



<u>Decision Ref:</u>	2019-0163
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Disputed transactions Dissatisfaction with customer service Fees & charges applied Failure to process instructions Maladministration
<u>Outcome:</u>	Partially upheld

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

Background

This complaint concerns a buy to let mortgage which the First and Second Complainants entered into with the Third Complainant as guarantor. The re-payments of the mortgage were to be interest only for a period of the loan.

The Complainants' Case

In **July 2006**, the First and Second Complainants entered into a buy to let mortgage with the Provider in respect of an investment property. The Third Complainant was guarantor.

The loan facility was in the sum of €428,000.00 with a tracker variable interest rate and a 20 year term. The loan facility expressly stated that it was *'interest only for 60 months with repayments of capital and interest thereafter for the remainder of the term.'*

After the loan facility had been signed, the Complainants asserted that they were entitled to pay interest only for the entirety of the term of the loan. By letter dated **11 September 2006**, the Provider wrote to the First and Second Complainants indicating that their request

for an interest only moratorium had been approved and that it would be effective from **1 October 2009** until **30 September 2014**.

The Complainants assert that, notwithstanding this, the Provider improperly debited capital and interest payments from them in respect of the loan and that it continues to do so.

After the drawdown of funds, the Complainants state that the Provider debited capital and interest payments from the Complainants account in the sum of €18,315.19. In April 2007, the Provider acknowledged this error and refunded the capital payments and reverted the Complainants' payments to interest only, as per the agreement. By letter dated **11 April 2007**, the Provider informed the Complainants of this and stated that the interest only period would end on **30 August 2011**.

In **August 2011**, the Second Complainant called the Provider and indicated that she had a letter which stated that interest only payments were to continue until **September 2014**. This correspondence has been furnished to this office. The Provider therefore agreed to allow interest only payments until **September 2014**.

In **January 2014** the Complainants assert that the Provider began to deduct capital and interest payments again and did so until **September 2014**. The Provider acknowledged this error and returned the capital payments which had been deducted between those dates.

The complainants assert that in 2006 the Provider agreed to allow interest only repayments for the entirety of the term subsequent to drawdown and in **September 2014**, the Complainants contacted the Provider in respect of this and they complain that the Provider had misplaced a letter which indicated that the loan was to be interest only for the entirety of its term. The Complainants assert that this letter was seen by them in the Provider's branch during the summer of 2014.

Between **September 2014 and November 2014**, in order to allow it to investigate this further, the Provider required interest only payments to be made on the loan by the Complainants. Ultimately, in **December 2014**, the Provider determined that it was not obliged to offer interest only payments for the duration of the loan and began to debit interest and capital payments from 27 December 2014 onwards.

From **27 December 2014 until 27 May 2016** the Complainants made full capital and interest payments, which were debited by the bank. From **27 May 2016** onwards, the Complainants stopped making any payments at all, as the direct debit was intentionally cancelled.

The Complainants also make various complaints in respect of alleged maladministration such as: their complaints in 2014 not being followed up by the Provider; the Provider's representative not calling the Complainants back when promised on 3 separate occasions; and that incorrect information was provided by the Provider's representatives and their complaint was not logged when they called. They also complain that there were 8 separate occasions on which they believed that the interest only option was to end.

Furthermore, the Complainants, when furnished with correspondence and documents which the Provider furnished to this office, indicated that they had not received this documentation previously, despite requests made by them to the Provider.

The Complainants are seeking a direction that the Provider operate the mortgage as interest only for the term of the loan and repay those deductions made in respect of capital payments, which had not been already refunded by the Provider.

The Provider's Case

The Provider makes the following points in response to the complaint.

Firstly, that the terms and conditions of the loan were that it was interest only for 60 months with capital and interest repayments afterwards.

Secondly, that the Provider did not provide interest only loans for the entirety of a loan such as this at that time. It was not a product offered by the Provider.

Thirdly, that it could find no evidence of any agreement subsequent to the drawdown of the funds that substantiated the Complainants' position that the loan was to be interest only for its full term.

Fourthly, in respect of the various maladministration complaints, the Provider accepts that it provided incorrect information and has incorrectly debited sums of money when it should not have. The Provider also accepts that it should have returned the Complainant's calls when it said it would.

The Provider acknowledges the customer service issues which the Complainants raised in this regard and accept that they did not provide a satisfactory level of customer service to the complainants in respect of the handling of this matter.

In acknowledgement of the Provider's failures in relation to the Complainants receiving the proper standard of customer service, the Provider has made a good will gesture of €2,500 to the Complainants. This has not been accepted by the Complainants.

The Complaints for Adjudication

The complaints for adjudication are that:

1. The Provider wrongfully refused to treat the mortgage as interest only for the entirety of the term of the loan.
2. The Provider wrongfully debited capital and interest payments from January 2014-September 2014 and from December 2014-May 2016.

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3. The Provider engaged in maladministration by not following up on the Complainants' complaint, not returning the Complainants calls and providing the Complainants with incorrect information.

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 10 April 2019, 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 issuing of my Preliminary Decision, the Complainant made a further submission by letter dated 7 May 2019, a copy of which was transmitted to the Provider for its consideration. The Provider advised this Office by letter dated 21 May 2019 that it had no further comment to make

Following consideration of the Complainants' submission, together with all of the evidence submitted by the parties, I set out below my final determination.

- 1. The Provider wrongfully refused to treat the mortgage as interest only for the entirety of the term of the loan.***

It is apparent from the signed loan offer that the payments were to be '*interest only for 60 months with repayments of capital and interest thereafter for the remainder of the term.*' The payments were, therefore, interest only for 5 years, with the remaining 15 years of the term being capital and interest payments. In the absence of any subsequent agreement or moratorium, I find that the Provider is entitled to assert its contractual rights.

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I note that the Complainants assert that the bank, subsequent to them drawing down the funds, agreed to make the payments interest only for the term of loan. There is no evidence of this either in documents or in phonecall transcripts. Various telephone call recordings were furnished by the Provider, which I have considered and from the recordings provided, there is no evidence of this either. However, I do note that all relevant recordings have not been furnished by the Provider.

I note that there is a letter submitted signed by two of the Complainants dated **26 September 2011**, which seeks a request for an '*extension on our repayments of our interest only mortgage account.*' I find that this is inconsistent with the assertion that the Complainants make that they understood that they were always entitled to an interest only loan for the term of the loan.

I note that the Complainant asserts that there is a letter which cannot be located stating that the loan is to be interest only for the term of the loan, which the Complainants submit was last seen in the Provider's branch in the summer of 2014.

However, as neither the Complainants nor the Provider have been in a position to furnish me with a copy of this letter, and the Provider asserts that no such letter exists, I find that there is not sufficient evidence to find that any such commitment was made in correspondence by the Provider. I note that a letter from the Provider, dated **30 September 2011** and referred to above, was submitted which stated that the interest only moratorium was to extend to **30 September 2014**. The Provider accepts that it is bound by this letter.

I have been provided with no evidence that any subsequent agreement was made between the Complainants and the Provider that the loan was to be an interest only loan for the entirety of its term. Therefore, I find that the Provider was entitled to ask for capital and interest only payments once the moratorium period ended, and that the loan was not an interest only loan for the entirety of the term.

2. The Provider wrongfully debited capital and interest payments from January 2014- September 2014 and from December 2014-May 2016.

I note that there was confusion brought about by the Provider's inconsistency concerning when the interest only period was due to end in its correspondence with the Complainant. As stated above, the terms of the loan facility itself suggested that it would end in **August 2011**. Confusingly, however, a letter was sent in **September 2006** stating that the request for an interest only moratorium had been granted and would operate from **1 October 2009 until 30 September 2014**. It is difficult to make sense of this, as the dates do not make sense, particularly the start date of **1 October 2009**. However, the Provider appears to have mistakenly commenced deducting capital and interest from the outset of the loan instead of interest only. Similarly, after agreeing to extend the interest only period in **August 2011** to **September 2014**, the Provider began to again deduct capital and interest from **January 2014** instead of waiting until **September 2014**. This was not justifiable and undoubtedly caused great stress, frustration and inconvenience to the Complainants.

I find that the Provider should not have done so and this amounted to unreasonable and unjust conduct. I do note that the monies deducted incorrectly between January and September 2014 have been refunded to the Complainants. However, I find the Provider should not have debited these sums. This undoubtedly had a significant impact on the Complainants' finances at the time.

From December 2014, as per my findings at 1 above, the Provider was entitled to deduct full capital and interest repayments and did not act wrongfully in doing so during this time period.

3. The Provider engaged in maladministration by not following up on the Complainants' complaint, not returning the Complainants calls and providing the Complainants with incorrect information.

In respect of the maladministration complaint, I find that the Provider fell below the expected standard required of it. I particularly note that the Provider has failed to make all relevant audio recordings of the telephone conversations between it and the Complainants available, and it has submitted various transcripts instead.

There is also various correspondence which, despite repeated requests from the Complainants, was not furnished to the Complainants from the Provider until it was received by this office and subsequently provided to the Complainants.

Chapter 11 of the Consumer Protection Code 2012 refers to the record keeping obligations of financial service providers and 11.5 states that;

"A regulated entity must maintain up-to-date records containing at least the following:....

(e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;"

The failure to provide this documentation to the complainants at their request is disappointing and I find that this amounts to poor administration.

I find that the Provider should have been more proactive in contacting the Complainants and that the Complainants were entitled to have information provided clearly and promptly to them from the Provider. The Provider has operated the Complainants' mortgage account improperly, has put forward contradictory dates upon which interest only payments were to cease and has generally provided poor customer support and service. This has undoubtedly confused the Complainants and should not have happened.

I note the goodwill gesture made by the Provider in the sum of €2,500, however, I do not find that this is adequate in light of the failings of the Provider as identified above, namely the deduction of capital repayments for the period January 2014 - September 2014 and the maladministration of the account.

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For the reasons set out above, I partially uphold the complaint and direct the Provider to pay a sum of €4,000 in compensation for the inconvenience caused to the Complainants.

For the avoidance of doubt, this includes the €2,500 offered by the Provider.

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) (c)**.

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 €4,000 (to include the Provider's offer of €2,500), 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) and (f)** 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**

23 May 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.