



<u>Decision Ref:</u>	2019-0019
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide correct information Delayed or inadequate communication
<u>Outcome:</u>	Upheld

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

Background

This complaint concerns the Provider's administration of a mortgage, and in particular the Provider's clarity of communication in respect of a term extension that was agreed between the parties.

The Complainants' Case

The Complainants held a mortgage loan with the Provider. They state that in May 2015 they agreed an 8 year extension to the term of their loan (i.e. to 2023); and that in March 2016 they agreed a 12 year extension to the term of their loan (i.e. to 2028).

The Complainants state that when a third party service provider took over the administration of the mortgage, they were informed that their loan term was due to expire, in spite of their understanding that they had extended the term to 2028.

The complaint is that the Provider has failed to provide information to the Complainants in a clear and accurate manner, and that the Provider has reneged on its agreement to provide an extension of the term of their mortgage loan to 2028. The Complainants would like the Provider to confirm their mortgage term expires in 2028, and compensation.

The Provider's Case

The Provider states that it did not receive acceptance of the term extension (of 8 years) offered in July 2015, nor did the Complainants comply with the payment terms of that offer, and the extension offered in March 2016 was for an extension of 1 year only, not 12 years as the Complainants contend.

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 11 December 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, I set out below my final determination.

Background

The Complainants took out a mortgage loan with the Provider in 2000. I have been provided with a copy of the mortgage application form, and the general terms and conditions, but not a copy letter of offer. However, the relevant terms of same are not in dispute – namely that it was an advance of £80,000 to be repaid by way of interest only payments for 6 years, with the balance being paid at the end of that term. In other words, it was for a term of 6 years – expiring in 2006.

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In 2006, the Complainants were not in a position to repay the outstanding balance so the Provider agreed to extend the term of the mortgage by a further 5 years – expiring in 2011.

In 2011, the full balance again fell due. The Complainants were not in a position to repay the outstanding balance. Some communications passed between the parties – the Complainants stated they were awaiting maturation of a life policy and sought a 7 month extension of the mortgage term.

Ultimately, in September 2013 that life policy was used to pay €23,592.28 into the mortgage account, thus reducing its balance. It appears that no term extension was agreed from the term expiry in 2011 up until 2015.

In June 2015 service agents for the Provider contacted the Complainants to advise that the mortgage term had expired in October 2011 and the balance remained due and owing. The Complainants advised that they were not in a position to discharge the outstanding amount and requested a term extension.

Based on the information provided by the Complainants, and their indication of a willingness to increase repayments to reduce the capital balance over and above the interest only repayments, the Provider offered the Complainants an 8 year term extension. This was confirmed by offer letter dated the 14th July 2015 (“the 2015 Letter”), which contained an acceptance form to be signed by the Complainants in order to implement the term extension and increased repayments.

The Provider states that it holds no record of having received a signed acceptance form for the 2015 Letter.

In January 2016 the Provider contacted the Complainants by telephone to discuss the account. It informed to the Complainants that the term extension offered in the 2015 Letter had not been implemented as an acceptance form had not been received. The Complainants stated that an acceptance form was filled out by them and returned.

Whether or not an acceptance form was filled out and sent back is not an aspect of the complaint upon which I need to adjudicate – the Complainants did not make the increased payments that were envisaged under the terms of the 2015 Letter. Neither party’s conduct suggests that the arrangement envisaged in the 2015 Letter was ever implemented.

To progress matters, the Complainants made a new application for a term extension, providing their financial information, which was received by the Provider in February 2016. The Provider agreed to a term extension, and a letter issued dated the 24th of February 2016 confirming an extension of the mortgage term and an increase in monthly repayments (“the 2016 Letter”). The signed acceptance form accompanying this letter was received by the Provider on the 10th of March 2016.

Difficulty arose almost immediately, when the Complainants received an automatically issued letter in March 2016 confirming the extension of the term by 12 months to 18th of

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March 2017. The Complainants contacted the Provider on receipt of this letter, and the parties remain at odds.

The interpretation of the 2016 Letter forms the basis of this dispute. The Complainants state that the 2016 Letter confirms an agreement whereby the mortgage term was extended by 12 years to 2028. The Provider states that the 2016 Letter confirms an agreement whereby the mortgage term was extended by 12 months (to March 2017).

In the meantime, in April 2017 the Provider offered a term extension of 1 year to the Complainants. The Complainants are not agreeable to that offer, primarily on the basis that their understanding is that their mortgage term currently does not expire until 2028.

The 2016 Letter

The 2016 Letter contains the following relevant text:

"[The Provider] is pleased to offer you the option of extending the term of your Mortgage Account and transferring to part capital and interest repayments"

*"Period of Agreement : 1 Year
Number of repayment instalments : 12
Amount of each instalment :€138.59"*

"A term extension allows you to extend the life of your Loan Agreement"

*"1. The original mortgage term will be extended to a revised term that is **12** years after the signed acceptance form has been received and processed by the [Provider]. This date will be notified to us in due course by way of a separate confirmation letter.*

*2. The number of monthly instalments will be increased to **12** additional monthly instalments."*

*"Period of agreement: 1 Year" is clear and unambiguous. The statement "... extended to a revised term that is **12** years after the signed acceptance form has been received" is also clear and unambiguous, but contradicts the earlier section.*

The 2015 Letter

The 2015 Letter, which the Provider accepts was an offer of an 8 year extension (i.e. to 2023), details a Period of Agreement of 8 years and 96 repayment instalments. The corresponding sentence regarding extension of the revised term states:

“1. The original mortgage term will be extended to a revised term that is 13 years after the signed acceptance form has been received and processed by the [Provider]. This date will be notified to us in due course by way of a separate confirmation letter.

2. The number of monthly instalments will be increased to 96 additional monthly instalments.”

Analysis

No confusion could have arisen on the basis of the “*Period of Agreement*” or “*Number of repayment instalments*” sections.

The confusion arises due to the wording of the section contained in both letters stating “*The original mortgage term will be extended to a revised term that is [X] years after the signed acceptance form is received and processed by the Provider...*”. This wording is repeated in the acceptance forms.

The Provider states that the “*12 years*” in the 2016 Letter (which it contends offered only a 1 year extension) refers to:

- the original mortgage term of **6** years (to 2006); **plus**
- agreed **5** year extension (to 2011); **plus**
- proposed **1** year extension (from 2016 to 2017).

This sort of mental gymnastics ought not to be necessary when interpreting a letter of offer from a provider.

Furthermore, it begs the obvious question: what does the “*13 years*” in the 2015 letter (which it is agreed offers an 8 year extension) refer to? If one applies the logic that the Provider has used to explain the 2016 Letter terms, the 2015 Letter should have read “*19 years*”, made up of:

- the original mortgage term of **6** years (to 2006); **plus**
- agreed **5** year extension (to 2011); **plus**
- proposed **8** year extension (from 2015 to 2023).

The Provider has failed to provide a satisfactory explanation for the above terms, either for what it means or, if they are simply errors due to some form of automated glitch, why such an error occurred. The Provider has simply stated that it has “*updated the terminology of its offer letters*”.

Recordings of telephone conversations between the Complainants and the Provider have been provided in evidence. Immediately (on the 30th of March 2016) upon receipt of the Provider’s letter in March 2016 which stated the mortgage was extended by 12 months, the Complainants contacted the Provider to tell them their understanding was an that an

extension of 12 years had been agreed. This was not based on any sort of speculative or unreasonable interpretation of what they had signed, but was based on the clear and unambiguous term to which they had signed their acceptance: *“The original mortgage term will be extended to a revised term that is 12 years after the signed acceptance form has been received and processed by the [Provider]”*.

The Provider is not entitled to rely on an interpretation that is not consistent with the ordinary meaning of a term offered by it. The Provider is also not entitled to apply an illogical and non-sensical interpretation to a term offered by it, after the event or in hindsight. There is no suggestion whatsoever that the Complainants understood they were being offered a 1 year extension and then somehow seized upon a typographical error in an opportunistic fashion. As far as they were concerned they were offered a 12 year extension and they accepted it. This is entirely consequent upon the terms of the letter that they were offered.

Conclusion

This dispute revolves around the interpretation of the following term:

“The original mortgage term will be extended to a revised term that is 12 years after the signed acceptance form has been received and processed by the [Provider].”

The natural and ordinary meaning of those words is that, on receipt of the signed acceptance form, the mortgage term will be extended by 12 years.

The Complainants have continued to make the repayments agreed pursuant to the 2016 Letter. For as long as the Complainants continue to abide by their repayments obligations under the 2016 Letter, the Provider must abide by its obligations under that same letter – i.e. a mortgage term expiry date being 12 years after the acceptance form was received and processed by it.

On the basis of the expiry date contended for by the Provider (18th of March 2017), that must be taken to mean a term expiry date of the 18th of March 2028.

Conclusion

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

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify its records in relation to the Complainants’ account and take any other necessary steps such that the currently applicable expiry date for the mortgage term is 18 March 2028.

I also direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €1,000, 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

17 January 2019

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.