Decision Ref: 2022-0186

Sector: Banking

Product / Service: Investment/buy to Let Mortgage

Conduct(s) complained of: Selling mortgage to t/p provider
Arrears handling - buy-to-let
Fees & charges applied
Maladministration

Outcome: Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant's mortgage loan accounts are held with the Provider.

The Complainant's Case

The Complainant submits that the Provider sold the mortgage loans for accounts ending in 309 and 495 to a third party around **August 2018** despite the fact that they had reached what he says was an agreement with the Provider in respect of these loan facilities. The Complainant submits that he was in continuous contact with the Provider in relation to the loan accounts ending in 309 and 495 and he states that he is a good customer of the Provider and he has always been open and honest in his dealings with it.

The Complainant submits that in relation to the mortgage loan account numbers ending in 309 and 495, he was in constant negotiation with the Provider Relationship Manager, and that in **July 2018** following a series of meetings, telephone calls and emails, both parties had entered into what the Complainant had believed to be a very clear and defined resolution to managing these mortgage loan facilities.

The Complainant submits that in **May 2018** the mortgage loan account ending in 495 was converted to full capital and interest repayments, as per his suggestion to the Provider and that the Provider had facilitated this new arrangement by extending the term on another mortgage loan account ending in 505 so as to free up repayment capacity.

The Complainant states that the outstanding mortgage on the loan account ending in 495 was circa €400,000 (four hundred thousand euro) and the property pertaining to the loan was valued at €275,000 (two hundred and seventy five thousand euro) at that time and that this resulted in negative equity on the mortgage loan account to the sum of €125,000.

The Complainant submits that the mortgage loan account ending in 309 is an "interest only" repayment facility. The Complainant submits that in **May 2018** he was informed by the Provider that the repayments pertaining to the mortgage loan account ending in 309 would remain on interest only and that the property pertaining to the loan would be sold in **2018** or **2019** and that the proceeds of the sale of the property would be used as full and final settlement of the repayments on the mortgage loan account ending in 309.

The Complainant submits that in that event, the outstanding balance on the mortgage loan account was likely to be circa €140,000 which he states the Provider had agreed to write-off, post-sale of the property. The Complainant submits that since the mortgage loan was sold to the third party this has resulted in negative equity on the mortgage loan facility totalling €140,000. The Complainant submits that on **12 July 2018**, the Provider emailed him to inform him that the Provider's credit department had agreed to the sale of the property pertaining to account number ending in 309 as the "*correct strategy*" and that the repayments would be reduced to €204.00 (two hundred and four euro) per month, for an initial six month period.

The Complainant argues that as the Provider sold the mortgage loan accounts ending in 495 and 309 to a third party notwithstanding the alleged agreed arrangements to resolve the repayment of the loans, and it has caused him much distress and has had a negative impact on him financially.

The Complainant also submits that the Provider wrongfully capitalised the arrears on the accounts ending in ending in 309 and 495 and that when he brought the matter to the Provider's attention, it informed him that he had agreed to the capitalisation of the arrears through a voice authority. The Complainant submits that he had requested a copy of the voice recording that the Provider is relying on in this regard, and it refused to provide it to him. The Complainant submits that the capitalisation of the arrears on the loan accounts was as a direct result of the Provider's inefficient administration and it was never agreed by him, for it to take this action on the accounts.

The Complainant further asserts that the Provider may have overcharged his mortgage loan account ending in 482. The Complainant submits that the mortgage loan repayment on the account ending in 482 had risen from €1,536.23 in **December 2017** to €1,545.23 in **January 2018** and that he queried this matter with the Provider and it failed to respond.

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The Complainant submits that the process of resolving the arrears on the loan accounts ending in 495 and 309 has taken a toll on his health resulting in him being hospitalised in **January 2018** and he asserts that he must provide for his daughter in the life challenges she faces.

The Complainant states as follows:

> "*I am a customer of [Provider] for over 20 years have five mortgage facilities with them including my private home at … All bar one of my mortgage facilities, namely reference [ending] 309 … are conforming capital and interest repayment facilities…During 2017 and 2018 I was in constant negotiation with my relationship manager in [Provider]…and following a series of meetings, phone calls and emails we entered into what I thought was as a very clear and defined resolution to managing out my facilities with [Provider] in July 2018…I was of the understanding that we were on I a very clear path to formalising a resolution on mortgage reference [ending 309] which would mean a consensual sale in 2019 and debt forgiveness…I have no doubt that the [Provider] would be in a better financial position if it had followed through on what I believe had been agreed in principle with my relationship manager…Conversion of [account ending 495] to capital and interest repayments whereby I took on negative equity of c €125 and 2. Consensual sale of [account ending 309] carrying negative equity of c. €140k but potential to save the [Provider] over €320k over the lifetime of the tracker mortgage*."

The Complainant further submits as follows:

> "*They readily acknowledge their failings across a number of issues including:*
> *i. Incorrect posting of 'arrears' on my various mortgage accounts*
> *ii. Delays in the response to queries around the processing of arrears*
> *iii. Stating that I verbally agreed to the capitalisation of my arrears when I had not …*
> *iv. Incorrect correction of my arrears which they acknowledge*
> *2. Acknowledgment that they did not respond to my various queries on issues in a timely manner*
> *3. Delays in the processing of my proposal in May/ June 2018*."

The Complainant submits that he is "*very aggrieved*" and asserts that he "*wholeheartedly and professionally engaged*" with the Provider. The Complainant wants the Provider to provide an agreeable resolution to the complaint.

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The Provider's Case

The Provider has acknowledged that the account ending in 482 was overcharged. The Provider submits that this occurred due to a temporary alternative repayment arrangement which had been put into place on the account in **April 2017** which had not been applied in time to the account and as a result, the Complainant paid €2,215.12 (two thousand, two hundred and fifteen euros and twelve cents) instead of the agreed €320.00 (three hundred and twenty euro) on the loan account ending in 482. This resulted in the Complainant being overcharged to the sum of **€1,895.12** (one thousand, eight hundred and ninety-five euro and twelve cents) on the loan account ending in 482.

The Provider has acknowledged this error and in addition to applying the required refund, it offered €400.00 (four hundred euro) as compensation in full and final settlement of this element of the complaint.

The Provider wrote to the Complainant, by letter dated **18 February 2019,** and said that a portfolio of non-performing mortgages, including loans endings 485 and 309, were sold to the buyer of XYZ Portfolio and noted that:

> *"the terms of your loan offer do not restrict any assignment of your mortgage loan and any transfer of any security to the Buyer and therefore such assignment and transfer is permitted under our agreement with you."*

The Provider recognises that account ending 309 was in an arrangement, at the time of sale.

The Provider also notes that it had arranged for the Complainant's ICB record to be amended to reflect that he was in an arrangement from **April 2017**.

The Provider is satisfied that its polices do not allow for debt forgiveness or write-offs. The Provider also states that it was entitled to sell the mortgage loans, in line with its **Terms and Conditions**.

The Complaints for Adjudication

The first complaint is that the Provider wrongfully sold the loan account ending in 309 to a third party and that it failed to honour the alleged agreement made in **July 2018,** regarding the sale of the property pertaining to the loan account, and the write off of any remaining debt on the account, after the sale.

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The second complaint is that the Provider wrongfully sold the loan account ending in 495 to a third party and that it failed to follow through on an arrangement allegedly made in May 2018, that it would resolve the arrears on the loan account.

The third complaint is that the Provider wrongfully overcharged the mortgage loan account ending in 482.

The fourth complaint is that the Provider wrongfully capitalised the arrears on the Complainant's accounts.

Decision

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

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

A Preliminary Decision was issued to the parties on **12 April 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Provider relies on paragraph 30 of the mortgage **Loan Offer** for account ending 309 which says as follows on page 10 –

> *"the Lender may, at its sole discretion, agree to capitalise the Borrower's arrears of Monthly Payments (if any) on terms and conditions agreed between the Lender and the Borrower."*

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The Provider also relies on paragraph 34 of its **Terms and Conditions** which govern account ending 495, which says that –

> "[*the Lender] may, at its sole discretion, agree to capitalise the Borrower's arrears of monthly Mortgage repayments on terms and conditions agreed between [the Lender] and the Borrower*."

The Provider relies on paragraph 12 of the **Terms and Conditions** of the mortgage **Loan Offer** for account ending 309 which says as follows on page 5:

> "*12. Securitisation – [the Lender] may at any time and from time to time transfer, assign, mortgage and / or charge the benefit of all or any part of the Mortgage and all of the rights and interests of [the Lender] in and to any life assurance assigned to or charged unto [the Lender] and all other contracts and policies of insurance relating to the Property on such terms as [the Lender] may think fit. Information on securitisation is available at your local branch*."

The Provider also relies on paragraph 12 of the **Terms and Conditions** of mortgage loan ending 495 which says at page 5 as follows:

> "*12. Securitisation – [the Lender] may at any time and from time to time transfer, assign, mortgage and / or charge the benefit of all or any part of the Mortgage and all of the rights and interests of [the Lender] in and to any life assurance assigned to or charged unto [the Lender] and all other contracts and policies of insurance relating to the Property on such terms as [the Lender] may think fit. Information on securitisation is available at your local branch*."

Recording of telephone calls has been furnished in evidence. I have considered the content of these calls and reviewed all evidence thoroughly. I note that the telephone call of **6 March 2017** is a discussion between the Complainant and the Provider Relationship Manager about how best to make a proposal to the Provider's credit department.

I note that during the telephone call of **3 September 2018**, the Complainant submits that he is concerned that he will become liable for the surplus post sale of around €140,000 (one hundred and forty thousand euro) as a result of the sale by the Provider of mortgage loan ending 309.

The Complainant submits that:

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> *"… of primary concern to me is that they let me enter into an agreement with them in June/ July 2018 despite their knowing that they were preparing both assets for sale as part of the [XYZ] Portfolio namely:*
>
> *1. I take on mortgage reference *****495, [address], at full capital and interest repayments*
> *2. Mortgage reference *****309, [address], to remain at interest only pending formalisation of a decision to sell the property with the proceeds to be applied in full and final settlement of the debt*
>
> *By allowing me to do this mortgage reference *****495 was presented as a conforming mortgage facility to the proposed purchasers while at the same time [the Provider] choose not to advise the proposed purchasers of the ongoing negotiations and/ or proposal to sell the [County] property with a view that the proceeds would be in full and final settlement of the debt. Key here is that both of these decisions by [the Provider] would have ensured a higher price for their book to the detriment of own position."*

The Complainant further notes that:

> *"At all times I have honoured my commitments with the [Provider] and have presented solutions. Four of my five mortgage facilities are operating on full capital and interest repayments. Having converted mortgage reference *****495 (address) to capital and Interest, at my suggestion, I was of the understanding that we were on a very clear path to formalising a resolution on mortgage reference *****309 (address) which would mean a consensual sale in 2019 and debt forgiveness. I was led to believe we were working towards a resolution satisfactory to all parties*."

I note that on **14 May 2018**, the Complainant asked the Provider Relationship Manager by email, why the direct debits did not match the agreement made for accounts ending 309 and 495 and that both accounts were showing arrears. He noted that "*I was hoping to agree a strategy, but you advised that a new policy was forthcoming. I still await hearing about this*." I note that similar queries had been emailed to the Provider Relationship Manager by the Complainant on **15 February 2018** and the Complainant was clearly seeking to engage proactively with the Provider regarding his mortgage accounts, throughout February and March 2018.

I note that in **May 2018**, the Complainant sought to establish from the Provider Relationship Manager by email, whether his accounts were part of the Provider Portfolio Sale which had been the subject of media coverage.

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The evidence shows that from **16 May 2018**, the Provider Relationship Manager emailed the Complainant noting that "*credit would look at the properties but that there was a delay in them coming back*". I note that the Complainant emailed the Provider Relationship Manager on **28 June 2018** to ask what he should do about direct debits due to hit his account on **1 July**, how much they would be, and whether he should cancel them.

On **6 July 2018**, the Provider Relationship Manager wrote to the Complainant by email, and said that the debt forgiveness part of the proposal, had come under some scrutiny.

On **12 July 2018**, the Provider Relationship Manager wrote to the Complainant, by email, and said as follows:

> "*Credit have approved the following arrangement :*
> *• [Mortgage account ending 309] - Reduced Repayment to 240 per month for a initial 6 months*
> *• [Mortgage account ending 505] - Term Extension out the maximum term*
> *• [Mortgage account ending 495] - Term Extension out to the maximum term*
> *With regards to debt write off on the sale of [Mortgage account ending 309] property, Credit cannot approve this as we do not have a Debt Write Off policy at this time.*"

On **13 July 2018**, the Complainant wrote to the Provider Relationship Manager, by email, and said as follows:

> "*Thanks for your note and phone conversation last evening.*
> *Firstly many thanks to you and your colleagues for working through this proposal. From our phone conversation I would like to confirm:*
> *1. [Mortgage account ending 505] - yes for term extension resulting in monthly repayments of €199 capital and interest.*
> *2. [Mortgage account ending 518] stays as is €888 per month capital and interest.*
> *3. [Mortgage account ending 495] - term extension and conversion to capital and interest repayments of €1,573pm.*
> *4. [Mortgage account ending 309] - interest only facility extended for six months initially at €240pm.*
>
> *While I am in agreement in principle to commence this new arrangement key is that we reach a solution on the debt write off position for [Mortgage account ending 309] when that property is sold in spring 2019.*

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> *By entering into this agreement I have now transferred all my facilities to confirming capital and interest facilities and confirm that all property management charges and property taxes are up to date on all the properties."*

The Provider says that it made a decision to dispose of its interests in the two mortgages (ending 309 and 495) on **13 August 2018** and it sold the two mortgages on **30 November 2018**.

The Provider submits that it sold them because "*they had been previously been in repayment forbearance arrangements*" and that "*this was a commercial decision that the [Provider] was entitled to make at its sole discretion*." The Provider also noted that "*the decision to dispose of its interest can be made whether the mortgage is performing or not.*"

The Provider relies its **Terms and Conditions** of both mortgage loans ending in 309 and 495 which allows that it may "*at any time and from time to time transfer, assign, mortgage and / or charge the benefit of all or any part of the Mortgage and all of the rights and interests of [the Lender] in and to any life assurance assigned to or charged unto [the Lender] and all other contracts and policies of insurance relating to the Property on such terms as [the Lender] may think fit*."

The Provider says that it advised the new owner of the interest only agreement to **1 January 2019** on account ending 309 but did not advise of the Complainant's intention to sell his property linked to account ending 309, as it says it would not have bound the new owners and that instead, it was for the Complainant to re-enter negotiations with them. The Provider states that the proposal for mortgage ending 309 to sanction a six-month reduced repayment arrangement to allow the property to be placed on the market for sale, and a discussion about the remaining €140,000 shortfall, was not committed to, as it was "*outside our policy*."

I accept that the Provider was entitled to sell its interest in mortgage loans ending 309 and 495 in accordance with the **Terms and Conditions** of the mortgage loans on these accounts. I note that on **13 July 2018**, the Complainant had only agreed in "*principle*" to what was proposed on **12 July 2018**. I am satisfied that there was no agreement to sell account ending 309 and no agreement by the Provider write off the remaining debt after the sale.

The Provider explains that minor adjustments were made to the re-payment amounts on the mortgage loan ending 482, but that this was in line with the rise and fall of the Revenue Tax Relief at Source scheme and so there was no overcharge by the Provider. I accept this.

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On **21 August 2018**, the Complainant wrote to the Provider Relationship Manager and noted that €6,886.34 (six thousand, eight hundred and eighty-six euro and thirty-four cents) in arrears was appearing against account ending 495, and he queried how arrears could have arisen, if he was honouring his monthly payments as agreed. He speculated that this was because direct debits were being presented for higher amounts than agreed. The Complainant further noted that the arrears had been capitalised and that the payments for the duration of the mortgage had increased as a result. He noted that the same had occurred in account ending 309, with €7,704.04 (seven thousand, seven hundred and four euros and four cents) appearing as arrears. He also noted that it had been agreed that arrears would be wiped from these accounts.

The Provider wrote to the Complainant, by letter dated **18 February 2019** and noted that having reviewed its records, because the arrears had been caused as a result of deals being delayed by the Provider, that it was proposed to capitalise the arrears as a form of corrective action and it said "*as you agreed to this through voice authority, the transactions were applied*". It further noted that as the "*original fault*" was with the Provider, this was not the service the Complainant should have received.

The Provider wrote to the Complainant, by **Final Response Letter**, dated **20 June 2019** and noted in relation to account ending *309, there should have been a Temporary Alternative Repayment Arrangement in place on the account in **April 2017,** and due to delay in applying it, the Complainant had been required to pay €2,215.12 (two thousand, two hundred and fifteen euros and twelve cents) instead of the agreed €320.00 (three hundred and twenty euro) and the Provider noted that "*as a result, I agree that you have overpaid and are entitled to a refund*" in the amount of €1,895.12 (one thousand, eight hundred and ninety five euro and twelve cents). I note that this refund was paid.

The Provider submits that on **8 August 2019** the outstanding arrears of €7,704.04 on mortgage loan ending 309 were capitalised, leaving the amount due and owing at zero. Similarly, on **7 August 2018**, the outstanding arrears of €6,886.34, on mortgage loan ending 495 were capitalised, leaving the amount due and owing at zero. The Provider relies on paragraph 30 of its **Terms and Conditions** which govern account ending 309 and paragraph 34 of its **Terms and Conditions** which govern account ending 495, which says that at its sole discretion it can agree to capitalise the Borrower's arrears of monthly mortgage repayments, on terms and conditions agreed between the lender **and the borrower**. The Provider also notes that as Alternative Repayment Arrangements had expired for these two accounts by **March 2018**, a number of Temporary Alternative Repayment Arrangements were put in place, but that from **May to August 2017** full arrears were recorded on its systems.

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The Provider admits internal delays in processing this matter and that:

> "*it is fully accepted that the arrears recorded on both these mortgages at that time was caused by [Provider] error as it took some time to finalise the new mortgage payment arrangements*." The Provider notes that "*it was therefore correct that the [Provider] should correct the position by zeroising those arrears, which was done ... the arrears; however, were corrected to zero in such a way that led to an increase in the monthly repayment recorded on the mortgage system for both 309 and 495, which was not correct. The adjustment made should not have led to an increased repayment being recorded on our systems*."

The Provider notes that in fact, no voice authority was sought on **12 July 2018**, but it says that none was required to simply correct an internal error and zeroise arrears, as the error lay in the capitalisation of the arrears. The Provider also acknowledged that such error was not reversed or amended. The Provider submits that albeit that €168.30 (one hundred and sixty eight euros and thirty cents) was overpaid on account ending 495 due to the capitalisation of arrears, in fact this had the effect of decreasing the loan balance and interest charged, and it was therefore not technically an overpayment.

In relation to account ending 309, an alternative repayment arrangement of €240.00 (two hundred and forty euros) applied up to **January 2019**; thereafter, the full monthly repayment amount (including the incorrectly capitalised arrears of €67.08 (sixty seven euro and eight cents) fell due on **February 2019** in an amount of €2,453.98 (two thousand, four hundred and fifty three euro and ninety eight cents) in total, and was not paid.

In particular, I note that the letter dated **18 February 2019** misled the Complainant and informed him that voice authority had been granted for the capitalisation of arrears in line with the Provider's **Terms and Conditions,** when in fact this had not occurred. This is very disappointing and, in my opinion amounts to a breach of provision 2.1 **CPC** to act *"honestly, fairly and professionally"* and 2.2 **CPC** to act *"with due skill, care and diligence in the best interests of its customers"* in its interactions with the Complainant. It is understandable that the Complainant was mystified at this reference to a voice authority, as he had given no such authority to the Provider to capitalise the arrears. Whilst I note that this was a "genuine attempt" by the Provider to rectify the error which it had made, the communication to the Complainant in that regard was misleading and unacceptable.

The Provider wrote to the Complainant, by letter dated **18 February 2019,** and upheld the Complainant's complaint that he could not contact the Provider Relationship Manager. I note in particular the many examples of the Complainant's unaddressed emails seeking confirmation of why accounts were being directly debited, and why the amounts were such as they were.

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The Provider notes furthermore that "*a number of phone calls to our ASU team were not responded to in a timely manner, at a time when the Complainant needed support*." I note the delay in handling the Complainant's complaint and the subsequent delay in issuing a formal response to the investigation of this Office, and other significant delays in dealing with the FSPO process. This is also disappointing.

When the Provider responded to the formal investigation of this Office in **April 2021**, it noted that there had been a number of service issues, including the issue regarding the capitalisation of arrears. It also noted that several phone calls to the Provider's Arrears Support Unit had not received a response, during a period when the Complainant required support and neither had the Provider supplied a timely response to him, when he queried the increase in the monthly repayments on the mortgage on his private dwelling house, mortgage reference 482 (which occurred as a result of the reduction in TRS credits from Revenue).

The Provider also acknowledged that full capital and interest repayments had been debited to both accounts 309 and 495 instead of the concessionary amount which had been agreed. The Provider acknowledged that although the error in relation to account 495 had been corrected and reversed promptly on 10 May, the equivalent error for account 309 had not been corrected at that time.

The Provider also acknowledged that its letter of 13 February 2019, had not in fact resolved the issue of the refund due on account 309, because its response had been incorrect. The Provider noted the repayment of €1,895.12 to the Complainant's current account and the Provider suggested that this was a direct compensatory payment to the Complainant, rather than being an actual refund, given that the mortgage in question had been closed.

In responding to the formal investigation of the complaint by this Office at that time, the Provider sought to apologise for the distress and inconvenience that these various issues had caused the Complainant and the delays he had encountered when he raised those issues with the Provider. In those circumstances, in addition to the payment of €1,895.12 already made, the Provider in sending its formal response to the investigation in April 2021, made a formal offer to the Complainant of compensation of **€4,000**, with a view to resolving the complaint in full and final settlement.

In May 2021, the Complainant rejected this settlement offer and made clear his view that in circumstances where the refund of €1,895.12 arose as a result of an incorrectly posted direct debit in July 2019, this was not in his opinion any form of compensation to him and, indeed, he noted that this refund had taken more than 12 months to secure.

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Subsequently, in **June 2021**, the Provider made an additional formal offer to the Complainant of compensation in the amount of **€10,000**, bearing in mind the Complainant's additional comments at that time.

In my opinion, the issues giving rise to this complaint are disappointing as it is clear that the Complainant was very conscious of his ongoing liabilities to the Provider, and he made very significant efforts during February and March 2018 to address the outstanding debts and come to an agreement which would ensure that both parties could reach an agreement whereby the liabilities would be addressed. In my opinion however, there is no evidence that the Provider accepted an agreement whereby it would write-off any outstanding balance due and owing on mortgage account 309 of approximately €140,000, in the context of the Complainant's intention to sell the property in the Spring of 2019. Rather, I am satisfied that the evidence suggests that the Provider specifically declined to agree to any such write-off, or debt forgiveness.

I am satisfied nevertheless, on the evidence available, that there were quite a number of failings on the part of the Provider in its communications to the Complainant at a time when he sought assistance and was making every effort to address his ongoing liabilities to the Provider. Whilst I accept that the Provider was entitled the sell the mortgage account as part of a Portfolio Sale, nevertheless during the period when it continued to own those loan accounts, the Complainant was entitled to a more responsive service from the Provider, but regrettably, the service he received was far from satisfactory.

I am satisfied that the Complainant's complaint regarding the overcharging and incorrect debiting of mortgage repayments is borne out by the evidence, as is his complaint that the Provider wrongfully and without his authorisation capitalised arrears on the account. In those circumstances, I consider it appropriate to partially uphold this complaint. In my opinion, these failures on the Provider's part, were unjust and unreasonable within the meaning of ***Section 60(2)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

The nature of the Provider's errors over a period during which the Complainant was seeking to work to address the situation he had found himself in, are such that I do not consider the Provider's offer, at the time when it sent its formal response to the investigation of this Office, of €4,000, to be adequate in the circumstances, for the inconvenience which he was caused.

I take the view however, that the Provider's more recent offer of €10,000 is an appropriate figure to redress its failures to the Complainant throughout the period in question. I am mindful that in its submission to this Office following the issuing of the preliminary decision to the Parties, the Provider has suggested that because it previously offered the figure of €10,000, this complaint should not be upheld.

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I don't accept this. The offer of €10,000 came late in the day. Although the Provider acknowledged its wrongdoing when responding to the formal investigation of this Office in April 2021, and indeed, it made a settlement offer to the Complainant at that time, I take the view that the figure offered of €4,000 was not adequate to redress the inconvenience which it had caused to the Complainant. It was subsequent to the delivery of the Provider's formal response to the investigation of the complaint, that it ultimately increased the compensatory offer to a figure which I consider to be more appropriate.

Accordingly, to mark my decision that this complaint is partially upheld, I consider it appropriate to direct the Provider to make a compensatory offer, as specified below.

Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld on the grounds prescribed in ***Section 60(2)(b).***

- Pursuant to ***Section 60(4)(d) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of **€10,000** (ten thousand Euros) by way of payment to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

- The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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

MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

3 June 2022

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PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.