



<u>Decision Ref:</u>	2022-0334
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Investment/buy to Let Mortgage
<u>Conduct(s) complained of:</u>	Selling mortgage to t/p provider Arrears handling - buy-to-let
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Provider's assessment of the Complainants' request for an Alternative Repayment Arrangement (ARA) and the sale of their mortgage loans.

The Complainants' Case

In the Complaint Form, the Complainants state that:

"We were in the middle of a transaction, namely the sale of our investment property in May 2019 (formerly our 1st home) as formerly agreed with [the Provider], when our mortgage loans were sold (including the mortgage on our family home) to [a new owner]. This served to profoundly destabilise the transaction which had gone sale agreed - ultimately leading to the termination of the transaction, as consent was refused by [new owner] to sell the property. This has had disastrous consequences on our ability to restructure our finances & get back onto a sustainable footing as planned."

In resolution of this complaint, the Complainants stated in **November 2019**, that they wanted:

"[...]"

- *A reversal of the sale of our loans in order for us to regain control over the process, enable us to sell our investment property as originally planned and pay off all arrears, resolve our accounts and restore our financial stability. The bank sold loans of c €500,000 backed by assets, valued by the bank at c €1.5 million.*

Transferring such value to a foreign owned entity, especially at a time when one of the assets was mid sale transaction, we feel has breached [the Provider's] obligations under the Consumer Code of Conduct (general principle 2.2) [...]. We feel that had [a Provider] official taken the time to familiarise themselves with the situation and read up on the call notes, this surely would never have come to pass.

- *Compensation for the foregone rental income as the investment property has now lain vacant for over seven months (and continues to do so while we endeavour to resolve this situation) To date this amounts to €12,320*
- *Compensation for the devastating impact this has had on our family for many months, including the loss of income that has resulted with time lost owing to the almost daily time consuming correspondence that we have had to enter into since we were informed our loans were being sold in May 2019.*
- *Compensation for the detrimental impact this process has had on the eventual sale value of the property. The property went Sale Agreed for 527,000 reduced to 515,000 following a survey. We believe even if a re-sale of the property occurs this value is unlikely to be achieved again, as putting the property up for re-sale will inevitably have a detrimental effect on the original value.*
- *Compensation for any increase in arrears on both properties as the refusal of [new owner] to consent to the Sale of our property has deprived us of our ability to pay off all arrears on both properties as originally planned”*

By email dated **25 July 2020**, the First Complainant provided an updated figure of **€28,160.00** in respect of loss of rental income.

In a submission dated **1 November 2019**, the Complainants state, as follows:

“We were in the middle of a transaction, namely the sale of our investment property (May 2019), as formerly agreed with [the Provider], when we were informed that our loans (including the mortgage on our family home) had been sold to [new owner]. We were also informed that our rights under our loans would not change and that we would continue to be provided with the same protections of the consumer protection regulations and codes after the sale of loans, as we had before.

This served to profoundly mislead us, as it soon became clear that indeed everything had changed, and that in selling our loans, [the Provider] had effectively deprived us of our ability to resolve our accounts and restore our financial stability.

It is a matter of record with [the Provider] that owing to [redacted] that had lain undetected for many months in 2016, [the Second Complainant's] mental faculties had been severely compromised affecting his ability to work effectively. By the time [the Second Complainant] was diagnosed in July 2016, the situation had become critical and on the very same day as his diagnosis, he was rushed to [hospital] for

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emergency [redacted]. We were extremely fortunate that the condition was reversible and the surgery was successful. However [the Second Complainant] was unable to work for many months while he was in recovery. He was self-employed at the time and consequently, the enforced hiatus was extremely detrimental to our finances and we had to rely on support from our family to see us through the following months.

It is also a matter of record that our finances had already been adversely affected following my own treatment of [redacted] in 20xx. Given the fact that we were both self employed, and our finances still in recovery mode when [the Second Complainant] was hospitalised, [the Second Complainant's] illness and hospitalisation had a further detrimental effect on our financial stability. We fell behind in our ability to maintain our mortgage payments on our family home and our investment property. We entered into a short term interest only arrangement on the mortgage on our family home and investment property until May 2017. We were granted an extension on an interest only arrangement on our family home until May 2018 in order to work towards resolving our finances, and undertook to sell our investment property. During a telephone conversation with [the Provider] in October 2018, it was proposed that a sale of the investment property could clear both the mortgage on the property and the arrears on our family home. It was suggested that we look into the implications for capital gains tax in the interim. At no stage were we told that the bank would impose sanctions if the sale was not completed within 9 months as stated in [the Provider's] reply to our recent complaint.

In June 2018 we entered into correspondence with [the Provider] with a letter requesting that our interest only arrangement be extended on our family home for a further year, as our finances were still in recovery mode. This request evolved into a protracted process with endless requests from [the Provider] for more and more documentation. This frustrating process ultimately proved to be fruitless, as no conclusive response was ever given.

Nonetheless, we endeavoured to pay the equivalent of interest only payments on both properties on a voluntary basis as far as our circumstances would allow. In the same letter, we reiterated our undertaking to sell our investment property, informing the bank that notice would be given when the part 4 tenancy that our tenant was legally entitled to would conclude [date] 2018 (the tenancy began [date] 2014) As part of our efforts, [the Second Complainant] sought and was awarded a permanent position with [a financial services company] in July 2018 thereby transitioning from being self employed to PAYE.

Notice to terminate the tenancy on our investment property was served by us to the tenant in [date] 2018, and the requisite notice period was served. The property was put on the market at the end of March 2019 and went Sale Agreed on XXMay for €527,000 (reduced later to €515,000 following a survey) Prior to that, at the end of April, we requested redemption figures from [the Provider] ahead of contracts being exchanged and the sale being closed. The redemption figures were issued on 3 May by [the Provider] with no mention of the impending sale of the mortgage loans.

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While we were in the middle of this transaction, we received a letter informing us that not only was the loan for our investment property sold but also the loan on our family home, as the deeds on both mortgages were cross charged.

The consequences of [the Provider's] actions have been devastating for this family. Instead of a sale that would pay off all arrears, resolve our financial difficulties, and leave us liquid and free of debts, we found ourselves after a protracted process with [an Asset Service Provider] with consent for the sale being refused by [new owner]. The purchaser who had waited for four months for us to resolve the issue pulled out ... and requested the return of his deposit.

We attach both the redemption statement and the original proposal as originally agreed with [the Provider], which shows that we were clearly in a position to restructure our finances and get back on a sustainable footing, following the sale of our investment property. With the sale of our mortgage loans to [the Asset Service Provider/the new owner], this option has effectively been closed off from us and we find ourselves facing a very uncertain future in the hands of a predatory vulture fund.

We believe that in selling our loans when they did, [the Provider] failed in their obligation to help us resolve our finances. We believe we were misled by [the Provider] when they omitted to inform us in advance of the impending sale of our loans, or of the catastrophic consequences this would have on our ability to restructure our finances and get back onto a sustainable footing.

We have now been deprived of rental income from our investment property which has lain vacant for seven months and to date have foregone rental income of €12,320.

We appeal to the ombudsman to consider our case as a matter of urgency as we now fear that we may lose control over the entire process and that it is likely that [the Asset Service Provider/the new owner] may appoint a receiver to the property imminently and enforce a sale for far less than its original market value whilst dictating the terms of the proceeds,"

By email dated **25 July 2020**, the First Complainant furnished a further submission dated **23 July 2020**, stating that:

"We believe [the Provider's] decision to sell our loans is indefensible on several levels. For clarity, we provide a summary below:

- *[The Provider] sold our loans mid transaction (we had gone 'sale agreed' on our investment property in May 2019 for €515,000) despite the fact that [the Provider] knew of our intention to sell for many months. The attached letter of 26 June 2018 is unimpeachable evidence of this. I have also highlighted several instances where [the Provider] acknowledge this, in their letter of response to our complaint.*

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- [The Provider] *did not communicate our long-term resolution arrangement, as agreed with them, to [the Asset Service Provider/the new owner] – namely, for us to sell the investment property in order to pay off all our arrears, leaving us liquid and free of debt.*
- *We were not informed of the pending loan sale even as we requested redemption figures and title deeds through our solicitor, I attach a new document 30 April 2019 from [the Provider] which confirms our solicitor's request for redemption figures/title deeds. This loan sale included the mortgage on our family home as the properties were cross secured.*
- *We do not feel that [the Provider] demonstrated due diligence in assessing our case. [The Provider] sold loans of c €560,000 that were backed with assets it valued at c €1.5 million while in possession of our firm undertaking to dispose of the investment property. (Both the mortgages had LTV of less than 50%) Had [a Provider] official assessed the situation closely, surely the transfer of such value to a foreign-owned entity would never have come to pass.*
- *We feel [the Provider] did not fulfil its obligations under the Consumer Code of Conduct (general principle 2.2) [...] We have been customers of [the Provider] since 2002 and it is a matter of record with [the Provider] that it was only when we both suffered life threatening illness (myself with [redacted] in 20XX and emergency [redacted] for [the Second Complainant] in 2016) that our finances became distressed. With the sale of our investment property we were on the verge of full financial recovery. [The Provider] has deprived us of our ability to recover our finances onto a sound footing and has inflicted extreme psychological stress on our family in the process.*

The financial impact of [the Provider's] actions are summarised below:

- *[The Provider] stated in their response letter that the decision to sell our loans 'left us frustrated' In fact the financial impact of selling our loans mid transaction has been catastrophic – Instead of a sale that would pay off all arrears on our family home and recommence our finances on a stable footing, we were denied consent by [the Asset Service Provider/the new owner] to sell the investment property. We continue to be denied consent to sell the property as the arrears climb alarmingly. Despite many submissions to [the Asset Service Provider] we have failed to engage in any meaningful way. Their attitude can only be described as rapacious with a strategy apparently designed to inflict maximum distress and ultimately to force the sale of our home. We attach our original completion statement which clearly indicate how the sale would have cleared our arrears and fully restored our financial stability. The arrears on our family home have jumped from c €42,000 to €71,479, and on the investment property from c €34,000 to €69,500 since May 2019 while we continue to be rendered powerless to act.*

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The sale of the loans has directly and catastrophically affected our ability to meet our financial obligations.

- *The investment property has now lain vacant for over 16 months (and continues to do so as we endeavour to resolve this situation) as a result, we have foregone rental income to date of €28,160.*
- *Even if there is an eventual sale of the property, we do not expect that we can achieve the same market prices before (€515,000). This is due to having to put the house back up on the market after a failed sale, in completely different market conditions, post Covid. With increased arrears and a lower sale price the potential to restore our finances to the same degree as before, had been virtually wiped out.”*

The Provider's Case

In its complaint response dated **21 October 2020**, the Provider has set out a timeline of events, over the course of 26 pages, beginning on **13 December 2002** (with the drawdown of loan accounts ending 2/01 and 3/01 followed by the drawdown of loan account ending 4/01 on **23 May 2005**) to **19 September 2019**.

The Provider says there are three mortgage loan accounts the subject of this complaint, accounts ending 2/01, 3/01 and 4/01.

The Provider says account 2/01 relates to a mortgage account which was sanctioned in the name of both Complainants in the amount of **€264,000.00**, over a term of 25 years and to be repaid on a capital and interest basis. The Provider says the purpose of the mortgage loan was to re-mortgage the Complainants' property located in Dublin (“the Investment Property”) and was secured by this property and another private dwelling house property located in Dublin (“the PDH”). The Provider says the signed Letter of Loan Offer is dated **31 October 2002** and that the loan was drawn down on **13 December 2002**.

The Provider says loan account 3/01 relates to a mortgage loan account which was sanctioned in the name of both Complainants in the amount of **€283,000.00**, over a term of 30 years and to be repaid on a capital and interest basis. The Provider says the purpose of the mortgage loan was to acquire a freehold/long leasehold property at the PDH which was to be used as the Complainants' principal private residence. The Provider says this mortgage loan was secured over the PDH and the Investment Property. The Provider says the signed Letter of Loan Offer is again dated **31 October 2002** and that the loan was drawn down on **13 December 2002**.

The Provider says loan account 4/01 relates to a mortgage account which was sanctioned in 2005, in the name of both Complainants in the amount of **€60,000.00**, over a term of 22 years and 11 months and to be repaid on a capital and interest basis, with the last 12 months being repaid on an interest only basis.

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The Provider says the purpose of the loan was to provide the Complainants with additional finance of €60,000.00 on the Investment Property and was secured over the Investment Property. The Provider says the signed Letter of Loan Offer is dated **18 February 2005** and that the loan was drawn down again on **23 May 2005**.

The Provider says the following Alternative Repayment Arrangements (ARAs) were sanctioned on the Complainants' loan accounts:

- 12 month interest only repayment arrangement from **June 2014** to **May 2015**;
- 12 month interest only repayment arrangement from **June 2015** to **May 2016**;
- 12 month interest only repayment arrangement from **June 2016** to **May 2017**;
- 12 month interest only repayment arrangement from **June 2017** to **May 2018**.

The Provider says the following important information was given to the Complainants as part of the interest only repayment arrangements commencing in **June 2014**:

“Important Information

- *For an ‘Interest only’ arrangement, interest is charged to the account on a monthly basis. For all other arrangements, interest will be charged to the account on a quarterly basis*
- *In the case of variable and tracker rate loans, the above repayment is subject to change as a result of adjustments in the interest rate during the term of the arrangement.*
- *Alternative repayment arrangements may be affordable for you in the short term but could be more expensive over the life of the loan*
- *During an ‘Interest Only’ period, the principal amount of your loan will not reduce but the expiry date will remain the same. After an ‘Interest Only’ period, repayment of principal and interest over the shorter remaining period will mean proportionately larger repayment instalments.*
- *There will be no impact on your credit rating from this alternative arrangement, once the agreed repayments are met as they fall due. Where you have an overdue balance on your account this may be reported to the Irish Credit Bureau which would affect your credit rating.*
- *If you have taken Payment Protection Insurance in respect of this mortgage account, the change may impact the benefits payable from such policy. Please refer to your policy schedule and conditions booklet or to your local [Provider] branch for further details*
- *Life Assurance cover should take account of alternative repayment arrangements such as Interest Only or Repayment Breaks. We strongly recommend that you get advice on your life assurance needs.”*

On **23 June 2015**, the Provider says it issued written correspondence to the Complainants to confirm the approval of an interest only repayment arrangement on their three mortgage accounts, effective from **June 2015**. As part of this letter, the Provider says it outlined the following as advantages and disadvantages:

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“The advantages of the alternative repayment arrangement are:

- You will not be required to make a fully capital and interest repayment in relation to this mortgage account during the period of the alternative repayment arrangement.*
- The reduction of monthly repayments will enable you to address your financial circumstances during the period mentioned above, may assist you in clearing existing arrears on this account and enable you to return to full capital & interest on expiry of the alternative repayment arrangement.*
- During this period of the alternative repayment arrangement your mortgage account will not fall into further arrears providing you continue to repay the agreed monthly repayment.*

The disadvantages of the alternative repayment arrangement are:

- Where the alternative repayment arrangement amount is below the amount of interest charged the balance outstanding will increase during the period, as full interest will continue to accrue on the account.*
- Alternative repayment arrangements may be affordable for you in the short term but could be more expensive over the life of the loan.*
- On expiry of the alternative repayment arrangement your capital and interest repayments will be recalculated to ensure the loan balance will be cleared in full by your existing mortgage expiry date, excluding existing arrears.*
- Repayment of capital and interest over the shorter remaining period will mean higher repayment than your previous capital and interest repayments.”*

The Provider says the same advantages and disadvantages were quoted as part of the agreements issued on **14 and 15 November 2016** which related to the alternative repayment arrangement sanctioned on the three loan accounts from **June 2016 to May 2017**; and the agreement letters issued on **13 and 15 November 2017** which related to the alternative repayment arrangements sanctioned on the three loan accounts from **June 2017 to May 2018**.

The Provider says the potential sale of the Investment Property was discussed with the Complainants and their mortgage had been deemed unsustainable in **November 2017**. The Provider says the sale of the Investment Property would have been a means for the Complainants to reduce their debt by way of lodging the sale proceeds into the account and either clearing or reducing the balance on the other mortgage accounts, subject to the level of net sale proceeds received.

The Provider says the sale of a property is not considered to be a long-term solution as, in line with a long-term solution, repayments would need to be made to the account in line with a customer’s affordability.

The Provider says it is to be noted that while the Complainants did agree to place the property on the market in **October 2017**, this was not done by them as agreed until **March 2019**.

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The Provider says it was not explicitly advised to the Complainants in **2017** or **2018** that the Provider expected the sale of the Investment Property to be completed within nine months. However, the Provider says it considers that it is not unreasonable to expect a property to be vacated and sold within a nine-month period.

The Provider refers to its final response letter dated **4 September 2019**. The Provider says it outlined that it was important to note, as loan account 3/01 relates to the Complainants' PDH, they were protected by the Central Bank of Ireland's Code of Conduct on Mortgage Arrears ("the CCMA"). As part of the CCMA provisions, the Provider says it implements the Mortgage Arrears Resolution Process ("MARP"). The Provider says this process facilitates a lender's ability to work collaboratively with customers in arrears, in an effort to come to a long-term, sustainable solution. The Provider says it confirmed that the Complainants remained under the CCMA protection, going forward with the new owner.

The Provider says that in **March 2017**, following a number of missed payments on the loan accounts, it requested that the Complainants complete a Standard Financial Statement ("SFS") in order for it to assess their financial circumstances. The Provider says the SFS and supporting documentation were not returned. The Provider says the First Complainant contacted it by telephone on **5 May 2017** to advise that the Complainants were completing an SFS and gathering supporting documents.

During the call, the Provider says it advised the First Complainant that it would be proceeding with issuing a Provision 28 letter under the CCMA which outlined that the Complainants would be classified as not co-operating, if they failed to return a completed SFS within a period of 20 business days from the date of the letter.

The Provider says the SFS and supporting documents were not returned as promised, and it proceeded to issue a Provision 26 letter to the Complainants. As per this letter, the Provider says it subsequently visited the Complainants at home on **20 June 2017**. The Provider says the Complainants advised that they had submitted an SFS two days before that. The Provider says it received an SFS and then issued a letter dated **3 July 2017** requesting that the Complainants provide documentation that was necessary, in order for the Provider to proceed with the assessment (which was provided in full on **14 August 2017**).

Prior to the assessment taking place, the Provider says it required valuations to be carried out on the Investment Property and the PDH, which were carried out on **9 October 2017**. The Provider says it was then in a position to carry out its assessment of the SFS.

The Provider says that on **24 October 2017**, it telephoned the First Complainant to advise on the outcome of the assessment. The Provider says it confirmed it was offering an arrangement of 12 months interest only, on the PDH loan account 3/01. The Provider says it had been deemed that loan account 2/01 was unsustainable. In order to come to a long-term resolution on the PDH loan, the Provider says it advised the First Complainant that a voluntary sale of the Investment Property would be the most appropriate course of action with any surplus, from the sale, to go towards their PDH loan debt.

Following the sale of the Investment Property, the Provider says it would then be in a position to further assess the Complainants' case with a view to establishing if a long-term sustainable solution was affordable. The Provider says written confirmation of these decisions were issued to the Complainants on **15 November 2017**.

In terms of the Complainants' **June 2018** application for an alternative repayment arrangement, the Provider says it rejects the allegation made by the Complainants and refers to the details contained in the final response letter. The Provider says it is satisfied that every effort was made with the Complainants, to obtain the relevant information and documentation required in order to complete an assessment, and the Provider refers to the timeline of events in this regard.

The Provider says it would firstly refer to a telephone conversation on **24 October 2017** when the First Complainant was advised that 12 months interest only repayments had been sanctioned on loan account 3/01 and that loan account 2/01 had been deemed unsustainable. In order to come to a long-term resolution on the PDH loan, the Provider says it advised the First Complainant that a voluntary sale of the Investment Property would be the most appropriate course of action, as outlined above. The Provider says it followed up by way of a telephone call with the First Complainant on **19 January 2018** and queried if the Complainants were agreeable to selling the Investment Property in an effort to clear the debt associated with loan account 2/01. The Provider says the First Complainant advised that the Complainants would sell the Investment Property but that it was taking time to place on the market. The Provider says it made a further telephone call to the First Complainant on **8 March 2018** to get an update on the sale, and the First Complainant advised that paperwork was to be completed and that the Complainants were meeting their accountant in due course. The Provider says it agreed to make a further telephone call again in one month's time for an update.

On **19 April 2018**, the Provider says a telephone call took place with the First Complainant and the Provider advised the First Complainant to send in a proposal in a further effort to support the Complainants through their financial recovery. The Provider says the First Complainant advised that the sale of the Investment Property would be delayed, due to the requirement to await the end of a tenancy agreement in place which was due to expire in **November 2018**, 12 months on from the original unsustainable decision.

At this time, the Provider says it requested that a further SFS be completed in order to assess the Complainants' financial situation and determine if an appropriate measure could be put in place to assist them, prior to the sale of the Investment Property. The Provider says it received a letter dated **26 June 2018** with an enclosed completed SFS and supporting documentation. The Provider says in addition to the SFS supplied, the Complainants submitted a proposal requesting an extension on the interest only arrangement on account 3/01 for a 12-month period, and also requested an interest only arrangement on the top-up loan (account 4/01) to be put in place.

The Provider says the Complainants stated that, as per previous discussions with the Provider, the Investment Property would be put up for sale, estimating that the sale would be completed in **February 2019**.

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When the documentation was received by the Arrears Support Unit, the Provider says it was noted that the Complainants had provided information of a sensitive nature, under the General Data Protection Regulation ("GDPR"), in their cover letter. As a result, the Provider says it issued a letter on **9 July 2018** requesting the Complainants' explicit consent. Further, in order to fully assess the Complainants' financial situation, the Provider says it required documentation which had not been supplied. In this regard, the Provider says it issued correspondence on **20 July 2018** outlining the documentation required – this included a Form 11 relating to **2016**, a Self-Assessment certificate for the same year, and a monthly payslip from the Second Complainant.

On **20 September 2018**, the Provider says the First Complainant telephoned to query the additional documents required. During this conversation, the Provider says the First Complainant advised that she now had a payslip for the Second Complainant and that the other documents would be supplied by **28 September 2018**.

On **5 October 2018**, the Provider says it received correspondence from the Complainants which contained documentation including a monthly payslip for the Second Complainant, a Notice of Assessment from Revenue and a summary of business accounts for the First Complainant's business. The Provider says the First Complainant reiterated the Complainants' intention to place the Investment Property on the market and referred to their request to extend the interest only arrangement on the loan accounts.

On **26 November 2018**, the Provider says it made a telephone call to the First Complainant to request again that the Complainants submit documents relating to their tax liabilities: a Form 11 and a Self-Assessment Form. The Provider says the First Complainant advised she would send on the Self-Assessment Form and request a Form 11 from their accountant. The Provider says a further telephone call was made on **15 January 2019**, when it requested the Form 11 again in order to complete an assessment. Further to this, the Provider says it confirmed that the SFS on file, dated **10 June 2018**, was now deemed out of date, as it was more than six months old. Consequently, this would need to be re-signed by the Complainants.

On **19 February 2019**, the Provider says it received a Form 11, followed by the re-signed SFS on **27 February 2019**. The Provider says it issued correspondence on **1 March 2019** acknowledging receipt of the SFS.

On **6 March 2019**, the Provider says it received a telephone call from the First Complainant looking for an update on the assessment. The Provider says it advised that a full assessment would need to be carried out. The Provider says it is important to note that it cannot begin assessing the financial circumstances of a customer until all required documents have been provided.

The Provider says while it notes that the original SFS was sent in **June 2018**, an assessment could not begin until **27 February 2019** because the Complainants had failed to supply the necessary supporting documents and the Provider cannot start an assessment prior to receiving all required documentation.

Following this, the Provider says the Complainants' accounts were subject to a review with regard to tracker rates, which commenced in **March 2019** and concluded in **May 2019**. The Provider says this was part of an industry wide review required by the Central Bank of Ireland. During the course of this review, the Provider says it was not in a position to assess the Complainants' financial circumstances. The Provider says correspondence issued to the Complainants on **30 April 2019** with regard to this.

The Provider says that in **May 2019**, the Transitional Services Team took over the management of the Complainants' accounts and a letter notifying them of this issued on **10 May 2019**. The Provider says this letter also contained a notification that their loans had been transferred to a new owner.

In the final response letter, the Provider says it apologised that the Complainants' proposal, as outlined in their SFS and supporting documentation dated **February 2019**, was not referred to the new owner for consideration during the transitional period. The Provider says the matter was not addressed again until the Transitional Services Team received a telephone call from the First Complainant on **16 July 2019**.

The Provider says that while it notes the Complainants' frustration that an assessment was not carried out in **February 2019** following completion of an SFS dated **February 2019**, it had advised more than 18 months previously that the Investment Property loan was unsustainable and should be sold. The Provider says it was not in a position to assess for a potential long-term resolution on the Complainants' PDH loan account until a sale of the investment property had occurred and the surplus funds were lodged to the PDH loan account. The Provider points out that this did not occur. Although the Complainants provided an SFS in **June 2018** to seek a further short term arrangement on the PDH, the Provider says it did not receive the outstanding supporting documentation until **February 2019**.

As confirmed above, the Provider says the Complainants' account could not have been assessed by the Arrears Support Unit while the review of their case was ongoing. The Provider says it acknowledges that this contributed to the delay between **March** and **May 2019** and it apologised for this. The Provider says it would again like to reiterate that this would not have impacted its decision to sell the Complainants' mortgage facilities to the new owner.

In terms of referring the Complainants' alternative repayment application from **June 2018** and supporting documentation from **February 2019** to the new owner, during the transition period, the Provider says it has outlined above, the delays which occurred on the part of the Complainants in not supplying the required documentation in a timely manner, in order that the Provider could progress with an assessment. The Provider says it has apologised that the Complainants' proposal was not referred to the new owner for consideration during the transitional period.

The Provider says that while an account is identified for loan sale, no handover of the case takes place between departments, until the transition starts. As a result of this, the Provider says the Transitional Services Team were unaware there was a proposal, by way of SFS dated **February 2019** which had been submitted to the Arrears Support Unit.

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The Provider says its Transitional Services Team are advised of cases where there is an agreed alternative repayment arrangement in place, and this is to ensure that the new owner is aware of cases where there is such an arrangement in place. In the case of the Complainants, the Provider says there was no agreed alternative repayment arrangement in place. Notwithstanding this, the Provider says the Transitional Services Team is satisfied that the Complainants were advised that a proposal could be submitted through it, for passing on to the new owner for consideration. In this regard, the Provider refers to telephone conversations which took place between the Transitional Services Team and the Complainants.

The Provider says that while it notes that the original SFS was sent in **June 2018**, an assessment could not begin until **27 February 2019** because the Complainants had failed to supply the necessary supporting documents and the Provider cannot start an assessment prior to receiving all required documentation. The Provider again refers to the tracker mortgage review and states that it was not in a position to assess the Complainants' financial circumstances during this period. The Provider says the Transitional Services Team took over the management of the Complainants' account and a letter issued to them in respect of this on **10 May 2019**.

Without completing an assessment, the Provider says it is unable to confirm whether a long-term solution would have been available to the Complainants. As the Complainants' loan accounts are no longer held with the Provider, the Provider says it would encourage the Complainants to engage with the new owner in relation to any Alternative Repayment Arrangement, they believe they may require.

The Provider says the Complainants' mortgage loan facilities could have been sold to the new owner regardless of whether the assessment had been completed prior to the loan sale. As part of its requirement to meet EU norms of reducing 'Non-Performing Loans' by the end of **2019**, the Provider says portfolio sales were identified to form a part of plans to reduce non-performing loans. The Provider says it reviews its position and options available on a continual basis and it made a strategic decision to sell the portfolio in which the Complainants' loans were included, as part of its strategic requirement to reduce non-performing loans. The Provider says the Complainants' loans were included as part of this portfolio sale. The Provider also says it conducted a thorough due diligence process prior to including any loan in this portfolio.

The Provider points out that there was no alternative repayment arrangement agreed with the Complainants at the time when it agreed to sell, sold or transferred the Complainants' mortgage loans. On that basis, the Provider says the original terms of sanction applied to all loans and those terms were being relied on by the Provider.

The Provider says it entered into a loan sale agreement with the new owner, the details of which are commercially sensitive and confidential. Following this, the Provider says correspondence issued to the Complainants on **10 May 2019** to advise that it had agreed to sell their loans. In this correspondence, the Provider says it outlined that the transfer was expected to be completed on or after **17 July 2019**. The Provider says a final letter issued to the Complainants on **26 July 2019** confirming that the transfer to the TPP had been completed.

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The Provider says it had made every effort over a number of years to work with the Complainants to reach a resolution in relation to their borrowings. Notwithstanding the above, the Provider says it acknowledges there were customer service failings in the handling of the Complainants' case, including the failure to cease telephone communication with the First Complainant after being notified of her illness (albeit that this request was not received in writing) and the failure of the Provider to pass over the Complainants' proposal by way of SFS dated **February 2019** along with supporting documentation to the new owner. As stated above, the Provider says this would not have altered its decision to sell the mortgage loans to the new owner. In recognition of the service failings, the Provider says it would like to offer the Complainants a goodwill gesture of **€2,500.00** in full and final settlement of their complaint. This was not accepted by the Complainants.

The Complaint for Adjudication

The complaint is that the Provider failed to assess and respond to the Complainants' request in **June 2018** to extend their interest only arrangement and wrongfully sold the Complainants' mortgage loans in 2019.

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 **18 July 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.

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In response to this complaint, the Provider furnished 126 recordings of telephone conversations which took place between **February 2013** and **August 2019**. In the FSPO Complaint Form, the Complainants have identified the conduct being complained of, as beginning in **May 2019**. In the Complainants' submission of **1 November 2019**, the Complainants state that during a telephone conversation in **October 2018** the sale of the Investment Property was discussed.

In the Provider's complaint response, it is noted that the First Complainant was advised of the option of a voluntary sale of the Investment Property, during a telephone conversation on **24 October 2017**. The Complainants state that in **June 2018** a request was made for an extension to the existing interest only arrangement and that a response to this request was not received.

In light of the times at which the conduct of the Provider, the subject of this complaint, has taken place, I have reviewed only those recordings of the telephone conversations which took place between **January 2017** and **August 2019**, whilst noting that it is the Complainants' very difficult personal circumstances with their health, in the period from 2013 to 2016, which contributed significantly to their financial difficulties, and their consequent requirements for Alternative Repayment Arrangements.

Background

I note that pursuant to a letter of offer dated **31 October 2002** and signed by the Complainants, the Provider agreed to advance an amount of **€264,000.00** to the Complainants for the purpose of re-mortgaging a property located in Dublin, the Investment Property (loan account 2/01). The security for this loan was a first legal mortgage over the Investment Property and a second property located in Dublin, the Private Dwelling House (PDH).

Pursuant to a further letter of offer dated **31 October 2002** and signed by the Complainants, the Provider agreed to advance an amount of **€283,000.00** to the Complainants for the purpose of purchasing a property located in Dublin, the PDH (loan account 3/01). The security for this loan was a first legal mortgage over the Private Dwelling House and the Investment Property.

Pursuant to a letter of offer dated **18 February 2005** and signed by the Complainants, the Provider agreed to advance an amount of **€60,000.00** to the Complainants for the purpose of providing additional finance in respect of the Investment Property (loan account 4/01). The security for this loan was a first legal mortgage over the Investment Property.

I note that between **June 2014** and **May 2018**, a number of Alternative Repayment Arrangements in the form of 12-month interest only arrangements, were approved by the Provider in respect of the Complainants' loan accounts and put into effect.

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October 2017

Case Manager 1 telephoned the First Complainant on **24 October 2017** to advise that the Provider had completed an assessment of the Complainants' application for an Alternative Repayment Arrangement.

On foot of this assessment, Case Manager 1 advised that a 12-month interest only arrangement back dated to **June 2017** (in respect of the family home loan) had been approved. In respect of the investment property loan, Case Manager 1 advised that the Provider had found the loan in question to be unsustainable, because the rental income was not meeting the required repayments and there was no surplus income to make up the difference. Case Manager 1 advised that the Provider wished for the Complainants to look at selling the Investment Property but noted that, before doing so, the Complainants would need to consider capital gains implications and would need to speak to a tax adviser or accountant in this regard.

Case Manager 1 advised that a valuation was carried out on the Investment Property and that it was valued at €440,000.00. In this respect, Case Manager 1 indicated that the Complainants could clear the debt associated with the Investment Property and the surplus sales proceeds could be used to reduce the family home loan, making repayments more affordable.

I note that later in the conversation, Case Manager 1 advised that the basis on which the Provider was offering a 12-month interest only arrangement, was to afford the Complainants the opportunity to explore the option of selling the Investment Property and reducing the debt on the family home loan. Case Manager 1 advised that the Complainants should obtain appropriate advice regarding a sale of the Investment Property. Following the sale of the Investment Property, Case Manager 1 advised that an assessment would take place to see what the family home loan would look like, what the new repayments would be and whether this would be affordable. Case Manager 1 advised that no forbearance was being offered in respect of the Investment Property loan at the moment, because it was deemed unsustainable, but that the Provider was hoping, in the short term, that the Complainants would be reverting to the Provider regarding a possible sale and the Provider would then put a moratorium on the account, to facilitate the sale. Shortly after this, Case Manager 1 advised that the sooner the Complainants could get matters sorted, the better, but acknowledged this would take a few months. The First Complainant agreed with the position set out by Case Manager 1 and indicated that the Complainants would be agreeable to considering a sale of the Investment Property. The First Complainant advised that they would look into this and revert to the Provider as soon as possible.

By letter dated **13 November 2017**, the Provider wrote to the Complainants in respect of loan account 3/01 (the family home loan) to advise that an interest only arrangement was being offered for the period **12 June 2017** to **5 May 2018**.

By letter dated **13 November 2017**, the Provider wrote to the Complainants in respect of loan account 4/01 to advise that it was not in a position to offer an alternative repayment arrangement because this loan account was considered unsustainable.

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By letter dated **15 November 2017**, the Provider wrote to the Complainants in respect of loan account 2/01 to advise that it was not in a position to offer an Alternative Repayment Arrangement because this loan account was considered unsustainable.

In the letters relating to loan accounts 2/01 and 4/01, two options outlined by the Provider were voluntary sale and voluntary surrender. However, I note there was no mention of any time limits regarding the completion of the sale, if either of these options were chosen.

January 2018

Case Manager 2 telephoned the First Complainant on **19 January 2018** to discuss the Complainants' loans. Case Manager 2 noted that a 12-month interest only arrangement was granted in respect of the family home loan, with a view to selling the Investment Property. Case Manager 2 asked if the First Complainant was agreeable to selling the Investment Property. In response to this, the First Complainant advised that she was, but there was a delay in catching up on paperwork with the Complainants' accountant and sorting the implications regarding capital gains tax. The First Complainant asked if it was possible to make interest only payments on a 'holding basis' until the Investment Property was sold. Case Manager 2 advised that as part of the assessment which took place in **November 2017**, the Provider had looked at everything but an interest only arrangement was not offered in order to facilitate a sale of the Investment Property.

Case Manager 2 advised that this was the outcome of the assessment, and the Provider would not assess the case again because this is the position that was signed off on. The parties continued by discussing the position of the Investment Property loan. It was also discussed that it would take time to market and sell the Investment Property and that the Complainants had to give the required notice period to the tenant.

March 2018

Case Manager 2 telephoned the First Complainant on **8 March 2018** for an update regarding the sale of the Investment Property. The First Complainant advised that she had been gathering paperwork for the Complainants' accountant in order to bring their tax affairs up to date and that the accountant was now in a position to meet with them (the following week) to discuss matters. Case Manager 2 advised that at this point, the Provider was looking for progress, as to when the property would be placed on the market. Case Manager 2 noted that once the meeting was held with the Complainants' accountant, the property would likely be placed on the market.

The First Complainant agreed with this, advising that the property was definitely being placed on the market and that it was a question of timing. Case Manager 2 advised there were timeframes as to when matters have to progress, and when a property is deemed unsustainable and to be sold, it should be six months from that point. I note that the First Complainant acknowledged the position in this regard.

On **13 March 2018**, the Provider wrote to the Complainants in respect of loan account 3/01 noting that the Alternative Repayment Arrangement in place on the account was due to expire. The Provider advised that if the Complainants were not in a position to return to full contractual repayments, they should submit a completed SFS together with the relevant supporting documentation.

In terms of supporting documentation, the letter advised that three most recent payslips were required in respect of employed/PAYE individuals and a Revenue balancing statement/Notice of Assessment and six months of business current account statements were required for self-employed individuals.

April 2018

Case Manager 2 telephoned the First Complainant on **19 April 2018** for an update regarding the sale of the Investment Property. The First Complainant advised she had met with the accountant and that the accountant was bringing the Complainants' tax affairs up to date. The First Complainant indicated she would receive the relevant information regarding the Complainants' tax position from the accountant in the next one to two weeks and that capital gains tax was also discussed. The First Complainant advised that the accountant needed to look at the capital gains tax, in more detail. The First Complainant advised that the lease in respect of the Investment Property was due to expire in **November 2018**. The First Complainant proposed to give the tenant notice to terminate the lease in **November 2018** and that the property be put up for sale in **February 2019** (which would be nine months from the date of that telephone conversation, and some 16 months after the Provider had told the Complainants in October 2017, that the loan was unsustainable, and it wished for the property to be sold).

Case Manager 2 advised the First Complainant again, that there was generally a six-month timeline from when a loan account is deemed unsustainable and from when the Provider requests that a property be sold. Case Manager 2 advised that following this period, the matter could be progressed down the legal route.

The First Complainant noted there were mitigating circumstances on the Complainants' file, referring to the economic recession, her health issues, and the Second Complainant's health issues. The First Complainant advised that the Complainants were endeavouring to recover from this and to stabilise their situation, noting that the Complainants had agreed to sell the property. In the meantime, the First Complainant advised that the Complainants were trying to strike the correct balance with their tenant and the tenant's rights.

The First Complainant also indicated that November was not an appropriate time to sell a property. It was agreed that the First Complainant would put this in writing.

The parties also discussed the expiry of the interest only arrangement on the family home loan. The First Complainant queried the Provider's position towards affording the Complainants further forbearance in respect of the family home loan. It was also agreed that the First Complainant would submit a proposal to the Provider.

June/July 2018

I note that two months later, the Complainants wrote to the Provider by letter dated **26 June 2018** which appears to have been received by the Provider on **5 July 2018**, enclosing an SFS dated **10 June 2018** and certain supporting documentation.

In this letter, the Complainants advised that they wished to apply for a 12-month extension to the interest only arrangement in place on loan account 3/01 from **May 2018**, and to apply for an interest only arrangement in respect of loan account 4/01. In respect of the sale of the Investment Property, the Complainants advised that:

"[A]s per previous discussions with the bank, our investment property [address] will be put up for sale as soon as the existing lease and requisite notice period has concluded. We estimate the sale of the property to be completed in February 2019."

By letter dated **9 July 2018**, the Provider wrote to the Complainants advising that in order to fully assess their financial position, further information was required. In this regard, the letter noted that due to certain of the information provided by the Complainants falling under the General Data Protection Regulations, the Complainants' consent was required for this information to be recorded on their file. The relevant consent was received on **12 July 2018**.

The Provider made a further request for information on **20 July 2018**. In respect of the First Complainant, the Provider requested all pages from the 'Form 11 2016' and the most recent 'Self Assessment Cert (2016)'. In respect of the Second Complainant, the Provider requested the most recent payslip or four recent consecutive payslips if paid weekly, dated in the last three months/confirmation of new salary.

There does not appear to have been any contact between the parties during **August 2018** except for arrears correspondence.

September - November 2018

Case Manager 3 telephoned the First Complainant on **20 September 2018** in relation to the Complainants' loan accounts and a letter issued by the Provider around **23 July 2018** requesting further information from the Complainants. The First Complainant advised that the Second Complainant had commenced his current job in **July 2018** and therefore, did not have a payslip to submit to the Provider. The First Complainant advised that the Complainants now had documentation they could send to the Provider in this regard. Case Manager 3 also advised that a Form 11 and Chapter 4 was awaited in respect of the First Complainant.

The First Complainant advised that the relevant documentation was currently being processed, which the First Complainant hoped to return to the Provider that week. Case Manager 3 advised generally that a period of six months was allowed to dispose of a property. The parties proceeded to discuss the tenancy in respect of the Investment Property.

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The First Complainant telephoned the Provider on **1 October 2018** noting that certain documentation in respect of the SFS was outstanding. The First Complainant advised that the Second Complainant was away and would not be in a position to obtain a payslip until the coming Wednesday (**3 October 2018**).

Case Manager 3 telephoned the First Complainant on **2 October 2018**. In terms of the documentation required from the Complainants, Case Manager 3 noted that the Complainants would be in a position to obtain a payslip for the Second Complainant the following day. Case Manager 3 advised that the Complainants would need to provide the amounts they had agreed to pay Revenue.

Case Manager 3 also queried whether the First Complainant would be in a position to provide documentation in relation to her self-employed income.

The First Complainant responded to the above request for information by letter dated **5 October 2018** enclosing payslips for the Second Complainant, a Notice of Assessment and a summary of accounts for the First Complainant's business. In terms of the sale of the Investment Property, I note that the letter advised that:

"As per previous discussions with the bank, our investment property [address] will be put up for sale as soon as the requisite notice period has concluded. We estimate the sale of the property to be completed in February 2019."

The First Complainant telephoned Case Manager 3 on **9 October 2018** to advise that she had details of the amounts owed to Revenue, which she would be sending to the Provider that day.

The First Complainant then served a Notice of Termination in respect of the tenancy of the Investment Property dated **November 2018** stating that the property was to be vacated by the specified date in **March 2019**.

Thereafter, the First Complainant telephoned Case Manager 3, on **13 November 2018**. Case Manager 3 advised the First Complainant that documentation had been received and was being reviewed. Case Manager 3 further advised that additional documentation may be required once the previously furnished documentation was reviewed.

Case Manager 3 telephoned the First Complainant again on **26 November 2018** to discuss certain queries raised by 'Credit' regarding the application. During this conversation, Case Manager 3 discussed certain aspects of the Second Complainant's income and employment, the First Complainant's business, certain aspects of the Complainants' expenditure regarding the Investment Property and the Complainants' tax returns. In particular, Case Manager 3 noted that the Complainants had provided one page in respect of each of the Chapter 4 documents for **2014, 2015** and **2016**. Case Manager 3 also queried whether the Complainants had filed a tax return for **2017**.

The First Complainant advised that the Complainants had an updated 'Notice of Assessment', to which Case Manager 3 advised that Credit were looking for a copy of the full Form 11 and Chapter 4 if possible.

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Towards the end of the call, it was agreed that the First Complainant would try to obtain a Form 11 and send it to Case Manager 3. Case Manager 3 noted that he would wait to hear from the First Complainant as to whether she could obtain the form from the accountant and if not, he would try and work forward without it.

There does not appear to have been any contact between the parties during **December 2018** except for arrears correspondence.

January – February 2019

Case Manager 3 telephoned the First Complainant on **15 January 2019** noting that the First Complainant had provided a Chapter 4, but he was waiting for the Form 11. Case Manager 3 queried the position regarding the Form 11. The First Complainant advised that she did not have a Form 11. The First Complainant explained that she sent in the documentation she had, which was the Notice of Assessment.

Case Manager 3 indicated his understanding that an individual is entitled to a Chapter 4 and Form 11 from Revenue, and that he had never seen one not being issued without the other. The First Complainant suggested this may have been due to some kind of time lag. The First Complainant stated that she did not know the absence of a Form 11 was holding things up, at the Provider's end. In response to this, Case Manager 3 stated that he should have reverted to the First Complainant more quickly but with Christmas, matters were 'getting slowed up' but advised that the case was being worked on. Case Manager 3 indicated that the First Complainant should be able to print a copy of the Form 11 from the Revenue website. The First Complainant responded that she would look into this.

During the conversation, the First Complainant indicated that a Form 11 may not be available because of a time lag, in that the Complainants had to prepare returns/accounts for Revenue for the previous four years and that the latest return had recently been completed. The First Complainant indicated that a Form 11 may not be available because there was a back payment in place with Revenue for five years (the four previous years and the most recent year).

In respect of the SFS, Case Manager 3 advised that because it was more than six months old, the Complainants would need to re-sign it, but this would not hold matters up. Case Manager 3 asked the First Complainant to revert to him by email, outlining the reason that a Form 11 was unavailable so that he could place this on the assessment file.

I note that a month later, by email dated **19 February 2019**, the First Complainant forwarded a Form 11 to the Provider and apologised for the delay in sending it, which was due to a delay receiving it from the Complainants' accountant. The First Complainant also advised that the re-signed SFS was in that day's post. The First Complainant telephoned Case Manager 3 on **19 February 2019**. During this call, the parties discussed the Complainants' application, including the Form 11, the Second Complainant's income and employment and the tenancy in respect of the Investment Property.

I note that the **June 2018** SFS was re-signed by the Complainant and dated 'February 2018', which appears to have been received by the Provider on **27 February 2019**.

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March 2019

The Provider wrote to the Complainants on **1 March 2019** to acknowledge receipt of their SFS and to advise that its dedicated assessment team would review the information supplied.

The First Complainant telephoned Case Manager 3 on **6 March 2019** for an update regarding the Complainants' application. Case Manager 3 indicated that the re-signed SFS was received on the previous Friday (**1 March 2019**). Case Manager 3 advised that he was not dealing with the application, because he was working on another project and that it had passed to another colleague. Case Manager 3 advised that he would follow-up with his colleague regarding the status of the application. Case Manager 3 advised that it should not take long to carry out the assessment. Case Manager 3 further advised that a full assessment would not take place until all information and documentation was received. Towards the end of the conversation, the First Complainant asked Case Manager 3 to check the status of the application with the agent dealing with the matter.

I note that some eight weeks later, by letter dated **30 April 2019**, the Provider wrote to the Complainants in respect of their loan accounts and a review taking place in relation to tracker interest rates. In respect of the tracker interest rate review, the letter stated that:

"We are carrying out a review of customer mortgage accounts with regard to tracker rates. This is an industry wide review required by the Central Bank of Ireland.

The review, which is ongoing, is nearly complete and your accounts have not been found to be impacted to date. If in the future your accounts are found to have been impacted by a failure on our part, we will write to you."

A few days later, by letter dated **3 May 2019**, the Provider furnished the Complainants' solicitor with redemption figures in respect of each of the three loan accounts.

The Provider wrote to each of the Complainants (separately) on **10 May 2019** advising that it had agreed the sale of each of their three loan accounts to the new owner, and that the transfer was expected to complete on or after **17 July 2019**.

The First Complainant telephoned the Provider's Arrears Support Unit on **14 May 2019**. The Provider's agent advised the First Complainant that the Complainants' account was now being managed by the Transitional Services Team ("the TST"). The First Complainant advised that she just wanted a loan account statement and arrears balance. The Provider's agent advised the First Complainant that the loan account was being dealt with another department and provided a telephone number to her.

A TST Agent ('G') telephoned the First Complainant on **15 May 2019**. The First Complainant explained that she wanted a breakdown regarding the arrears' balances on the Complainants' loan accounts, as these balances did not correlate with the balances contained in correspondence received in **August 2018**.

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The parties then went through the payments to the loan accounts. The TST agent also advised that he could issue account statements to the First Complainant. Shortly after this, the TST agent explained the loan sale to the First Complainant. Later in the conversation, the TST agent noted that the Complainants were looking for forbearance in respect of the family home loan. The TST agent further noted that the First Complainant had been dealing with the Arrears Support Unit and that an SFS together with supporting documentation was on file.

The TST agent advised that although legal ownership of the Complainants' loan would change in **July 2019**, the Provider was obliged to consider the Complainants' proposal for an interest only arrangement and furnish a response.

The TST agent advised that the proposal would have to go through a credit approval process, but any proposal after **17 July 2019** would be passed to the new owner for its approval. The TST agent advised the First Complainant that a response should have been received to the Complainants' proposal. The TST agent then provided the First Complainant with contact details for the TST. The TST agent also indicated that forbearance requests can take longer to process. While the TST agent indicated that he would investigate the issues raised, regarding the arrears on the Complainants' loan accounts, the request for a reduced interest rate, and would also revert regarding a request for title deeds on accountable trust receipt, he did not indicate that any enquiries would be made in respect of the Complainants' interest only proposal.

By letter dated **23 May 2019**, the Provider furnished the Complainants' solicitor with redemption figures in respect of each of the three loan accounts.

It appears that the First Complainant emailed the TST on **16 July 2019**, which the Provider recorded as a formal complaint. However, a copy of this email does not appear to have been supplied by the parties. G left a voicemail for the First Complainant on **17 July 2019** acknowledging receipt of an email from the First Complainant.

The Provider wrote to the Complainants (separately) on **26 July 2019** to advise that the transfer of their loans to the new owner, had completed on **23 July 2019**.

The First Complainant telephoned G on **23 August 2019**. The First Complainant advised that the Investment Property had gone sale agreed and that the new owner was not providing consent to sell the Investment Property, unless the Complainants repaid the family home loan in full. The First Complainant expressed her dissatisfaction with the position of the new owner. The First Complainant also expressed her dissatisfaction with how matters had been handled by the Provider.

A Final Response letter issued to the First Complainant on **4 September 2019**. The First Complainant responded to the Final Response letter by letter dated **9 September 2019** noting that the essence of the Complainants' grievance was that the Provider *"for many months prior to the loan sale knew of our intention to sell the investment property, pay off all arrears on our family home and recommence our relationship on a sound footing."* The Provider issued a reply to this letter on **19 September 2019**.

Analysis

I am conscious that by letter dated **26 June 2018**, the Complainants wrote to the Provider (enclosing an SFS and certain supporting documentation) requesting an extension to the interest only arrangement in place on loan account 3/01 and to apply for an interest only arrangement in respect of loan account 4/01.

It appears the Complainants' letter was received by the Provider on **5 July 2018** and by letter dated **20 July 2018**, the Provider requested certain information relating to the Complainants' income. In this respect, I note that Provision 33 of the **Code of Conduct on Mortgage Arrears 2013** ("the CCMA") permits the Provider to request supporting documentation to corroborate the information contained in an SFS. On considering the information provided by the Complainants and the information subsequently requested by the Provider, I am satisfied that the Provider's request for this information was reasonable.

Following this, a number of telephone conversations took place between the First Complainant and Case Manager 3 regarding the information required by the Provider to assess the Complainants' request for forbearance.

Having reviewed these conversations, it appears that the Complainants' tax affairs were not in order and that their accountant was in the process bringing matters up to date. This appears to have been the reason for the delay in providing the Revenue related documentation requested by the Provider in **July 2018**. Further to this, it appears that certain difficulties were encountered by the Complainants in obtaining payslips for the Second Complainant, as he had recently commenced employment on a PAYE basis, having previously been self-employed. None of these issues were the making of the Provider.

It appears that documentation in respect of the Complainants' income was furnished to the Provider under cover of letter dated **5 October 2018**. Further queries were raised however, by Case Manager 3, on **26 November 2018**, regarding the Complainants' circumstances and the documentation recently furnished. On reviewing this telephone conversation, I am satisfied that it was reasonable for Case Manager 3 to discuss the various aspects of the Complainants' circumstances, as were discussed during this conversation.

In terms of the documentation submitted by the Complainants, it appears the documentation relating the Complainants' income tax returns from **2014, 2015 and 2016** was incomplete, and that no documentation in respect of the **2017** income tax return had been supplied. In this respect, I am satisfied it was reasonable for Case Manager 3 to request complete and up to date income related documentation from the Complainants in the form of their tax returns, so that the Provider could properly assess the Complainants' request for forbearance. Following further telephone conversations between the First Complainant and Case Manager 3, it appears that additional documentation was ultimately furnished by the First Complainant by email dated **19 February 2019** and that a re-signed SFS was received by the Provider around **27 February 2019**. The Provider then wrote to the Complainants on **1 March 2019** acknowledging receipt of the SFS and to advise that its dedicated assessment team would review the information supplied.

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Having given detailed consideration to the matter, I am not satisfied there was any delay on the part of the Provider in assessing the Complainants' request for forbearance, up to **27 February 2019**. Indeed, there was in my opinion, significant delay on the part of the Complainants in supplying the information which the provider required, to advance matters.

I note that during a telephone conversation on **6 March 2019**, Case Manager 3 advised the First Complainant that he was no longer involved with the Complainants' loan accounts. Towards the end of this conversation, the First Complainant asked Case Manager 3 to check the status of the application with the agent dealing with the matter. However, it is not clear whether Case Manager 3 followed up with the relevant agent and, based on the available evidence, Case Manager 3 does not appear to have reverted to the First Complainant with an update. In the circumstances, I consider that it would have been reasonable for either Case Manager 3 or the new agent to which the Complainants' loans were now assigned, to have contacted the First Complainant with an update, as she had requested.

By letter dated **30 April 2019**, the Provider wrote to the Complainants to advise that it was in the process of carrying out a review of its mortgage loan accounts with respect to tracker interest rates. In the Final Response letter, the Provider advised the First Complainant that following receipt of the documentation in **February 2019**, the Complainants' loan accounts were subject to a tracker interest rate review, which began on **20 March 2019** and "*[d]uring the course of this review, we were not in a position to assess your accounts.*" In its complaint response, the Provider says that this review concluded in **May 2019**.

Provision 35 of the CCMA requires the Provider to assess an SFS in a timely manner. In this respect, I note that 14 business days elapsed between receipt of the required information on **27 February 2019** and the commencement of the tracker mortgage review on **20 March 2019**. Having considered the matter, I consider 14 business days to be a reasonably sufficient time for the Provider to have begun or completed its assessment of the Complainants' request for forbearance.

The manner in which the Final Response letter and the Provider's Complaint Response is phrased, suggests to me that its letter of **30 April 2019** informed the Complainants that their request for forbearance would not be assessed while the tracker mortgage review was taking place. However, on reviewing this letter, I note that the Provider does not in fact mention anywhere that the review would interfere with or cause any disruption or delay to the Complainants' loan accounts or that it would delay or suspend the Provider's assessment of any forbearance requests. Further to this, the letter does not advise as to when the review began, the time it would take to complete, nor does it provide an estimated completion date.

As it was in fact the case that the Complainants' request for forbearance would not be assessed while this review was taking place, I am of the view that the Provider should have written to the Complainants expressly advising them of this. It is also disappointing to note that the Provider was unable to proceed with its assessment while this review was taking place.

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However, based on the available evidence, it is not clear why or how the review meant that the Provider was unable to carry out the assessment even on a preliminary basis, particularly as the letter of **30 April 2019** advised that the Complainants' loan accounts were not found to have been impacted to date.

It appears the Transitional Services Team (TST) took over the management of the Complainants' loan accounts from **10 May 2019**. During the telephone conversation with the TST agent on **15 May 2019**, the First Complainant discussed the request for forbearance, noting that an SFS together with supporting documentation was on file.

As noted above, the TST agent indicated that he would investigate certain matters discussed during the call, however, despite noting an absence of a response to the request for forbearance, the TST agent did not appear to offer to look into the Complainants' request for forbearance or to follow up with the Arrears Support Unit.

In its complaint response, the Provider seems to suggest that the TST was not aware of the request for forbearance at the time when the Complainants' loans were assigned to the TST. However, in my opinion, this does not entirely reconcile with the TST agent's remarks during the telephone conversation on **15 May 2019**, which was only three business days after the loans had been assigned to the TST. Consequently, the evidence suggests to me that the TST was aware of the Complainants' request effectively at the time the loans were assigned to it. However, it appears that the TST did not take any steps to progress the assessment of the request, either by the Provider's Arrears Support Unit, or by the new owner.

I note that the sale of the Complainants' loans completed on **23 July 2019**. However, at that date the Complainants' request for forbearance had not been assessed by the Provider.

In the Final Response letter and its Complaint Response, the Provider apologised for the fact that the request for forbearance was not transmitted to the new owner for consideration during the sale transition period. I consider it very disappointing that such important account related information was not transmitted to the new owner during the assessment period, and it is unclear why this did not happen.

It is my opinion, notwithstanding what I consider to be very significant delays by the Complainants themselves in making available all of the information which the Provider required, to facilitate an assessment of their request for forbearance, nevertheless the Complainants' request for forbearance was in a position to be assessed from around **27 February 2019**. Having considered the matter, I am of the view that the Provider failed to assess the Complainants' request. As discussed above, I am of the view that there was reasonable opportunity to carry out or at least begin the assessment, prior to the tracker interest rate review taking place.

While I am not entirely satisfied based on the evidence that this review should have interfered with the assessment, once this review was complete, I am of the view that the Provider was again in a position to assess the Complainants' request, but it failed to do so.

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Accordingly, I am satisfied that there was a total failure on the part of the Provider to assess the Complainants' request for forbearance between **27 February 2019** and **23 July 2019** (being the date the transfer was complete). This failure was further compounded by the fact that the Provider failed to transmit the Complainants' request to the new owner for assessment.

The Complainants dispute the Provider's entitlement to sell their loans. I note that in each of the letters of offer referred to above, it is stated that the respective loan agreement is subject to the terms and conditions in Appendix A. However, in an email to this Office dated **2 March 2022**, the Provider advised that:

"From reviewing the Bank's submission sent to your office on 21 October, 2020, we have become aware that the Appendix A provided for the Letter of Offer in the amount of €283,000 dated October 2002 [loan account 3/01] (Schedule of Evidence 2), appears to be incorrect.

The business area has advised that despite their searches, they have been unable to locate the correct Appendix A for the above Letter of Offer and Appendix B and C for the three Letters of Offer (October 2002 x 2 and February 2005).

The Bank apologises to your Office and the Complainants for this missing documentation and for any inconvenience caused."

Provision 11.7 of the **Consumer Protection Code 2012 (as amended)** ("the Code") requires the Provider to maintain complete and readily accessible records. In this respect, I am of the view that the Provider has failed to maintain complete records in respect of the loan agreements the subject of this complaint.

In terms of the letter of offer for loan account 3/01 and the Provider's statement that Appendix A for this loan accounts 'appears' to be incorrect, the Provider does not appear to have clarified whether Appendix A is incorrect in whole or in part, nor has the Provider explained precisely what aspect(s) of Appendix A is incorrect. Based on the letters of offer furnished by the Provider, the following provision appears in each Appendix A:

"Securitisation: *The Bank's authority to securitise the Facility is set out in Appendix C. By virtue of acceptance of this Facility Letter, the Borrowers authorise the Bank to securitise this Facility."*

The 'Securitisation' provision indicates that the Provider's entitlement to securitise the Complainants' loans is contained in Appendix A and Appendix C.

However, Appendix A appears to have been 'incorrect' in some manner in respect of loan account 3/01 and at the time when the preliminary decision of this office was issued in July 2022, Appendix C had not been supplied in evidence, in respect of loan accounts 2/01, 3/01 and 4/01.

It is unclear when the Provider became aware that certain parts of the Complainants' loan documentation was incorrect or missing nor is it clear whether these issues occurred prior to or post the sale of the Complainants' loans. In deciding to sell the Complainants' loans, I am of the view that the Provider should have conducted a review of the relevant loan documentation; firstly, to ensure it was contractually entitled to sell the loans in question and secondly, to ascertain whether there were any preconditions or caveats to the sale of these loans, such as eg. a minimum notice period. In its complaint response, the Provider says it conducted a thorough due diligence process prior to including any loan in the portfolio sale.

As a result, it is reasonable to expect the Provider to have been aware of any incorrect or missing documentation. If it were the case that certain of the Complainants' loan documentation was incorrect or missing at the time of the sale of these loans, owing to the nature of the missing documentation and the absence of clarity as to the incorrect documentation, it is difficult to understand how the Provider could have been reasonably satisfied that it possessed the contractual entitlement to sell loan account 3/01 (as Appendix A appears to have been incorrect in some respect) and that it satisfied the requirements of Appendix C in respect of all three loan accounts. Yet it appears to be the case that the Provider proceeded with the sale of these loans. Further to this, the Provider does not appear to have made the Complainants aware that it did not hold complete documentation in respect of their loans at any stage nor did the Provider bring this to the attention of this Office, as part of its complaint response

I note that since the preliminary decision of this Office was issued in July 2022, the Complainants have supplied a document which they suggest is Appendix C, and the Provider has not disagreed. The Provider rather says in a recent submission that:

"Appendix A cited by the FSPO in its Preliminary Findings provides authority for securitisation of loan facilities, and Appendix C referred to by the Complainants in their latest correspondence, provides the conditions applicable in the event such a formal securitisation is pursued in respect of loan facilities.

However, the Complainants' loan facilities in this case were sold by the Bank in a loan sale. The Complainants' loan facilities' terms and conditions are silent on the assignment or transfer of their loan accounts in an outright loan sale. Based on legal advice, the Bank is satisfied that although the terms and conditions governing the Complainants' facility agreements are silent on the right to assign or transfer the facility agreements in a loan sale, the accepted legal position is that silence to assignability in a document operates to permit assignment. Therefore, the Bank was entitled to sell the Complainants' loan facilities to a third party, in an outright loan sale.

[my underlining for emphasis]

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I note that based upon the contractual provisions, the loans were sold as part of a portfolio sale. I am satisfied on balance, and in the absence of sufficient evidence available to suggest otherwise, that as legal owner of the Complainants' loans, the Provider was entitled to sell that ownership of the Complainants' loans. If, however, the Complainants believe that the manner in which the sale was made, was invalid, and can be challenged, such a matter is more appropriate for the Court and I make no finding in that regard.

By letters dated **10 May 2019**, the Provider informed the Complainants of the sale of their loans to the new owner, which was expected to complete on or after **17 July 2019**, and which ultimately completed on **23 July 2019**. I am satisfied that a lender is not generally required to obtain the prior approval of a borrower to the sale of the loan. However, I am satisfied that a reasonable period of notice should be given by a lender to a borrower in respect of the sale of a loan. In this case, the Provider gave more than 30 days' notice to the Complainants that their loans were being sold to the new owner, which I am satisfied constitutes a reasonable notice period. Further to this, I do not accept that the Provider was required to inform the Complainants about the sale of their loans, in response to any requests for redemption figures, nor do I accept that the Provider was required to inform the Complainants about the sale of their loans, because they were engaged in the sale of the Investment Property.

I am conscious that during a telephone conversation on **24 October 2017**, Case Manager 1 discussed the sale of the Investment Property and the First Complainant indicated that the Complainants would be agreeable to this.

Almost two years later, during a telephone conversation on **23 August 2019**, the First Complainant advised that the Investment Property had been placed on the market at the end of **March 2019** and had gone "sale agreed" in **May 2019**. I am mindful in that regard, that 17 months passed from when the First Complainant indicated that the Complainants would be agreeable to the Investment Property being sold, to when the property was ultimately placed on the market for sale.

The evidence in this complaint suggests that for the Complainants to sell the Investment Property and assess the capital gains tax implications of the sale, their income tax returns were required to be brought up to date. The evidence further suggests that this took some very considerable time to complete, thereby giving rise to a delay in selling the Investment Property, notwithstanding the Complainants being told more than once, that such a process was expected to complete in a period of six months.

It appears that the Complainants wished to give the tenant occupying the Investment Property ample notice to vacate the property and that this also delayed the sale of the Investment Property. In this regard, it appears that the Complainants wanted to wait until the expiry of the tenancy then current, and then serve a notice of termination on the tenant to the effect that the tenancy would not be renewed. However, based on the available evidence, I do not accept that the Complainants were required to wait until the expiry of the tenancy before it could be terminated.

In this respect, I note that item 3 of the table contained in **section 34** of the **Residential Tenancies Act 2004** permits a landlord to terminate a tenancy (once the required period of notice is given) where the landlord intends to sell the property. Consequently, it appears that the Complainants could have relied on this provision and sought to market the Investment Property earlier than in **March 2019**, when the relevant notice period expired.

It is my opinion that if the Complainants were agreeable to selling the Investment Property, that the property should have been placed on the market for sale within a reasonable period of time. In this respect, I note that it was not until **8 March 2018**, that a six-month time period was mentioned by Case Manager 2, more than four months after the initial discussion regarding the sale of the Investment Property. It appears that a nine-month period was first mentioned in the Final Response letter dated **4 September 2019**, which was after the Investment Property had gone sale agreed, and after the sale of the Complainants' loans.

During certain telephone conversations, the First Complainant was advised that the Provider generally expected a property sale to take place within six months of an agreement to sell. However, I note that the First Complainant was not advised of this during the initial telephone conversation on **24 October 2017** or in the letters of **13** or **15 November 2017**.

It was almost four months after the initial conversation, that the First Complainant was then advised of the six-month period. In circumstances where the Provider expects a property sale to be completed within a particular period, I consider it reasonable for the Provider to have communicated this to the Complainants at the earliest opportunity, being during the telephone conversation on **24 October 2017**. Further to this, I also consider it reasonable for the Provider to have referred to any such period in its correspondence from **November 2017** when a voluntary sale and a voluntary surrender were identified as some of the options available to the Complainants.

Although the Provider referred to two different periods, within which it would expect a property to be sold, I am satisfied it was reasonable to expect the Investment Property to be marketed for sale within six to nine months of the First Complainant indicating the Complainants' agreement to the sale of the property. Further to this, I am satisfied that the Complainants had sufficient time to sell the Investment Property prior to the sale of their loans to the new owner. I am also satisfied that the Provider did not seek to exert any unreasonable or undue pressure on the Complainants, regarding the sale of the Investment Property.

It should be noted that I do not accept that because the Complainants had agreed to sell the Investment Property, that the Provider was prevented from selling their loans to the new owner. Neither do I accept the Complainants' suggestion that they had an arrangement with the Provider, that should have transferred to bind the new owner. In my opinion, the parties' discussions from late 2017 onwards, never advanced to a situation where a potential arrangement became an agreement that was binding; this was largely because of the delays by the Complainants, and indeed also delays by the Provider.

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It should also be noted that I do not accept that any failure on the part of the Provider to assess the Complainants' request for forbearance, impacted the Provider's entitlement to sell the Complainants' loans.

Having considered all of the evidence, it is my opinion that the Provider's failure to assess the Complainants' request for forbearance in **February 2019**, constituted conduct of an unreasonable nature, within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

In addition, the Provider's failure to retain a full copy of the loan documentation, constituted conduct not only which was unreasonable, but which also breached the Provider's regulatory obligations pursuant to the Consumer Protection Code and was contrary to law in that regard, within the meaning of **Section 60(2)(a)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Goodwill Gesture

In recognition of certain service failings identified in its complaint response, the Provider advised that it wished to offer the Complainants a goodwill gesture of **€2,500.00** in full and final settlement of their complaint. This was not accepted by the Complainants.

Having considered the conduct, that is the subject of this complaint, I do not consider the gesture offered by the Provider to constitute a reasonable amount of compensation for the issues arising. On the basis of the evidence available, I consider it appropriate to partially uphold this complaint, and to mark that decision, it is my intention to direct the Provider to make a more reasonable compensatory payment to the Complainants, as directed below.

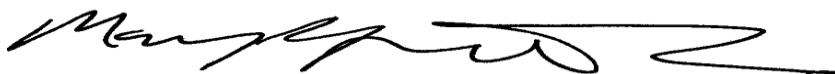
It will be a matter for the Complainants to engage directly with the new owner of the loans, in order to come to a suitable arrangement, if possible, to restructure their borrowings, whether or not this includes the sale of the investment property.

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)(a)** and **(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 Complainants in the sum of **€7,000 (seven thousand Euros)** to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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)

7 October 2022

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.