



<u>Decision Ref:</u>	2022-0192
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Delayed or inadequate communication Dissatisfaction with customer service Incorrect information sent to credit reference agency Wrongful consideration of forbearance request Failure to implement payment terms
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Complainants' borrowings with the Provider, which included loans related to property and lands on the Complainants' farm and Buy-To-Let Residential Properties.

The Complainants' Case

The Complainants sought a restructuring of the personal debt they held with the Provider across three accounts. The Complainants submit that on **29 April 2016** they received an email from the Provider which set out that following an earlier telephone conversation with the First Complainant, the Provider was going to seek formal credit approval for the restructure of their personal debt, setting out proposed terms.

The First Complainant then replied by email of the **6 May 2016** that they were in agreement with this proposal and requested the offer letters from the Provider as "*soon as possible*".

The Complainants submit that the reason for requiring the restructure to be agreed as soon as possible, was that the First Complainant was undergoing surgery in **June 2016**. The Complainants state that the Provider was informed of this hospital procedure and that the First Complainant would have a six-month recovery process after the operation. The First Complainant states that he "*worked very hard in the months preceding*" the operation, to get the restructure agreed.

The Complainants state that the First Complainant contacted the Provider in **November 2016** and discovered that the relationship manager who they had been working with prior to the surgery, no longer dealt with the loan file, and the Complainants assert that the restructure did not happen due to this change in relationship manager.

The First Complainant states that they chased the Provider but that it was only through the intervention of a local representative, that they got a meeting in **December 2017**. The Complainants state that at this meeting the Provider refused to agree a restructure on the terms agreed in **2016** and wanted a restructure at *"2018 loan balances as opposed to the 2016 loan balances and new rates"*.

The First Complainant states that the Provider was responsible for the delays in them meeting the loan pre-condition. The Complainants state that their credit rating was *"downgraded in 2019"* which prevented them from re-financing the loans when they were sold to the new owner.

The Complainants state that the Provider has been *"extremely unfair"* in its treatment of the Complainants over the last ten years, and that they are *"very dissatisfied"* with how the Provider worked with the First Complainant in the attempts to restructure the loans. The Complainants further complain that the Provider did not contact the Second Complainant during the period of **May 2016 to November 2016**.

The Provider's Case

The Provider states that the restructuring negotiations were ongoing for the two years leading up to **May 2016** with proposals going between the parties dealing with proposed write-offs and property sales.

The Provider states that between **12 February 2016** and **29 April 2016** there were around 17 interactions between the Provider and the Complainants. The Provider states that it was informed of the First Complainant's impending surgery in June 2016, in an email on **4 March 2016**.

The Provider states that on **29 April 2016**, it emailed the First Complainant with a proposal for potential restructure of the debt. The Provider states that at this point, it was made clear to the First Complainant that:

"no legal obligation would be deemed to exist until credit approval was attained, legal due diligence was carried out and that formal Offer Letter/Loan Agreement... for acceptance was complete."

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The Provider agrees that an email was received from the First Complainant on **6 May 2016** confirming that he was in agreement with the restructure proposal, and requesting that Offer Letters be issued to him as soon as possible. The Provider states that in its reply to the First Complainant it again emphasised that the proposal was *“subject to the business agreement and formal Credit approval”*.

The Provider states that between **May 2016** and **November 2016** it was undertaking legal due diligence in order to obtain credit approval and that while this was longer than its usual timeframe for approval, it submits that this was a *“complex case”* and that new legislation also contributed to the length of time. The Provider states that the First Complainant was emailed on the **23 November 2016** and provided with a *“Net Worth Statement”* which can also be referred to as a *“Statement of Affairs”*. The Provider says that the First Complainant was informed that this document needed to be completed in full and returned before the Provider could issue the letters of offer. The Provider states that completion in full of this document included completion of a *“Declaration of the Borrower”* which must be sworn by a Solicitor/Commissioner for Oaths. The Provider states that completion of this document was a *“pre-condition”* of the Offer Letters being issued.

The Provider states that the Net Worth Statement was returned by the Complainants on **16 December 2016** but that it was not completed or sworn/signed correctly and so was returned. The Provider accepts that the Net Worth Statement was again returned in **January 2017** but it says that it was again incomplete. However, the Provider accepts that it did not at this point inform the Complainants that the document was incomplete and that, as a result, the Offer Letters still could not be processed.

The Provider accepts that around the same time, the Case Manager assigned to the Complainants changed and the Complainants were issued a letter advising them of this on **23 January 2017**. The Provider states that the previous Case Manager remained involved to begin with, and that there was a full handover of the file and that the new Case Manager was aware of the First Complainant’s personal circumstances.

The Provider rejects the suggestion that the change in Case Manager *“negatively impacted either the Complainants’ efforts to put in place a restructure agreement or the [Provider’s] efforts to set up a restructure agreement”*. However, the Provider does accept that there was a *“period of poor communication between the [Provider] and the Complainants from January 2017 and November 2017”*.

The Provider is unable to determine the level of direct engagement between the Complainants and the Case Manager during this period.

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The Provider confirms that account *****245 was reported to the Irish Credit Bureau (ICB) and states that it was reported in line with *“how the Complainants have operated their accounts”* and that the Complainants were informed in each of the arrears letters they were sent that *“Continued arrears may be reported to the Irish Credit Bureau, which will have a further negative effect on your credit rating.”* The Provider states that it was obliged to accurately report arrears to the ICB. The Provider confirms that all three accounts were reported to the Central Credit Register (CCR) in **June 2017** as they were in arrears and the Provider states that it was obliged to accurately report arrears on the mortgage accounts to the CCR

The Provider is no longer the legal owner of the Complainants’ debt as it was sold in **November 2019**. The Provider made an offer of **€6,250** (six thousand two hundred and fifty Euro) in its response letter to this investigation, which was rejected by the Complainants. The offer then increased to **€10,000** (ten thousand Euro) during further submissions from the Respondent which was again rejected by the Complainants, but this offer remains open for acceptance.

The Complaint for Adjudication

The complaint is that the Provider wrongfully delayed in 2016, in processing the Complainants’ application for a debt restructure as a result of which the Complainants were exposed to additional charges, inconvenience and expense. The Complainants also says that during this time, the Provider failed to communicate effectively with them and delivered poor customer service.

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 **30 March 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 three accounts which are the subject of this complaint were each mortgage accounts dealing with separate properties. Account *****088 related to Property A, Account *****245 related to Property B, and Account *****172 related to Property C. The Provider had further security on these Accounts over Property D.

I note that the evidence also includes numerous regulatory arrears letters issued during the period leading up to the conduct that gives rise to this complaint. Extracts from certain regulatory arrears letters sent to the Complainants in relation to each account, are set out below. The first extracts selected, are those that are closest in time to **January 2017** and the second extracts are the last letter sent by the Provider. These extracts demonstrate the status of each account, before the conduct complained of and at the time of sale of the debts.

Account No. xxxxx088

This account was in arrears of €8,652.87 in January 2014, having been in arrears since July 2012. By October 2016, those arrears had grown to €21,601.27.

- As per an **Arrears Letter** sent to the First Complainant on **9 January 2017** account *****088:

1. *“Balance:* €68,192.34dr
2. *Excess (amount of arrears to date):* €21,601.27dr
3. *Loan Interest Rate:* 4.85%
4. *Account in Arrears Since:* 11th July 2012”

- As per an **Arrears Letter** sent to the First Complainant on **6 January 2020** account *****088:

1. *“Balance:* €55,642.87dr
2. *Excess (amount of arrears to date):* €55,465.99dr
3. *Loan Interest Rate:* 4.85%
4. *Account in Arrears Since:* 11th July 2012”

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Account No. xxxxx245

This account was in arrears in late 2011 and again in mid-2013. Subsequently, arrears of €1,059.75 occurred in October 2014, from the previous month, September 2014. By September 2016, those arrears had grown to €6,270.96.

- As per an **Arrears Letter** sent to the First Complainant on **12 December 2016** account *****245:

1. "Balance:	€122,874.04dr
2. Excess (amount of arrears to date):	€7,302.19dr
3. Loan Interest Rate:	4.85%
4. Account in Arrears Since:	11 th September 2014"

- As per an **Arrears Letter** sent to the First Complainant on **9 March 2020** account *****245:

1. "Balance:	€125,694.10dr
2. Excess (amount of arrears to date):	€29,989.25dr
3. Loan Interest Rate:	4.85%
4. Account in Arrears Since:	11 th September 2014"

Account No. xxxxx172

This account fell into arrears in 2008 and in 2009. I note that, subsequently in April 2014, arrears of €48,015.97 had accrued since July 2010. By October 2016, those arrears had grown to €79,585.86.

- As per an **Arrears Letter** sent to both Complainants on **23 January 2017** account *****172:

1. "Balance:	€348,646.85dr
2. Excess (amount of arrears to date):	€83,759.66dr
3. Loan Interest Rate:	4.85%
4. Account in Arrears Since:	29 th July 2010"

- As per an **Arrears Letter** sent to both Complainants on **21 January 2020** account *****172:

5. "Balance:	€366,624.08dr
6. Excess (amount of arrears to date):	€125,497.66dr
7. Loan Interest Rate:	4.85%
8. Account in Arrears Since:	29 th July 2010"

I note that the amount of debt the Complainants owed increased over this period by €8,547.82 (eight thousand, five hundred and forty-seven Euro and eighty-two Cent) and the arrears on the accounts increased by €98,289.78 (ninety-eight thousand, two hundred and eighty-nine Euro and seventy-eight Cent).

The restructure proposal agreed by the Complainants on **6 May 2016** was as follows:

- *"Restructure sole BTL debt [for Property A] by way of a Bridge to Disposal loan at 3% (variable), where the [Provider] will set an asset disposal of this property within 5 years. Fixed repayments of €350 per month will be made for the duration of the loan. The BTD loan will be sized at the current market value of the property, which will leave residual debt;*
- *Restructure the joint BTL debt [for Property C] by way of a Bridge to Disposal Loan (BTD) at 3% (variable) where the Bank will set an asset disposal target for the property within 5 years. Fixed repayments of €1100 per month will be made for the duration of the loan. The BTD loan will be sized at the current market value of the property, which will leave residual debt.*
- *Restructure the residual debt from the sole and joint BTL facilities and include the takeout of the [First Complainant's] sole personal overdraft facility, This affordability loan will be amortised over 20 years at 3% (variable) with capital and interest payments of c. €800 per month to clear the loan in full.*
- *The [Provider] will continue to rely on the security of [property D] in addition to the residential properties."*
-

I note that there was a subsequent proposal in **2018** (which was not agreed by the Complainants) as follows:

- *"Restructure sole BTL debt on [Property A] to include arrears capitalisation on Mortgage Bank loan. Interest rate of 4.85% (variable) with fixed repayments of €450pm for 47 months*
- *Restructure sole BTL debt on [Property B] to include arrears capitalisation on Mortgage Bank loan. Interest rate of 4.85% (variable) with fixed repayments of €504pm for 47 months*

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- *Both of these properties to be sold by 30/06/2022 with sale proceeds to be lodged to the associated loans.*
- *Restructure the joint BTL debt [on Property C] to include arrears capitalisation on Mortgage Bank loan. Interest rate of 4.85% (variable) with Interest only repayments of €1442.21pm for 47 months*
- *This property to be sold by 31/01/2023 with sale proceeds to be lodged in clearance of associated loan.*
- *Existing security [of property D] to be relied on.”*

This was not agreed by the Complainants and the final proposal between the parties which was sent to the Complainants in Offer Letters dated **16 January 2019** and **19 January 2019** set out as follows:

- *“Restructure sole BTL debt on [Property A] to include arrears capitalisation on Mortgage Bank loan. Interest rate of 4.85% (variable) with fixed repayments of €450pm for 47 months*
- *Restructure sole BTL debt on [Property B] to include arrears capitalisation on Mortgage Bank loan. Interest rate of 4.85% (variable) with fixed repayments of €504pm for 47 months*
- *Both of these properties to be sold by 31/03/2023 with sale proceeds to be lodged to the associated loans.*
- *Restructure the joint BTL debt [on Property C] to include arrears capitalisation on Mortgage Bank loan. Interest rate of 4.85% (variable) with Interest only repayments of €1442.21pm for 47 months*
- *This property to be sold by 31/01/2023 with sale proceeds to be lodged in clearance of associated loan.*
- *Existing security [of property D] to be relied on.”*

As can be seen from the above, there is no mention of Property B within the initial **2016** proposal and in the subsequent proposals there is no provision for an ‘affordability loan’ to restructure any residual debt. Other than this, the main difference between the **2016** proposal and those which came after, is an increase in the interest rate from 3% to 4.85% and the resulting increase in monthly repayments for each loan.

I note that the proposal reached in **2016** was the culmination of two years of negotiations between the parties, during which the Complainants’ outstanding liabilities to the provider continued to accrue arrears. The proposal made available by the Provider, is outlined in a letter to the Complainants from the Provider on **29 April 2016** where it is stated at the outset:

“Please note that the information below does not constitute an offer (or an undertaking to offer) to arrange or finance loan facilities. No legal obligation will be deemed to exist until, amongst other matters, the completion of credit approval, the undertaking of legal due diligence and the issuance of a formal offer letter/loan agreement”

What followed was that the First Complainant underwent surgery (which the Provider was aware of) and the Provider proceeded with the necessary legal due diligence to obtain credit approval. It took until **November 2016** for credit approval to be obtained which the Provider accepts was longer than normal, but it asserts that this was due to it being a particularly complex case. In any event, the credit approval was obtained and the proposed restructure in **November 2016** was on the same terms as had been explored with the Complainants on **6 May 2016**.

On **23 November 2016** a meeting was held between the First Complainant and the Provider in which the minutes record:

- *“Apologised to [First Complainant] for the delay in reverting to him in relation to the restructure but that it had taken some time for [NAME] Legal to revert with clarification on a MCR/MCD query that had been raised by our Credit Unit.*
- *It was noted that the query had now been resolved & we could move forward with our restructure*
- ...
- *I explained to [First Complainant] that a pre-condition to issuing the letters of offer was that an up to date SOA would be provided by both him and [Second Complainant] (co-borrower)*
- *... I advised [First Complainant] that this needed to be witnessed by a Solicitor.”*

I note that this meeting was followed with an email on same date, sent from the Provider, by way of the assigned Case Manager, which was to an email account in the Second Complainant’s name, but the email was addressed to the First Complainant. In these circumstances I am satisfied that the email was communicated to both Complainants. This email stated:

“I refer to our telephone conversation this morning and confirm that the restructure as outlined below has now been formally approved.

...

As agreed, I now attach a Net Worth Statement (asset & liability statement) for completion. This should be completed in full and the Declaration of the Borrower sworn by a Solicitor/Commissioner for Oaths. As advised this must be provided before I can issue letters of offer”

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SOA refers to 'Statement of Affairs' which the Provider has advised is used interchangeably with 'Net Worth Statement.' The Provider has stated that the **Net Worth Statement** was returned on **16 December 2016** but that it was in some way "*not completed or sworn/signed correctly*". This document does not appear within the evidence made available. There is a record of a meeting on **16 December 2016** between the First Complainant and the Provider in which it is recorded:

"SOA RECEIVED FROM [FIRST COMPLAINANT] BUT HAS NOT BE SWORN, RETURNED TO CUSTOMER TO HAVE SAME SWORN SO THAT WE CAN ISSUE LETTERS OF SANCTION"

Without a copy of this **Net Worth Statement** itself it is not possible to determine in what way it was insufficient, though it seems that it had not been sworn. The document in question was in fact in two parts, one being titled a "*Net Worth Statement*" which set out several tables in which the Complainants detailed their various Assets and Liabilities. This part was to be "*physically signed and also witnessed by a Solicitor/Commissioner of Oaths*".

The second was titled "*Declaration of Borrower – Net Worth Statement*" which took the form of a pre-drafted declaration in which the individual "*solemnly and sincerely declare[d]*" as to the fullness and accuracy of the information provided in the first part. This was to be "*declared before*" a commissioner for oaths or practising solicitor. As a result, the involvement of a solicitor or commissioner for oaths was required at two points to fully complete the document. The only version of this document submitted in evidence by both the Provider and the Complainants, is a version in which the **Net Worth Statement** section is completed, signed by the First Complainant, and dated the **9 January 2017** but where the second part, the "*Declaration of the Borrower*", is entirely blank. The first section does include, above the signature of the commissioner for oaths, a handwritten note stating, "*Declared before me a commissioner for oaths*".

Within the documentation provided, there is no acknowledgement of receipt of this version of the **Net Worth Statement** nor is there any evidence that the Provider highlighted that the document was still incomplete; the Provider accepts this. The next record of contact between the parties is a phone call on **23 June 2017** some five months later, in which copies of statements were requested by the First Complainant.

The Case Manager assigned to the Complainants changed on the **17 January 2017** and the Complainants were notified of this on **23 January 2017**. After the phone call of **23 June 2017**, the next contact between the parties was a meeting between the First Complainant and the new Case Manager on behalf of the Provider on **19 December 2017**. The minutes of this meeting contain the following relevant extracts:

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- *“Meeting requested by borrowers in relation to the drawdown of the fundamental restructure approved in November 2016.*
- *[NAME REDACTED] queried the delay in drawdown of the [Fundamental Restructure] advising that he was last advised by the [Provider] that contracts would need to issue and that this did not happen.*
- *[Case Manager] advised that while this was the case, the [Providers] computer systems were unable to accommodate the approved structure*
...
- *... a fresh credit approval was required, which would incorporate some minor amendments to the approved structure.*
- *The [First Complainant] advised that they had no issue but wanted the restructure progressed this while expressing their dissatisfaction at the delays and lack of updates from the [Provider].”*

The Offer Letters detailed above were sent, and the Complainants appealed the **2019** Offer Letters to the SME Credit Appeals Office on **5 March 2019** and this appeal was rejected on **13 March 2019**. The Complainants’ loans were then sold by the Provider in **November 2019** without a restructure agreement in place.

Dealing first with the events during **2016**, I note that it is accepted by both parties that a proposed restructure was agreed in principle between them. I am satisfied that at this stage it was made clear that there was no formal agreement in existence. I am further satisfied with the explanation provided for the longer than normal credit approval process, and that this was conveyed to the First Complainant at the meeting of **23 November 2016**. In any event, the proposed restructure in **November 2016** was identical to what had been agreed in principle with the Complainants on **6 May 2016** and so this delay had no impact upon the particular terms of the restructure.

I am satisfied that both parties acted reasonably and expended considerable effort in getting to **November 2016** whereby there was a proposal agreeable to both parties which had obtained credit approval. I understand that this was a difficult and emotive period for the Complainants, and I accept that they did indeed work very hard during this period of time, to address their escalating liabilities to the Provider.

The Complainants say that the Second Complainant was not contacted during this time, and whilst this was not ideal, as they would no doubt have appreciated an update, I am not satisfied that it had any impact upon the restructure, as the desired proposal was still available at the end of this period, during which the First Complainant was recovering from his surgery.

I am satisfied that the Provider made the Complainants aware that a fully completed **Net Worth Statement** with a sworn **Declaration of the Borrower** section was a pre-condition of issuing letters of offer. I am also satisfied that insisting upon it being fully completed and properly sworn was a reasonable requirement of the Provider and I do not believe it was a difficult requirement for the Complainants to meet. No fully completed **Net Worth Statement** was however, ever submitted by the Complainants and I accept that this was the primary factor which prevented the restructure from being put in place on these accounts.

However, a further version of the **Net Worth Statement** was submitted in **January 2017** and the Provider accepts that it has no record as to whether this was ever acknowledged or if the Complainants were ever contacted about this second version, which was still deficient. The Provider accepts that there was "*poor communication*" during **2017**.

The fact that the **Net Worth Statement** had been submitted incomplete, although this was a pre-condition for an extremely important restructure to be put in place, was clearly key information to be supplied to the Complainants on a timely basis. In addition, the fact that the restructure was time-sensitive in that fresh credit approval would be required if it was not put in place, made the situation extremely urgent. The Provider addressed this appropriately in **December 2016** but completely failed to do so when the **Net Worth Statement** was resubmitted in **January 2017**.

The Complainants state that they were never informed that there was a problem with the **Net Worth Statement** and there is no mention of this being an issue in the meeting of **19 December 2017**. The Provider has stated that it intended for Offer Letters to be sent on **23 December 2016** upon receipt of the **Net Worth Statement** and so I am satisfied that this breakdown in communication greatly contributed to the restructure not being finalised.

The Complainants assert that the change in Case Manager was a key factor in the delay. The Provider accepts that the assigned Case Manager changed on **17 January 2017** but denies that the change in Case Manager had any impact on the restructure process. The Provider states that there was a proper transition to the new Case Manager and that the previous Manager "*remained engaged in this case... during and after the transition*". However as stated above, the Provider has acknowledged that there was a "*period of poor communication... from January 2017 to November 2019*" and somewhat remarkably, it is unable to determine what, if any, direct engagement took place between the new Case Manager and the Complainants during this period. It is notable that this period of "*poor communication*" commenced with the changeover from one Case Manager to another and, in addition, that the incomplete **Net Worth Statement** provided by the Complainants in **December 2016** was flagged as incomplete by the previous Case Manager while there was no such communication in **January 2017** under the new Case Manager.

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There is no evidence to suggest that the new Case Manager was aware that the **Net Worth Statement** remained incomplete, or that it had been submitted, or that it was even a pre-condition to advance the **2016** restructure.

Instead, in the meeting of **19 December 2017** it is recorded that the Case Manager agreed that the last communication with the Complainants was that the offer letters were to issue and stated that the problem was that the *“computer systems were unable to accommodate the approved structure”*.

The Provider has been clear in its submissions that the problem was not *“computer systems”* but that a pre-condition had not been met by the Complainants. The inevitable conclusion from this is that the Case Manager assigned in **January 2017** had no proper understanding of the **2016** restructure and of what was required to implement it. Therefore, I am satisfied on balance that the assignment of a new case manager had a detrimental effect on the restructure process.

The Complainants also complain that their credit history was downgraded as a result of the Provider's actions. The Provider states that it was obliged to accurately report arrears to both the CCR and ICB. These accounts did not however fall into arrears due to any communication failures on the part of the Provider in **2017** or at any point in relation to a restructure. Account *****088 had been in arrears from **11 July 2012**, Account *****245 had been in arrears from **11 September 2014**, and Account *****172 had been in arrears from **29 July 2010**. I am satisfied that the Complainants were clearly notified within each arrears letter, that these arrears may be reported to the ICB and CCR. I am conscious that since October 2021, the ICB no longer holds any records, due to its cessation of operations. The Provider was however required under law to provide personal and credit information on loans in excess of €500 (five hundred Euro) to the CCR. I am satisfied that the Provider acted reasonably in reporting the arrears on the accounts, in meeting that statutory obligation.

The Complainants seek the implementation of the **2016** restructure and for it to be backdated. The Provider states that this is impossible, as it is no longer the legal owner of the Complainants' debts. I accept that what the Complainants seek is no longer within the power of the Provider to give, as the loans are no longer within its ownership.

At this remove, it is not possible to accurately assess the position the Complainants would have been in, had the **2016** restructure been implemented in late **2016** or early **2017**. However, it is clear that the total debt owed by the Complainants, across all three accounts, increased very significantly between then, and late 2019.

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The Complainants assert that they would have been able to make the monthly repayments set out within the **2016** restructure proposal, and I accept that. In that event, their debt would not have increased over this period, as they would have been making payments to reduce that amount. I am therefore satisfied that the failure to implement the proposal led to a loss suffered by the Complainants and that the Provider's inaction set out above, greatly contributed to the proposal not being implemented.

However, some of the blame also lies with the Complainants, in that they were clearly informed in **2016** that the specific documentation was a pre-condition, and they were informed that they had not correctly completed it on **16 December 2016**. Having been alerted to this, it is unclear why the Complainants did not then complete the document correctly, once they had been informed of their initial error.

The Provider has accepted that there was a failure to properly communicate with the Complainants in **2017** and I am satisfied that it acted contrary to the principles set out at Chapter 4 of the Consumer Protection Code 2012 (CPC) in not informing the Complainants that the submitted **Net Worth Statement** was incomplete. This was extremely important information and time was very much of the essence, so I am satisfied that this was a serious failure on the part of the Provider, and it was unjust and unreasonable within the meaning of **Section 60(2)(b)** of the *Financial Services and Pensions Ombudsman Act 2017*. Some responsibility however also lies with the Complainants for failing to properly complete the document for a second time, though I accept that if they had been notified of their error in **January 2017**, they could have taken the necessary action to resolve this.

In all of those circumstances, I am satisfied on the basis of the evidence before me that this complaint should be substantially upheld. The absence of communication between the Provider's new Case Manager and the Complainants in the period from early 2017 onwards is very disappointing and this failed to meet the Provider's obligation to act in the best interests of the Complainants, with a view to continuing to work with them to resolve the ongoing arrears situation.

I note that in its formal response to this investigation, the Provider offered a compensatory payment of **€6,250** with a view to resolving this complaint and having considered the Complainants' further submissions, the Provider more recently offered to increase this compensatory settlement figure to a figure of **€10,000**, although this, like the previous offer, was rejected by the Complainants. Although I indicated in my preliminary decision that it was my intention to direct compensation of €15,000, the Complainants, they take issue with this compensatory amount, and take the view that the provider should be directed by this Office to meet a figure representative of the amount by which their debts increased during the period in question, which they estimate at **€100,000**.

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Having considered the matter at length, taking account of both parties' submissions since the preliminary decision was issued, and also taking account of the role both parties played in the events that gave rise to this complaint, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainants in an amount to be calculated by the Provider, of the total amount of interest which accrued to the three accounts referred to above, in the period between **23 January 2017**, and **30 November 2019**.

I do not consider any further compensatory payment to be appropriate and therefore, once the payment in question is made by the Provider to the Complainants, this will conclude the matter. Any further restructure sought by the Complainants, will need to be addressed to the new owner of the loans, and will not be a matter for the Provider, which is no longer the owner of these loans.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(b) and (g)**.
- 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 Complainants in the same amount as the total amount of interest which accrued to the three accounts referred to above, in the period between **23 January 2017**, and **30 November 2019**. I direct that this compensatory payment be made to an account of the Complainants' choosing, within a period of 60 days from today, subject to the Complainants nominating an account to the Provider for receipt of those monies. 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**, after the elapse of 60 days, if the Complainants have within that period nominated an account but if the monies have not yet been paid.
- 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)

8 June 2022

/Cont'd...

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.