Provider did not refer to any attempted payment of the Complainants this month, in its reply to the formal investigation of this Office.

In response to the Complainants' allegation that there was an ARA in place in **May 2016**, the Provider submits that an ARA was agreed in **May 2016**, to last from **June 2016** to **August 2016**. This is evidenced in the letter of **24 May 2016**.

The Provider submits that, as advised in the letter of **1 September 2016**, repayment then fell due for the sum of €2,292.67 (two thousand, two hundred and ninety-two Euro and sixty-seven Cent). As noted in the letter to the Complainants of **30 September 2016**, a term extension was agreed on the account, and the repayments of €1,626.88 (one thousand, six hundred and twenty-six Euro and eighty-eight Cent) fell due from **28 October 2016**.

2017

In relation to the Complainants' contention that the payment for **January 2017** had been made, the Provider referred again to its arrears breakdown document. The Provider was asked by this Office to explain its decision to pass the Complainants' account to a debt collection agency. The Provider states that this agency was an approved service provider that acts on behalf of the Provider. The Provider appointed this agency to manage all mortgage accounts secured on but-to-let properties, regardless of whether or not the accounts were in arrears.

In relation to the sale of the Complainants' account to the new owner, the Provider submits that it was not restricted from assigning the loan in its mortgage agreement. It states that its decision to do so formed part of its strategy to reduce the level of non-performing loans on its balance sheet, and it may have had regard to the fact that there were previous ARAs on the Complainants' account.

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In response to the Complainants' assertion that the payment of **15 April 2013** should have been processed by the Provider's automated payment line, the Provider relies on a financial statement for the Complainants' account of this date. It notes that there were insufficient funds in the account to complete the payment of €1,400 (one thousand, four hundred Euro), and it says that the payment was refused, as a result.

In relation to the missed payment for **January 2016**, the Provider states that where the automated payment line is used, a payment will only be declined if there are insufficient funds in the account or if an incorrect digit was entered by the Complainants. Where an attempted payment is not successfully processed, the call will be automatically transferred to an agent to complete the process. The Provider states that there is no record of the Complainants having spoken to an agent on **5 January 2016**. However, the automated payment lines are not recorded, and it is not able to determine if the Complainants terminated the call, prior to the transfer taking place.

Further, the Provider submits that the Complainants' account received a credit transfer of €1,400 (one thousand, four hundred Euro) on **5 January 2016**. Depending on the time of the call, those funds may not have been applied to the account, at the time of the Complainants' call. As a result, there may not have been sufficient funds in the account to make the transfer. The Provider does not have a policy of informing its customers in writing when payments through the automated line are unsuccessful, because in that event, calls are transferred to an agent to complete the process.

The Provider states that it was obliged to issue reports to the Irish Credit Bureau which accurately reflected the transactions on its customers' accounts. In the Complainants' case, this included reporting the failure to make certain payments. The consequences of non-payment were explained in the ARA letters to the Complainants.

The provider says that from **May 2016 to July 2016**, the Complainants' account was managed under the ***Code of Conduct for Business Lending to Small and Medium Enterprises***, as consumers. In a letter to the Complainants of **3 May 2016**, a link was provided to the Code.

From **July 2016** onwards, the Complainants' account was managed under the ***Consumer Protection Code 2012*** (CPC). In compliance with Provision 8.11 CPC, the Provider and the Complainants agreed a Term Extension, with a monthly repayment figure of €1,626.88 (one thousand, six hundred and twenty-six Euro and eighty-eight Cent), confirmed in a letter of **30 September 2016**.

The Provider was asked by this Office if the Complainants were ever classified as 'non-cooperating', and it confirmed that this classification, as per the CCMA did not occur.

The Provider offered **€1,000** (one thousand Euro) in redress to the Complainants, taking into consideration the delays in putting the ARAs in place, which were subsequently backdated, and for being unable to locate a copy of the ARA for **2014**.

In relation to the Complainants' reply to its final response, the Provider made a number of additional submissions to this Office.

The Provider states that the terms of the mortgage drawdown were that the loan would be interest only for the first 24 months. Thereafter, the mortgage was due to revert to capital and interest repayments.

The Provider acknowledges that not every phone call may be recorded in the timeline of events it provided to this Office. However, it endeavoured to include key facts relating to the specifics of the complaint.

The Provider reiterates that it did not receive a SFS of **May 2012**, noting that the copy provided by the Complainants was unsigned. The Complainants responded to this submission stating that *"[t]he May 2012 SFS clearly bears the initials of the party who provided same."*

The Provider quoted the covering letter for the SFS, which stated that:

"Once we have received your completed SFS we will then be able to assess your case. We will revert to you in due course to let you know the outcome of this investigation."

The Provider acknowledges that the first Complainant had spoken to [Agent B]. However, there was no record of the second Complainant speaking to an agent named [Agent A]. Instead, the Provider notes that its records show an outgoing call to the Complainants in **June 2012** which was not answered by the Complainants.

The Complainants responded to this submission, acknowledging that a call may have been missed. However, the first Complainant noted that *"[f]rom my recollection it was the practice to complete SFS details over the phone and it is not clear why this would not have been the case in respect of the May 2012 SFS"*.

In response to the Complainants' submission that arrears should not deteriorate on an account when an arrangement is being put into place, the Provider states that this appears to be a reference to a '*Temporary Alternative Repayment Arrangement*', which did not arise in this instance. It says that expiry and pre-expiry letters were sent to the Complainants when the ARAs were due to expire.

The Complainants responded to this submission, stating that it failed to deal with the central point of how an arrears sum was recorded when the Complainants were in contact with the Provider "*in good time*", and with assurances from the Provider's agents that there was time to continue the arrangement.

In relation to the funds in the Complainants' account for the payment of **15 April 2013**, the Provider restated that automated payment was rejected. It submits that the account statements printed retrospectively may not show the exact sequence of transactions that would have been pending on the account. It repeats these submissions for the attempted transaction of **January 2016** and points out that the absence of these debits, would have been notable on the Complainants' online banking account.

The Provider states that it did not make any commitment to capitalise the Complainants' arrears in its term extension offer of **2016**. The Provider refutes the allegation that its letter of **14 October 2016** informed the Complainants, that the loan had been sold. Instead, it noted that the loan would be transferred to a new owner. A letter to the Complainants of **6 January 2017** then informed them that this had taken place on **19 December 2016**.

In relation to the Complainants' submissions that the loan was 'Interest Only', the Provider states that it reviewed the letter of **11 December 2006**. This letter referred to the 'Interest Only' loan, but did not state that it would be interest only for the entirety of the mortgage term. Instead, it stated that the Complainants should ensure that a suitable repayment vehicle is in place, and then referred to the **Offer of Loan**. The Provider submits that it was ultimately its decision as to what payment terms it wished to offer its customers. It further states that this point was not raised in the original complaint.

In relation to the SFS of **2015**, the Provider notes that the document submitted by the Complainants is date stamped as **February 2015**. However, under the section 'Voice Authority' this document notes that the information for the SFS was supplied via telephone on **14 April 2015**.

On **30 August 2021**, the Provider advised that it wished to increase its offer to the Complainants to €3,000 (three thousand Euro). This was rejected by the Complainants on **2 September 2021**.

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The Complaint for Adjudication

The complaint is that the Provider poorly administered the Complainants' loan account by failing to adhere to agreed repayment arrangements in the period from **2012** onwards, by failing to effect certain payments instructed by the Complainants and by recording inaccurate arrears balances, thereby damaging their credit rating.

The Complainants say these events together with poor communications in the period from **May 2012** to **March 2017** caused the Complainants "*considerable distress*" and "*reputational damage*". By way of further detail of the Provider's failures, the Complainants say that the Provider:

- Failed to process a telephone instruction on the Provider's automated payments line, to make a payment of €1,400 (one thousand, four hundred Euro) in **March 2013** and thereafter failed to inform the first Complainant of this failure;
- Wrongly declined a payment transaction the first Complainant instructed on **15 April 2013** even though there were sufficient funds in the account; and
- Failed to process a payment to the Provider of €1,400 (one thousand, four hundred Euro) on **5 January 2016** under reference xxxxxxxx859 and failed to inform the Complainants of this.

The Complainants want the Provider to rectify the arrears figure and say they want to be "*fairly compensated given the circumstances set out*" in their complaint.

Decision

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

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

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A Preliminary Decision was issued to the parties on **15 February 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

A table of the relevant arrears and suggested ARA periods is set out below:

Date	Payment made	Contractual Capital and Interest Monthly Payment	Arrears	Complainants submit ARA in force	Provider submits ARA in force
May-12	0.00	€2,136.07	Accruing	ARA in force (SFS completed via phone call circa May 2012; confirmed via phone call circa June 2012)	
Jun-12	0.00	€2,136.07	Accruing		
Jul-12	€1,400	€2,136.07	Accruing		
Aug-12	€1,400	€2,136.07	Accruing		
Sep-12	€1,400	€2,092.78	Accruing (€7,828.12)		
Oct-12	€1,400	€2,092.78	Accruing	ARA in force	ARA in force (for SFS received August 2012)
Nov-12	€1,400	€2,092.78	Accruing		
Dec-12	€1,400	€2,092.78	Accruing		
Jan-13	€1,400	€2,092.78	Accruing		
Feb-13	€1,400	€2,092.78	Accruing		
Mar-13	0.00	€2,092.78	Accruing		
Apr-13	€2,800	€2,092.78	Accruing		
May-13	€1,400	€2,092.78	Accruing		
Jun-13	€1,400	€2,092.78	Accruing		
Jul-13	€1,400	€2,092.78	Accruing		

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Aug-13	€1,400	€2,092.78	Accruing		
Sep-13	€1,400	€2,092.78	Accruing		
Oct-13	€1,400	€2,092.78	Accruing (€16,834.26)		
Nov-13	€1,400	€2,092.78	Accruing (adjusted to €7,828.12)		
Dec-13	€1,400	€2,092.78	N/a		
Jan-14	€1,400	€2,092.78	N/a		
Feb-14	€1,400	€2,092.78	Accruing	ARA in place	ARA in place
Mar-14	€1,400	€2,092.78	Accruing		
Apr-14	€1,400	€2,092.78	Accruing		
May-14	€1,400	€2,092.78	Accruing (adjusted to €7,828.12)		
Jun-14	€1,400	€2,092.78	N/a		
Jul-14	€1,400	€2,092.78	N/a		
Aug-14	€1,400	€2,092.78	N/a		
Sep-14	€1,400	€2,092.78	N/a		
Oct-14	€1,400	€2,092.78	N/a		
Nov-14	€1,400	€2,092.78	N/a		
Dec-14	€1,400	€2,092.78	N/a		
Jan-15	€1,400	€2,092.78	N/a		
Feb-15	€1,400	€2,092.78	Accruing	ARA in place (SFS completed)	
Mar-15	€1,400	€2,210.88	Accruing		
Apr-15	€1,400	€2,210.88	Accruing		

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May-15	€1,400	€2,210.88	N/a	ARA in place	ARA in place
Jun-15	€1,400	€2,210.88	N/a		
Jul-15	€1,400	€2,210.88	N/a		
Aug-15	€1,400	€2,210.88	N/a		
Sep-15	€1,400	€2,210.88	N/a		
Oct-15	€1,400	€2,210.88	N/a		
Nov-15	€1,400	€2,210.88	N/a		
Dec-15	€1,400	€2,210.88	N/a		
Jan-16	0.00	€2,210.88	Accruing		
Feb-16	€1,400	€2,210.88	N/a		
Mar-16	€1,400	€2,210.88	N/a		
Apr-16	€1,400	€2,210.88	N/a		
May-16	€1,400	€2,271.71	Accruing		
Jun-16	€1,400	€2,271.71	N/a		
Jul-16	€1,400	€2,271.71	N/a		
Aug-16	€1,700	€2,271.71	N/a		
Sep-16	€1,700	€2,292.67	Accruing		
Oct-16	€1,626.88	€1,626.88	N/a		
Nov-16	€1,626.88	€1,626.88	N/a		
Dec-16	€1,626.88	€1,626.88	N/a		
Jan-17	0.00	€1,626.88	Accruing		
Feb-17	€1,626.88	€1,626.88	N/a		

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Evidence

In a letter to the Complainants of **28 September 2010** confirming an interest only repayment arrangement for a further period of 24 months, it states:

“If we do not receive the agreed repayments at any stage during this 24 month period this arrangement will be deemed broken and our standard arrears process will resume.”

- The letter to the Complainants of **13 May 2012** states as follows:

“We’ve noticed that you have not kept to the alternative arrangement we agreed between us, for you to pay your Mortgage, which means our arrangement has ended.

Please contact us so that we can discuss the reason for your missed payment. If you keep in touch with us, we can help you better by working out a suitable solution together.”

- The cover letter to the Complainants dated **22 May 2012**, enclosing a blank SFS, stated as follows:

“Please find enclosed a Standard Financial Statement form, which contains the information that you provided to us over the phone or when our representative met with you.

...

Once we have received your completed Standard Financial Statement we will then be able to assess your case. We will revert to you in due course to let you know the outcome of this assessment.”

- The Complainants’ account statement with the Provider for **15 April 2013** states as follows:

12 Apr	Card Transaction			
			50.00	1,004.30
15 Apr	OnLine Transaction			
	Card Transaction		300.00	
			43.59	
	Cash Withdrawal		40.00	1,220.71
16 Apr	OnLine Transaction		200.00	

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- The SFS that the Complainants submit is dated **19 February 2015** and states as follows:

“Budget Planner

...

[Provider] Representative [Redacted]

Date 19/02/2015

...

Voice Authority (If Applicable)

...

Voice Authority Yes

Time of Call 14:00pm

Date of Call 14/04/2015”

Analysis

The first issue to consider is whether the Provider was entitled to demand payment for both the capital and the interest, following the termination of the interest only arrangement agreed on **28 September 2010**.

Although the Complainants submitted to this Office that the Provider’s letter of **11 December 2006**, which accompanied the loan, stated that it was ‘interest only’, they correctly acknowledge in their original complaint that the interest only period was to last for two years only. It is clear that they understood the Provider’s entitlement to demand normal capital and interest repayments following this period, though as it happens, the interest only period was then agreed between the parties to continue for a further two years. Consequently, it should be noted that the Provider would not have required the Complainants’ *“agreement”* to call for capital and interest repayments. when this arrangement had come to an end.

In respect of whether the arrangement came to an end validly, I note that they failed to make payments on multiple occasions, with multiple letters sent to the Complainants, before the arrangement was terminated in **May 2012**. As the interest only agreement of **28 September 2010** stated that the agreement *“will be deemed broken”* if any payment was missed, I accept that the Provider was entitled to end the agreement in **May 2012**.

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The Complainants submit that there was insufficient time between the letter of **13 May 2012**, and the letter of **15 May 2012**, which demanded repayments of capital and interest. I note that the letter of **13 May 2012** confirmed that the arrangement was terminated. It invited the Complainants to get in touch to discuss the possibilities of future repayment arrangements. It did not offer the Complainants the possibility of maintaining the current arrangement. In those circumstances, I believe that it was reasonable for the Provider to issue the letter of **15 May 2012**, and it was not required to maintain the previous agreement until the Complainants had made contact, or at all.

The next issue to consider is when the ARAs were in place on the Complainants' account.

The Complainants submit that the first ARA was in place from **May 2012**, as a result of an SFS completed via phone call. The Provider submits that it never received an SFS from **May 2012**, and it points out that the copy provided by the Complainant to this Office is not signed. The Provider states that its timeline does not have a note of every interaction between the parties and that it has no record of any call between the second Complainant and Agent A. However, it is clear from the letter of **22 May 2012** that there was some interaction between the parties, notwithstanding that the agent's name may be incorrect.

The Complainants were supplied with a completed SFS which contained information that was given to the Provider either over the phone or in person. The Complainants say that this was given over the phone, which seems to me to be likely. This cover letter instructed the Complainants to sign the declaration and return the SFS to the Provider. It does not however appear that they did this, and they do not suggest that they did so. The cover letter notes that the SFS would be assessed on receipt, and then the Provider would be in contact regarding any repayment arrangement that could be put in place. In circumstances where the Complainants did not sign and return the SFS for the Provider's consideration, I take the view that no ARA was put in place in **May 2012**.

As a result of what appears to have been the Complainants' misunderstanding, they accrued arrears on their account for **July, August, and September 2012**, totalling €2,164.92 (two thousand, one hundred and sixty-four Euro and ninety-two Cent).

In **October 2012**, an ARA was created for the SFS completed in **August 2012**. The Provider acknowledges that it did not register this ARA in its systems in a timely manner. In this respect, I note that it acted in breach of Provision 11.1 CPC:

"A regulated entity must ensure that all instructions from or on behalf of a consumer, including the date of both the receipt and transmission of the instruction, are recorded."

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I further note that the Provider rectified this error by adjusting the arrears, and subsequently it offered a sum of compensation to the Complainants.

The next ARA between the parties is also agreed, and lasted from **February 2014** to **January 2015**, and another adjustment was made for arrears accrued in this period.

The Complainants submit that an ARA was in place from **February 2015**. They rely on an SFS with a date of **19 February 2015**. The Provider submits that the information for this SFS was not provided until **April 2015**, and an ARA came into effect the following month. In effect, the Complainants argue that the ARA should be deemed to come into effect from the date that the parties began to correspond in relation to creating an ARA.

As noted in the Provider's letter of the **22 May 2012**, the Provider will assess a consumer's SFS before deciding whether or not to offer an ARA. The Complainants could have negotiated a temporary ARA, as per Provision 38 of CCMA during this period, but this did not occur. As a result, I do not accept that there was an ARA in place from **February 2015** to **April 2015**.

The parties then agree that there was an ARA in place from **May 2015** to **April 2016**.

The Complainants submit there was an ARA in place from **May 2016**, whereas the Provider submits that it came into effect in **June 2016**. The Provider's letter dated **24 May 2016** indicates that this ARA was to come into effect on **28 June 2016**. As a result, I am satisfied on this evidence that, as above, the ARA came into effect at that time.

The Complainants submit that they did not receive correspondence warning them that their ARA would expire in **February 2015**. This ARA actually expired in **January 2015**. As per Provision 43 CCMA, the Provider is required to review its ARA arrangement at appropriate intervals, and at least 30 calendar days prior to the expiry.

I note that pre-expiry letters were issued for the ARAs expiring in **April 2016** and **August 2016**. In this regard, I believe that the evidence indicates that the Provider failed to fully comply with its obligations under Provision 43 CCMA for the ARA that expired in **January 2015**. The Complainants accrued arrears of €2,314.54 (two thousand, three hundred and fourteen Euro and fifty-four Cent) for the period of **February** to **April 2015**, following this.

I note that a letter provided to this office dated **13 May 2014** stated that the Complainants were to be removed from the protection of the CCMA. However, the Provider stated in its reply to the formal investigation of this Office that the Complainants were dealt with under the CCMA until **May 2016**. In those circumstances, I accept that the Complainants were afforded the full protection of the CCMA during that time.

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The next issue to consider is the payments attempted via the automated payment system. The Complainants have made reference to attempted payments in **March 2013, April 2015, and January 2016**. The Provider has no record for calls to the automated system for **25 March 2013** or for **5 January 2016**. There were successful payments made through the automated system on **2 March 2013** and **26 January 2016**.

It is certainly unusual that the Complainants were able to furnish a reference number for the **5 January 2016** call, but that the Provider has no record of this call. In general, the Provider submits that where there is an unsuccessful transaction, the call will be transferred to an agent. It notes that a payment may be unsuccessful when digits are incorrectly entered or when there are insufficient funds in an account. It also notes that the Complainants' online account will reflect that no payment has been made.

As this line is not recorded, it is not possible to confirm whether the Complainants completed the entire process, or ended the call prior to being connected with an Agent. The Complainants have noted reference numbers for two of their attempted transactions. However, it is not clear whether the numbers reference the calls themselves, or are only provided when a transaction is successful. In any event, it is clear that the transactions were not completed.

The Provider has submitted and I accept that in relation to the attempted payments of **April 2013** and **January 2016**, there may not have been sufficient funds in the Complainants' account.

In relation to the Provider's obligation to inform the Complainants that the transactions were unsuccessful, in the absence of evidence pointing to a larger technical error on the part of the Provider, I consider the Provider's process of transferring calls to agents, to have been adequate. Indeed, the Complainants ought to have been able to view the success, or otherwise, of each such transaction through their online banking.

Finally, in relation to the demand for full payment of the debt made by the Provider's agent on **7 April 2015**, this demand was made by a third-party solicitor acting on behalf of the Provider. As the Provider submits that the Complainants were still protected by the CCMA, I take the view that the Provider should have informed them that this third-party would be acting on its behalf. In relation to the Complainants' submission that they did not miss an instalment of **January 2017**, this Office has not been supplied with any evidence to support the allegation that funds were taken out of the Complainants' account and misapplied.

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Having considered all of the evidence before me, I take the view that over an extensive period between 2010 until the loan was sold in late 2016, the Provider was very reasonable in its dealings with the Complainants. On a number of occasions it entered into Alternative Repayment Arrangements with the Complainants during those periods when the Complainants were unable to meet their full contractual capital and interest obligations to the Provider.

Whilst I note that the evidence indicates that the Provider made a number of small errors in the course of this time, I am conscious that the Provider, in responding to this complaint has offered what I consider to be a reasonable amount of compensation to the Complainants with a view to redressing failures in that regard.

In those circumstances, I do not consider it necessary or appropriate to make any further direction to the parties arising from the issues raised by this complaint. Rather, it will be a matter for the Complainants to communicate directly with the Provider if they wish to accept the Provider's reasonable offer of compensation.

For the reasons outlined above however, and on the basis of the evidence before me, I do not consider it appropriate to uphold the Complainants' complaint that the Provider poorly administered their loan account in the period from 2012 onwards.

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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

9 March 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—

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- (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.**

