



**Decision Ref:** 2018-0185

**Sector:** Banking

**Product / Service:** Mortgage

**Conduct(s) complained of:** Application of interest rate  
Maladministration  
Errors in calculations

**Outcome:** Rejected

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

In 2004 the Complainants took out a 2-year commercial loan with [Provider 2]. They submit that the 2-year loan was drawn down on an interest-only basis and that they serviced the loan on a monthly basis in accordance with the loan agreement. The Complainants state that following expiry of the 2-year loan term, they requested that the loan be switched to a residential, 20-year loan. They explain that during the course of the initial 2-year loan period they moved into the house forming security for the loan. In line with their request, on the 1 September 2008 the loan was changed to a 20-year, residential loan.

The Complainants submit that when their loan repayment basis changed in 2008, from an interest-only basis to an annuity basis, the only information they were provided with was to the effect that the new monthly repayment would be €715.15. The Complainants state that they were never informed as to what the new interest rate would be.

In 2013 the Complainants were notified that the ownership of their loan had transferred to [Provider 5]. Subsequently, on the 25 August 2014 the Respondent Provider, against which this complaint is made, commenced servicing the loan on behalf of [Provider 5].

The Complainants submit that in 2013 when their loan transferred to [Provider 5] they noticed that they were paying a very high rate of interest. When they contacted the Provider to query the rate applicable to their mortgage they were told that they were repaying their loan at a commercial rate of interest, and had been since loan inception.

The Complainants state that the Provider asked them to provide it with documentation proving that the mortgage property was their principal primary residence, which they did.

They submit that the Provider then assured them that the interest rate would be amended to a residential rate. Notwithstanding this assurance, the Complainants state that their loan interest rate was never changed, despite numerous requests.

The Complainants are extremely disappointed at the manner in which their loan has been administered. They are of the view that they have been overcharged for years. They argue that the interest rate ought to have reverted to a normal residential loan rate when they commenced servicing their loan on an annuity repayment basis.

The Complainants point out furthermore that upon scrutinising their account statements, they became aware that an additional €4,000 was added to their loan at the conclusion of the initial 2-year loan. They also discovered that during the initial 2-year term an extra €10,000 was added to their loan balance, even though this sum was not requested or drawn down. The Complainants state that the €10,000 addition to their loan was subsequently reversed and they were provided with €31. However, they feel that this was a very “paltry amount”. They are also concerned over the fact that when they examined their account statements, they noticed that following on from the removal of the €10,000 from their account, their monthly payment increased rather than decreasing, which they find very strange.

The Complainants are aggrieved at the manner in which their queries were left unanswered for prolonged periods of time. They are disappointed that the Provider failed to deliver on its promise to rectify the interest rate on their account.

### **The Complainants’ Case**

The complaint is that the Provider wrongfully failed to amend the interest rate applying to the Complainants’ mortgage loan, despite an assurance that this would be done and notwithstanding numerous requests by the Complainants to resolve the interest rate issue on their account.

The Complainants believe that an incorrect rate of interest has been applied to their mortgage loan account since 2008.

When asked how they would like the Provider to put things right, the Complainants outlined the following on their Complaint Form dated the 3 March 2017-

*“We expect to be refunded with all the monies we have overpaid in interest. If necessary we will consult with an independent financial adviser to calculate monies owed.”*

### **The Provider's Case**

The Provider explains that in 2003 the Complainants completed an application for a commercial home loan with [Provider 2]. On the 12 January 2004 the Complainants accepted a Letter of Loan Offer that issued on foot of their application. The Letter of Loan Offer outlined that monies would be advanced in order to fund the construction of a residential investment property.

Following completion of the loan term, [Provider 2] wrote to the Complainants and advised that the mortgage had matured. The letter also set out the balance due. The Complainants subsequently requested that the mortgage be changed to a 20-year annuity mortgage. This request was granted on the 26 August 2008.

On the 1 July 2011 the Complainants' mortgage loan was transferred to [Provider 3], which subsequently became [Provider 4]. Following on from this the loan was transferred to [Provider 5]. The Provider states that on the 25 August 2014 it commenced servicing the Complainants' loan on behalf of [Provider 5].

The Provider states that although the mortgage in question transferred from [Provider 4] as a Buy-to-Let mortgage loan, the underlying mortgage property was later coded as a principal private residence.

The Provider states that the interest rate applicable to the mortgage was determined at application stage. The loan was incepted as a commercial mortgage loan. Notwithstanding [Provider 2's] decision to replace the repayment terms of the mortgage contract in 2008, the applicable interest rate still applied. The Provider points out that the Complainants queried the mortgage interest rate with [Provider 4] when it was involved in the day-to-day administration of the loan. By letter dated the 4 June 2014 [Provider 4] advised the Complainants that "[Provider 2] did not have a policy of rate review for change of circumstances".

The Provider states that all payments made by the Complainant during the interest-only period of the mortgage were made in discharge of the interest amount applied to the mortgage each month. The Provider states that on the 1 September 2008 the balance outstanding on the Complainants' mortgage was €94,000.16.

The Provider submits that on the 1 January 2005 an advance of €10,000 was added to the Complainants' account by [Provider 2] in error. On the 8 September 2005 this error was corrected and an amount of €10,000 was credited to the account. The additional interest that applied to the account during this period totalled €31.38. This sum was credited to the account on the 8 September 2005.

Regarding the allegation that the Complainants were informed that the interest rate on their account would be reduced to a residential rate, the Provider denies that any such assurance was provided. The Provider points out that during telephone calls, copies of which have been provided in evidence, the Complainants were advised of the opportunity to be assessed for all available Alternative Repayment Arrangements offered by [Provider

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5], including a possible interest rate reduction; however, they declined to avail of the opportunity.

### **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 21 August 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.

Following consideration of an additional submission from the Complainant dated 10 September 2018, my final determination is set out below.

The Complainants are aggrieved at the manner in which their mortgage loan has been administered. They claim that their loan has been operating at an incorrect rate of interest since 2008; they also express concern over certain irregularities in their account balance, dating back to the period their loan was operating on an interest-only basis. The Complainants also contend that the Provider assured them, following repeated requests, that their mortgage loan interest rate would be amended to a lower residential rate; however, this never happened.

Before dealing with the substance of the complaint, I would like to make some comments about the jurisdiction of this Office to investigate the matters complained of. In their submissions the Complainants refer to three providers, including the Respondent Provider, against which this complaint is made, all of which had dealings with/administered the mortgage product at issue at various stages. The mortgage loan forming the subject matter

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of this dispute was taken out in 2004, with the loan monies advanced by [Provider 2]. Subsequently, [Provider 4] took over ownership of the loan and was responsible for administering the loan for a brief period. It was not until the 25 August 2014, however, that the Respondent Provider became associated with the loan, via an arrangement with the then owners of the loan, [Provider 5]. As this complaint is against the Respondent Provider only, it is the conduct of this Provider which will be investigated and dealt with in this Decision. By email dated the 24 May 2018 the Complainants were advised of the parameters of the impending investigation by this Office in the following terms-

*“You say that when you notified [the Provider] of the high rate of interest they ‘assured us that it would be reduced to a residential rate but failed to do this despite numerous requests from ourselves’.*

*You say [the Provider] failed to change the loan from a commercial to a residential loan and failed to notify you of the high rate of interest.*

*In this regard your complaint will be looked at in relation to the conduct of [the Provider].*

The Complainants maintain that they only became aware that their loan was operating at an inflated commercial rate of interest in or around 2013/2014 when the ownership of their loan was transferred to [Provider 5].

They have expressed disappointment at the manner in which the Provider dealt with their repeated requests to change the interest rate applying to their loan. Section 51 of the Financial Services and Pensions Ombudsman Act 2017 sets out the time limits for complaints to Ombudsman. Section 51(2) provides that where conduct relates to a “*long-term financial service*” (the mortgage product the subject of this complaint falls within this definition), a complaint shall be made to the Ombudsman within whichever of the following periods is the last to expire-

*“(i) 6 years from the date of the conduct giving rise to the complaint;*

*(ii) 3 years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct giving rise to the complaint;*

*(iii) such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period.”*

Section 51(5)(a) of the Financial Services and Pensions Ombudsman Act 2017 also provides that if conduct is continuing in nature, such conduct is “*taken to have occurred at the time when it stopped and conduct that consists of a series of acts or omissions is taken to have occurred when the last of those acts or omissions occurred*”.

The Complainants' Complaint Form is dated the 3 March 2017. Given the Complainants' submission that they only discovered that the interest rate applying to their mortgage was set at an unreasonably high level in or around 2013/2014, and in circumstances where the interest charged to their mortgage continued to be charged at the same rate following the Provider's involvement with the loan, I am satisfied that this Office has the jurisdiction to investigate the complaint regarding the interest rate applicable to the mortgage loan in question pursuant to both Section 51(2) and Section 51(5)(a) of the Financial Services and Pensions Ombudsman Act 2017.

The grievances the Complainants have outlined concerning the irregularities in their mortgage loan account balance and the associated conduct of other financial service providers do not form part of this investigation and decision. This is because the Provider was not involved in the administration of the Complainants' loan when these irregularities are alleged to have occurred.

While not forming part of this investigation, I note in its Final Response Letter to the Complainants dated the 28 October 2014 the Provider responded to the Complainants' complaint about the €10,000 addition to their loan account in the following terms-

*"On 01 January 2005 an advance of €10,000.00 was added to your account by [Provider 2] in error. On 08 September 2005 this error was corrected and the amount of €10,000.00 was credited to your account. The additional interest applied to your account during this period totalled €31.38. This was credited to your account on 08 September 2005."*

The Complainants dispute that interest of only €31 accrued as a result of this error and suggest in their post Preliminary Decision submission that the interest accrued would be at least €400.

The Complainants also take issue with interest accruing to their loan when it was converted from interest only.

As set out above, as these matters relate to a different financial service provider, I have not investigated these matters and I make no decision in relation to them. This investigation was confined to an examination of the conduct of the Provider insofar as it relates to the interest rate applying to the Complainants' loan and not the matters raised in relation to the other financial service providers.

The Complainants contend that an incorrect interest rate has applied to their mortgage loan from the date the loan converted to a 2-year, annuity loan. They maintain that when they raised the issue with the Provider, they were told that their interest rate would be amended from the commercial rate then applying to a lower residential rate of interest. However, they state that the Provider failed to deliver on the assurance provided.

In order to ascertain if the Provider did err by applying an incorrect interest rate to the Complainants' loan during the period it was tasked with the administration of the loan, it is necessary to scrutinise the loan agreement documentation.

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The mortgage loan account in question was inceptioned in 2004, on foot of a signed Letter of Loan Offer dated the 6 January 2004. The Mortgage Offer, which was issued by [Provider 2], came about following the Complainants' submission of an application for a commercial loan in the amount of €90,000. Copies of both the original application form and the Letter of Loan Offer have been supplied in evidence.

The application form is entitled 'Commercial Loan Application'. It is dated the 8 January 2003 and is signed by both Complainants. Section 3 of the application form outlined that the purpose of the loan is "To Build House & Sell it". Under Section 7 of the application form the Complainants made the following declaration-

*"That the information supplied in this application form is correct and complete to the best of my/our knowledge and belief whether completed by me or otherwise and shall form the basis of any advances which may be made by the Society."*

The Letter of Loan Offer dated the 6 January 2004 stipulates that an amount of €90,000 will be advanced over a term of "2 Years Approx." The interest rate is stated as "4.98% p.a. Variable". The purpose of the loan is described as "To Construct Residential Investment Property". Special Condition 93.5 provides as follows-

*"This advance has been requested and sanctioned on an interest only basis. A capital moratorium has been requested and granted. This means that the balance of the capital sum borrowed €90,000 does not reduce during the term of the loan and becomes repayable in full at maturity. Payments made go only to discharge accrued interest. Once the term of the facility has expired the Society shall require the immediate repayment of all sums due and owing."*

*Notwithstanding the foregoing, the Society reserves the right to demand immediate payment of the loan at any time during the term of the loan. This property is a residential investment property and is not intended to be used as a principal private residence."*

The Provider has stated that the loan matured on the 26 April 2006. A letter that [Provider 2] issued to the Complainants on the 9 November 2006 has been supplied in evidence.

This letter refers to the loan having expired in April 2006 as follows-

*"Our records show that the term on the aforementioned account expired on the 26<sup>th</sup> April 2006. In addition, there remains an outstanding balance due in the sum of €90,847.14..."*

Following on from the expiry of the initial, interest-only term, the Complainants requested that their loan term be extended to 20 years and that the repayment basis switch to annuity instalments. While the Complainants refer to their loan having changed from a commercial loan to a residential loan in 2008, I have not been provided with evidence to support the claim that the entire nature of the loan changed. On the contrary, the documentary

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evidence provided indicates that the loan term was simply extended, as requested, and that [Provider 2] acceded to the Complainants' request to service the mortgage on an annuity basis.

The Provider has stated that the Complainants wrote to [Provider 2] on the 29 June 2006, the 2 May 2007 and the 7 February 2008 and requested that their loan be changed to a 20-year loan. A copy of the Complainants' letter of the 29 June 2006 has been supplied in evidence. In this letter the Complainants made the following request-

*"We wish to change our interest-only loan of €90,000 to a 20 year mortgage..."*

On the 2 May 2007 the Complainants renewed their request in the following terms<sup>1</sup>-

*"We the undersigned wish to have the above Mortgage changed to a 20 year Annuity Mortgage."*

In response to the Complainants' requests to amend their mortgage, [Provider 2] corresponded with the Complainants on a number of occasions. By letter dated the 23 October 2006, a copy of which has been provided, the Complainants were advised of the following-

*"I refer to the above mentioned mortgage account and your recent letter requesting a term extension.*

*If you changed your mortgage to Annuity and amended the term of 20 years your mortgage repayments would be approx. €690.00 per month."*

When the Complainants' request was finally actioned in 2008, a letter was issued to advise them as to the changes effected on their loan. A copy of a letter dated the 26 August 2008 has been supplied in evidence, in which [Provider 2] explained to the Complainants the following-

*"Please be advised that the above account type has been changed from an Interest Only repayment type mortgage to an Annuity type mortgage, as of the above date. A standard conversion fee of €190.46 has been applied to your mortgage account for the account type change.*

*The term on the mortgage account has also been extended to 20 years remaining as of the above date. The term is due to expire on the 25<sup>th</sup> August 2028.*

*The monthly repayment has been recalculated to €751.15 effective the 10<sup>th</sup> September 2008."*

Having considered the documents furnished in evidence which relate to what transpired in the lead up to and in 2008, I can find no basis for the Complainants' assertion that their

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<sup>1</sup> A copy of this letter has also been furnished in evidence.



mortgage interest rate ought to have switched to a lower residential rate. There is nothing before me to suggest that an agreement to amend the interest rate applicable to the facility was reached between the parties and certainly, none of the documents referred to above support such a contention. There is no reference to a new/different interest rate being applied to the loan. In all the circumstances I must accept the submission by the Provider in its letter to this Office dated the 3 November 2017 that *“Notwithstanding [Provider 2’s] decision to replace the repayment terms of the mortgage contract in 2008, the applicable interest rate still applied...”*

In light of all of the foregoing, I do not intend to uphold the complaint that the Provider applied an incorrect interest rate to the Complainants’ mortgage during the period it acted as administrator of the loan. The interest rate as agreed by the parties at loan inception remained in force during the currency of the Provider’s involvement in the Complainants’ mortgage. As there was no obligation or onus on the Provider to amend the contractual terms applying to the loan, I cannot direct the Provider to amend the interest rate.

There is another dimension to this complaint. The Complainants insist that the Provider gave them an assurance that the interest rate would be amended to a lower residential rate. They submit that as the rate was never changed the Provider reneged on its promise.

There is simply no evidence before me to substantiate this element of the complaint. There is nothing in writing which supports the Complainants’ claim and there is no audio evidence to bolster the Complainants’ contention either.

A total of 56 copy recordings of telephone conversations between the parties (i.e. the First Complainant and various representatives of the Provider) have been supplied in evidence. The content of all of these calls have been considered by me in arriving at my decision. I can find no assurance in any of these calls that the interest rate on the Complainants’ mortgage would be changed to a lower rate.

In a number of the telephone conversations the issue of the interest rate being charged to the mortgage was discussed, and at times representatives of the Provider undertook to look into the issue and to attempt to find out what the position was. However, at no point was the First Complainant given a definitive assurance that his mortgage interest rate would be amended.

For example, in a conversation on the 5 September 2014 a representative of the Provider indicate that it was hoped *“some resolution”* might be reached, but a promise to change the rate was not made. During the course of another conversation on the 13 July 2015 the First Complainant was advised that one of the re-structure options under the Code of Conduct on Mortgage Arrears was an interest rate reduction; the Provider’s representative suggested that the Provider *“may”* consider amending the rate, but again, no definitive assurance was provided.

The Provider has stated that while the Complainants were offered the opportunity to be assessed for the available Alternative Repayment Arrangement options offered by [Provider 5] they declined to undergo such an assessment.

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Having considered the evidence before me, I cannot accept the allegation that the Provider assured the Complainants that their mortgage interest rate would be lowered.

In light of all of the foregoing, I do not 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 rejected.

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

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

16 October 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.**