



<u>Decision Ref:</u>	2018-0121
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Selling mortgage to t/p provider
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered into a variable rate commercial loan mortgage agreement with the Bank, for a term of 20 years. On **02 October 2006** a Letter of Loan Offer issued in the sum of €556,720.00, on **19 October 2006** an amended Letter of Approval issued in the sum of €562,770.00. The mortgage was drawn down by the Complainants on **26 October 2006**.

In **December 2009**, upon expiry of the interest only repayment period, the Complainants opted to continue interest only repayments on the loan.

In **December 2012**, the Complainants' mortgage fell into arrears. In **January 2013**, the mortgage reverted from Interest Only repayments to Principal and Interest repayments, in accordance with the mortgage terms and conditions. The Bank agreed to reduce the repayments to interest only for the period from **26 January 2013 to 26 April 2013**.

In **July 2013**, the Bank sanctioned a 12 month restructure agreement, involving a further 12 month interest only payment arrangement, at a reduced variable interest rate of 4.5%.

In **May 2014**, in the course of discussions leading up to the expiry of the **July 2013** restructure agreement, the Complainants, together with their financial advisor Mr. S, met with Mr. H, their relationship manager within the Bank.

In the course of discussions, the Complainants repeated an earlier request they had made for a term extension to 25 years, as well as an extension of the Interest Only repayment arrangement on the loan for a further 3 years. The Complainants submit that they were told by Mr H, on behalf of the Bank, that this would be granted by the Bank.

While the Complainants' interest only repayment request was granted within a restructure agreement of July 2014, for a further period of 16 months, the Complainants' request for an extension to a 25 year term was ultimately declined by the Bank's credit committee.

The Complainants' complaint is that although Mr H, on behalf of the Bank, provided the Complainants with verbal assurances that the loan would be restructured, to include a 25 year term, the commitment made by the Bank has not been honoured.

The Complainants' Case

The Complainants submit that in **August 2012**, they contacted the Bank to discuss their loan, as the rental income which they were in receipt of, from the mortgaged investment property, had fallen, which had affected their ability to maintain the agreed repayment schedule.

The Complainants submit that in **May 2013**, during a meeting at the Bank's offices, Mr. H., their relationship manager within the Bank, agreed to reduce the interest rate to 4.5% and to restructure the loan, to comprise interest only payments for a period of 1 year, following which time a term extension from 20 to 25 years on the loan, would be granted by the Bank.

The Complainants submit that in **July 2013**, they agreed to the interest only payments, and sent a letter to Mr. H., accepting this. The Complainants submit that Mr. H., confirmed that the term extension would be put in place after 12 months of payments had been received by the Bank. The Complainants submit that they honoured the "*interest payment programme*", in full.

The Complainants submit that in **March 2014**, they sought a meeting with the Bank as they were concerned about the proposed sale of the Bank's loan book to a third party provider. They submit that the Bank "finally" agreed to meet with them, in **May 2014**.

The Complainants submit that following this meeting, in **June 2014**, their representative at the time received an email from Mr. H., confirming that he had spoken to his manager, and that the Bank were happy to proceed to reschedule the loan. The Complainants submit that their representative responded by email, asking Mr. H. to confirm that the 25 year term was part of the agreement.

The Complainants submit that Mr. H confirmed by email that he would ensure that the 25 year term was part of the agreement.

The Complainants submit that contrary to this, however, in **August 2014**, the Bank issued a letter to them, offering an interest only arrangement for a period of 16 months, without any reference to the long term rescheduling of the loan. The Complainants submit that they did not accept this offer letter, but continued to fund the loan.

The Complainants submit that in **October 2014**, they wrote to the Bank and requested that the Bank honour the commitment which had been made by Mr H, in his email to their agent

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of 17 June 2014, in which he stated that *“he had spoken to his manager and would ensure”* that the 25 year term would be part of the agreement. The Complainants submit that in **November 2014**, the Bank responded by stating that such decisions are ultimately subject to the approval of the Bank’s Credit Sanctioning Authority.

The Complainants submit that the emailed commitment from Mr H, on behalf of the Bank can be relied upon by them, *“as it is not caveated in anyway”* and as such is a legally binding commitment from the Bank to extend the term of their loan.

The Complainants submit that the Bank have *“dishonoured a commitment made in writing by the lending manager”*. The Complainants submit that *“the fact that the Bank maintain that he did not have the authority to make that commitment is irrelevant.”* The Complainants’ representative submits that the Complainants have been *“forced by the [third party provider] who bought the loan to sell it at a huge loss”* and submits that *“this is all a direct result of the Bank to honour the commitment made.”*

The Provider’s Case

The Bank submits that the email dated **17 June 2014**, which the Complainants rely upon in making their complaint, does not do anything other than confirm to the Complainants that Mr. H would include a request for an extension to a 25 year term in the proposed restructure to be submitted to the Bank’s Credit Committee, for approval.

The Bank submits that the Complainants’ interpretation of the email in question is incorrect and it submits that it *“does not accurately reflect the context of the email exchange nor the overall background or context of that email conversation.”*

The Bank submits that the Complainants’ interpretation of the email in question, *“ignores the fact that the email from Mr. H did not, nor could have, had the effect of contractually binding the Bank. All restructure proposals and requests were subject to Credit Committee assessment and approval.”*

The Bank submits that the Complainants did not sign an acceptance of the **July 2014** restructure agreement. It submits that, according to its records, part payments were subsequently made by the Complainants.

The Bank submits that in **October 2015**, following a request by Mr. McK, the Complainants new representative, a formal complaint was logged with the Bank regarding the disputed email. A final response was issued by the Bank in this regard on **05 November 2015**.

The Bank submits that the Complainant’s mortgage account has since been sold to a third party provider and the Bank has no visibility on the current status of the loan or the secured property.

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 26 October 2018 outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

Background

A Letter of Loan Offer, dated **02 October 2006**, issued to the Complainants, in the sum of €556,720.00.

An Amended Letter of Loan Offer dated **19 October 2006**, subsequently issued, with the loan amount having been increased to €562,770.00. The terms of the offer were accepted by the Complainants and these monies were drawn down later that month.

On **09 December 2009**, the Complainants returned an options form to the Bank, confirming that they wished to remain on interest only repayments.

In **November 2012**, correspondence issued to the Complainants from the Bank, confirming that the interest only period of repayments on their mortgage would end, on the **01 January 2013**.

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In **December 2012**, the Complainants' mortgage account fell into arrears. In **January 2013**, the mortgage reverted to Principal and Interest repayments, in accordance with the mortgage terms and conditions. The Bank subsequently agreed to reduce the repayments to interest only, for the period from **26 January 2013 to 26 April 2013**.

On **30 January 2013**, a letter issued from the Bank to the Complainants confirming that,

"as per your recent instruction we have reduced your monthly repayments for the agreed period of 4month(s) from 26/01/2013 to 26/04/2013. As a result, your reduced interest only repayment during this capital payment holiday will be €3,020.01 and will apply from 26/01/2013."

By subsequent letters dated **30 May 2013** and **24 June 2013** the Bank confirmed that it was agreeable both to the Complainants making interest only repayments on the loan for a further period of 12 months, and to a capitalisation of the arrears balance of €13,865.64. It asked the Complainants to sign and return the attached forms including a direct debit mandate, in this regard.

By letter dated **11 July 2013** the First Complainant responded to Mr H (the relationship manager assigned by the Bank to the management of the Complainants' Mortgage account), stating:

"Following our conversation yesterday I have enclosed a copy of the signed forms and direct debit form..."

As we agreed in our telephone conversation yesterday, the bank recognises that we would not be able to meet the €5000 per month payment in June 2014. However, once we meet the monthly payment for the next 12 months the bank will be able to restructure the loan term for 25 year period as per our meeting in May.

...

We will be contacting you in April 2014 with a view to getting a finalised restructuring.

The Bank has submitted that:

The Complainants had requested that this July 2013 restructure agreement would also include an extension to a 25 year term and expressed disappointment that the resultant July 2013 restructure did not also include an extension to a 25 year term. [Mr. H] explained to the Complainants and [Mr. S] (their financial adviser) that the Bank needed to see a regular pattern of loan repayments before it could consider this request. This July 2013 12 month restructure agreement was signed and accepted by the Complainants."

In **May 2014** the Complainants, together with their representative, Mr. S, again met with Mr. H. They submit that at this meeting they repeated their request for a term extension to 25 years, as well as an extension of the interest only repayment arrangement for a further 3 years.

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I have had regard to the minutes of this meeting, which I have reproduced, in part, below:

The meeting was based around the Borrowers commercial loan exposure of €571k to [the Bank] secured against the commercial property at [location] (“the secured property”).

[The First Complainant] acknowledged that [the Bank] intended to sell their commercial loans and he stated that he is anxious to put a long term arrangement and payment plan in place, i.e., 24/36 months rather than a 12 month arrangement. ...

*[Mr. H] explained that he is not sure if or when [the Bank’s] Commercial loans would be sold. **[Mr H.] also advised that because [the First Complainant] had demonstrated good faith, stayed within the restructured terms of the loan and got the loan back on track over the last 12 months, a strong case could be made to [the Bank] to put a longer loan arrangement (24-36 months) in place.*** [my emphasis]

*[The First Complainant] advised that he could not afford to make larger monthly loan repayments than what he is currently paying (€3k p.m.). [The First Complainant] explained that the rent received on the (location) property cannot be increased for 3.5 years due to a 5 year lease that is in place. **[Mr. H.] suggested that a potential treatment may be to extend the term of the commercial loan (€571k) to 20-25 years in order to make principal repayments and maintain the current monthly loan repayments (€2.2k).*** [my emphasis]

...

[Mr H] advised that he will work towards placing a new loan arrangement in place (subject to credit approval) before the first P&I loan repayment is due in June.

Following this meeting, a series of emails were exchanged between the Complainants’ representative, Mr. S and Mr. H, of the Bank in **June 2014**.

This series of emails included an exchange which is of material relevance to the within complaint, which occurred during the period **12 June 2014 to 17 June 2014**. The contents of the email dated **17 June 2014**, from Mr. H. to the Complainants’ representative, Mr. S., forms the subject matter of the Complainants’ within complaint.

I have had regard to these emails, the details of which I have set out, below:

On **12 June 2014**, the First Complainant sent an email to his representative, asking him to:

“chase up [Mr H], and see where we are it’s a month nearly since we met him.

We will not be able to make the great payment at the end of the month and we badly need his help to move to a longer term sustainable plan.”

By email dated **12 June 2014**, the Complainants’ representative, Mr. S. wrote to Mr. H., stating:

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“just following up on our meeting of the 08th May last, as you can see [the First Complainant] is getting rather anxious. I would appreciate if you could come back to me as soon as possible.”

On **16 June 2014**, Mr. H. replied to Mr. S., stating:

“I’ve just spoken with my Senior Manager in relation to this case and he has indicated that he is supportive of a three year extension to the previously sanctioned Interest Only term as applied last year.

However, he has asked to review an updated Statement of Affairs and Standard Financial Statements before final sanction. Can you please arrange to have the attached completed and returned.

In the meantime I will be drafting the body of the report along the lines we had discussed and once the financials have been received, and subject to no material change in the financials from those received last year, sanction from the Bank should follow shortly thereafter.”

By email dated **17 June 2014**, Mr S. responded to Mr. H., as follows:

“I have asked [the First Complainant] to complete the attached form, just as an aside [the First Complainant] has mentioned that he never received any notification under the last arrangement of an extension of the term to 25 years, perhaps you could make sure this is included clearly in the new arrangement”

Mr. H. responded to Mr S, on **17 June 2014**, as follows:

“Thank you for the update, I will ensure the 25 year term is restated in the proposed restructure”.

It is the content of this message of **17 June 2014**, which the Complainants submit they are entitled to rely upon, *“as it is not caveated in anyway”* and, which they suggest, comprises a legally binding commitment from the Bank to extend the term of their loan.

The Bank’s position is that this particular email, written by Mr. H., was nothing more than a confirmation that he would include the request for a 25 year term in the proposal which was to be presented to the Bank’s Credit Committee.

The Bank has submitted that the interpretation applied by the Complainants ignores the fact that the email from Mr. H did not, nor could it have, had the effect of contractually binding the Bank. The Bank has submitted that it had been highlighted by Mr. H., to the Complainants that all restructure proposals and requests were subject to Credit Committee’s assessment and approval.

The Complainants submit that the effect of the email was to provide assurances to them that the loan would be restructured, to include an extension to a 25 year term of the

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mortgage. They submit that the Bank is bound by the representations of Mr H to them and that the Bank have resultantly “*dishonoured a commitment made in writing by the lending manager.*”

It is the Complainants’ contention that this email can be relied on by them as a legally binding commitment from the Bank to extend the term of their loan.

Analysis

In examining the Complainants’ contention, I have examined the communications which occurred between the parties, with particular regard to the above referenced email, of **17 June 2014.**

I have also had regard to the “Proposed Restructure Agreement” which was ultimately submitted by Mr H, to the Bank for approval on **31 July 2014.**

The “Overview” and “Recommendation” contained within the proposal document, states as follows:

“In June 2013, the Bank sanctioned a restructure of the subject loan account that allowed for a reduction in the interest rate to a new variable rate of 4.5% in conjunction with the granting of a 12 month interest Only (‘I/O’) period with monthly payments of c.€2.2k.

*The aim of this 12 month arrangement was to test the Borrower’s commitment to working with the Bank and to regularise payments following a period of delinquency. The Borrowers met the terms of the Bank’s restructure and all 12 payments were received on time without issue. **The Borrowers have now asked that the Bank extend the I/O period for a further 36 months while granting a term extension to 25 years (at which point the Borrowers will be 67 years old respectively). However, as there is no long-term treatment product available which would allow for a 3 year I/O period to be followed by an extended period of Capital & Interest payments, the Borrowers’ recent proposal is not feasible.**”*

[my emphasis]

It was somewhat surprising to read the recommendation contained within the proposal, as prior to this there was no evidence to suggest that the RM was minded to make a recommendation against the extension sought. In fact, the evidence shows that he gave the Complainants the clear impression that he would be putting forward a favourable recommendation for a term extension within this proposal.

I note in this regard that within the email of **16 June 2014**, Mr. H. had advised the Complainants’ representative, that:

*I’ve just spoken with **my Senior Manager** in relation to this case and he has indicated he **is supportive of a three year extension** to the previously sanctioned Interest Only term as applied last year.*

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*...I will be drafting the body of the report along the lines we had discussed and once the financials have been received, and subject to no material change in the financials from those received last year, **sanction from the Bank should follow shortly thereafter.***

[my emphasis]

Notably, the recommendations ultimately made by Mr. H. a short time later, are not at all along the lines as discussed between the parties.

The Bank, within its submissions highlight and rely upon the fact that Mr H.'s email of **17 June 2014** "*did not, nor could not*" have had the effect of contractually binding or otherwise committing the Bank to an extension to a 25 year term as a relationship manager is "*purposely not delegated the authority to bind in restructure discussions with customers*".

Having examined the evidence before me, I accept that is the case, and I do not accept the Complainants' contention that the email represented a binding commitment on the part of the Bank to a term extension.

I am satisfied, taking into account the ordinary meaning of the words used by Mr. H. within this email, of **17 June 2014**, namely, "*I will ensure that the 25 year term is restated in the proposed restructure*", that this merely consisted of an assurance that he would restate the Complainants' request for an extension to a 25 year term within the proposal which was to be put to the Bank's Credit Committee.

I am satisfied that he did so. This request was indeed included in the "Proposed Restructure Agreement", however I accept that the Complainants may have reasonably understood from Mr. H. that he would restate this proposal in favourable terms, which did not occur.

In examining the course of dealings between the Bank and the Complainants in its entirety, I believe that the Bank has failed to account for the various representations which were made to the Complainants by Mr. H., in relation to their request to reschedule the loan to a 25 year term.

Lack of transparency and fairness.

It appears, on the basis of the evidence before me, that the various representations which Mr. H. made to the Complainants set up an expectation on their part that their request for a term extension, to be proposed by Mr. H. and supported by his "*senior manager*" stood a good chance of being approved by the Bank and, at the very least, that Mr. H. was supportive of and would be making a "*strong case*" for same within the proposal.

The Bank have submitted that Complainant's representative, "*was, presumably, accustomed to as an industry standard process and procedure, all restructure proposals and requests were subject to Credit Committee assessment and approval.*" The Bank submits that "*ultimately, while the interest only repayment request was extended for a further 16 months, the 25 year term was regarded as unsustainable by the Credit Committee after its careful consideration*"

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I am satisfied however that the Committee's "careful consideration" of the proposal, relied on by the Bank in support of its position, included consideration of the RM's recommendation that the Complainants' request for an extension to a 25 year term was "not feasible".

I note that by letter dated **06 November 2014**, Mr. H. responded to a letter from the First Complainant dated **06 October 2014**. Within this letter Mr. H. advised that:

*"I acknowledge that you raised concerns at this time that a 25 year term extension was not included this restructure and I discussed the issue with [the Complainants' representative] stating that any potential restructure of the facility to a new term of 25 years would only be looked at following the sanctioned 12 month interest only period. Again, no guarantee or assurance in relation to a term extension was given at this time **although I indicated I was supportive of such a restructure and would put such a proposal to the Bank's Credit Sanctioning Authority.**"*

*The 12 month interest only period ended in July 2014, at which point another review of your exposure was prepared and submitted to the Bank for sanction. **As per our meetings and discussions, both with you and [the Complainants' representative], I can confirm I was still supportive of a term extension at this point. However, this proposal was not subsequently sanctioned by the Bank's Sanctioning Authority; a fact which you and [the Complainants' representative] were fully aware of.*** [my emphasis]

These representations are, however, directly contradicted by the content of the "proposed restructure agreement", dated **31 July 2014**, submitted and recommended by Mr H., in which he was explicitly unsupportive of such a restructure and, in fact, essentially recommended against its approval by the Sanctioning Authority.

Consumer Protection Code.

Within the "General Principles" set out within the Consumer Protection Code, 2012 it is stated that:

A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

2.2 acts with due skill, care and diligence in the best interests of its customers.

On the basis of the above considerations, and for the reasons outlined above, I do not believe that the Bank has complied with these principles in the course of its dealings with the Complainants.

Whilst I do not find that the email of **17 June 2014** constituted a legally binding commitment from the Bank to extend the term of their loan, as contended by the Complainants, I am of the view that the Bank was responsible for leading the Complainants to believe that their

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request for an extension would be considered favourably by the Bank. This was misleading, in light of the recommendations actually made by Mr. H. to the Bank's Credit Committee and it is particularly disappointing given the pressure which the Complainants must surely have been under, in the course of their attempts to engage with the Bank, so as to keep the account in good order. On the basis of the considerations set out above therefore, I consider it appropriate to partially uphold this complaint.



Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4)** 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 €5,000 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
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES

5 December 2018

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.