



<u>Decision Ref:</u>	2019-0173
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide correct information
<u>Outcome:</u>	Substantially upheld

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

Background

This complaint concerns the administration of the Complainants' mortgage loan account.

The Complainants' Case

The Complainants held a mortgage account which fell into arrears and was ultimately sold to a third party purchaser which engaged the Provider to service the loan account on its behalf.

The Complainants state that at a meeting they were informed the loan maturity date was **10 January 2018**. They made repayments with a view to entering into an alternative repayment arrangement. In the Spring of 2017, however, when they were offered an alternative repayment arrangement, they were advised that the maturity date was in fact **10 May 2018**, and not 10 January 2018. The Complainants state that, in their view (and based on continuing to make repayments for an extra 4 months at €250 per week) this meant they would be repaying an extra €4,000.

They state that they did not sign this alternative repayment arrangement proposal in March/April 2017 because of their concerns about inaccurate information, but they made the envisaged repayments nonetheless. They state that in the circumstances they should not have been charged arrears interest from March/April 2017.

They state that they were unable to obtain clarity about the actual maturity date and outstanding balance on the loan, until **October 2017**. They also query an unexplained “debit” of €10 on their statement.

Finally, the Complainants state that the Provider has delayed in furnishing them with the title deeds to the property, despite having paid off the loan.

The Provider's Case

In its final response letter dated 18 July 2017, the Provider identified interest of €164.74 which it described as having been “inadvertently” charged, and stated that it had refunded this amount. Some confusion followed about whether that amount was debited or credited to the account (the Provider described it as a “debit” in a statement furnished to the Complainants with its final response letter). It has since been confirmed that this amount was credited to the account.

The Provider also confirmed that due to “an administrative oversight”, the incorrect maturity date of 10 January 2018, had been entered on its systems, but it points to the letter of loan offer which confirms the maturity date as the 10 May 2018.

Having confirmed the foregoing, unfortunately the Provider then repeated the erroneous maturity date in a table in the Final Response Letter which stated the maturity date to be “10/01/2018”.

The Provider, in response to this investigation, has acknowledged that although the term of the mortgage was due to expire on 25 May 2018 in accordance with the loan agreement accepted by the Complainants, the mortgage maturity date was incorrectly set on the Provider’s systems as 10 January 2018. The Provider confirms that the First Complainant was incorrectly advised by its associates in the course of discussions that the mortgage maturity date was 10 January 2018, and it reiterated its apology to the Complainants in that regard.

By way of reply to the Complainants’ contention that the Provider unfairly and wrongly applied additional interest to their account from March/April 2017 onwards, the Provider has pointed out that following the Complainants’ successful completion of an Interim Repayment Plan (IRP) in March 2017, they were offered an Alternative Repayment Arrangement (ARA) which incorporated a recapitalisation of the arrears’ balance. If the Complainants had accepted the terms of this ARA, the arrears would have been capitalised, and therefore would not have accrued interest. However, the Complainants did not accept the terms of the ARA and therefore the arrears remained outstanding and interest continued to accrue on those arrears.

In response to the Complainants’ contention that the Provider had failed to furnish them with the title deeds in a timely manner, the Provider has referred to a telephone conversation between the First Complainant and its associate on 22 December 2017, when

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he was informed that a request for title deeds would need to be submitted in writing and that the release of the deeds would carry a fee of €38. The Provider points out that the First Complainant was informed of the €38 fee, on more than one occasion and that redemption quotes issued to the Complainants in February 2016, May 2017 and July 2017 also confirmed the €38 fee. Although a written request was received by the Provider on 11 January 2018, the fee was not forthcoming. Ultimately, the fee was waived on 8 February 2018 and the title deeds were issued to the Complainants by registered post on 4 April 2018, within the 8 week period.

The Provider also stated that it had complied with its obligations pursuant to the Complainants' data access request. Complaints regarding data access requests are not a matter for the Financial Services and Pensions Ombudsman however, and rather are a matter for the Data Protection Commission.

The Complaint for Adjudication

The complaint is the Provider was guilty of maladministration in its administration of the Complainants' mortgage account.

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 16 May 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.

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

The Complainants took out a loan in May 1998 for IR£35,000, to be repaid over 20 years. The Complainants fell into difficulty with the repayments. The loan was transferred to a third party purchaser and administered by the Provider. On 30 September 2014, the Complainants were advised that arrears on the loan amounted to €9,153.47, and the outstanding balance was €12,083.77.

A meeting was arranged between an agent of the Provider and the Complainants. The Complainants engaged with the Provider, and it appears the result of that meeting was that if the Complainants could demonstrate capacity to make repayments for a period of about 6 months, by way of Interim Repayment Plan (IRP) they would be considered for a formal Alternative Repayment Arrangement (ARA).

The Complainants state that at this meeting they were informed that the maturity date of the loan was January 2018, therefore it was their understanding that repayments would only have to be made up until then.

On the 28 September 2016, with arrears at this stage at €13,393, the Provider wrote to the Complainants to advise them that they were being considered for an Alternative Repayment Arrangement, but that they must adhere to an "Interim Repayment Plan" of €940 per month for 6 months. In the event, the Complainants made payments of €250 per week and in March 2017 they were offered an Alternative Repayment Arrangement of €912.40 per month for 14 months (i.e. up to May 2018).

The Complainants were surprised to see that the repayments would be made up to May 2018, when their understanding was that the loan maturity date was January 2018. On that basis, they made the agreed repayments but because of their concerns, they did not sign the Alternative Repayment Arrangement documentation to formally enter into this ARA, by way of amendment of their contractual provisions.

In May 2017 the Complainants sought a redemption figure for the mortgage. One week later, the Provider gave them a redemption figure of €10,562.91, plus daily interest of €1.18. The Complainants were also advised that a fee of €38.00 was applicable to have the mortgage vacated.

The Complainants had a number of queries in the following months that were responded to in detail by the Provider on 26 October 2017. This response explained how different repayment arrangements would result in the loan being paid off at different times. It also accepted that the Complainants had received incorrect advice regarding the end date of the mortgage during a telephone conversation on 24 August 2017, and that the balance displayed on the online statement was "overstated" as it had not taken account of repayments made that year to date. The Provider has also accepted that the statement issued to the Complainants did not accurately reflect the fact that the €164.74 refund had been applied to the account. This letter stated that the outstanding balance on the mortgage was €4,802.46 (including arrears).

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The Complainants' mortgage was redeemed on 22 December 2017. The €38 fee for the release of title deeds was waived by the Provider on 8 February 2018 and title deeds were sent to the Complainants on 4 April 2018.

Analysis and Conclusion

In its replies to the Complainants' complaint, and in its responses to this office, the Provider has accepted that on a number of occasions, it furnished incorrect information to the Complainants, either by telephone or in writing.

A mortgage loan "administrator" such as the Provider can often be limited in the manner in which it can deal with a mortgage, acting as it does as agent for a third party loan "owner". However, one of its primary duties to a customer is very simple: it must provide correct information regarding the loan it is administering.

In this complaint, the Provider has accepted numerous failings in this regard in:-

- i. Incorrectly advising that the loan maturity date was January 2018;
- ii. Incorrectly advising (on the basis of certain repayments) that the final repayment would be in August 2018;
- iii. Permitting an incorrect account balance to be displayed on the Complainants' online account portal;
- iv. Incorrectly charging interest of €164.74;
- v. Failing to list this €164.74 as a "credit" on the statement that issued, after the error was identified;

I accept that these errors did not result in the Complainants being required to pay more than was due and owing on the mortgage. While the Provider has admitted the foregoing failings, it did not offer any redress in its final response letter or in its submissions to this office, by way of formal response to the investigation of this complaint.

The Complainants have taken issue with the fact that they were charged arrears interest after March 2017 when, in their view, they were making agreed alternative repayments (albeit without having formally entered into the alternative repayment arrangement.) They state that the reason they did not formally accept the ARA was because of the confusion surrounding the maturity date. While the Provider was entitled to charge arrears interest on the basis of an ARA not having been formally entered into, I recognise the legitimate concerns which the Complainants held, as a result of the incorrect maturity date being referenced by the Provider and their concern that they would be prejudiced if they signed the ARA, by being seen to acquiesce to a particular suggested maturity date. In those particular circumstances, I believe that the Provider has a case to answer to the Complainants for the confusion which arose, and which ultimately led to the Complainants being exposed to greater interest charges, which might otherwise have been avoided.

In those circumstances, I am satisfied that Complainants are entitled to compensation for the inconvenience and loss caused by being furnished by the Provider with incorrect

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information, on multiple occasions. I do not accept however, that the Provider has any case to answer to the Complainants regarding the manner in which the title deeds for the property were procured. The evidence before me discloses that clear information regarding the process for requesting the return of title deeds was made available to the Complainants on a number of occasions, together with details of the vacate fee payable.

I take the view that the issue of suggested maladministration on the part of the Provider, regarding the release of title deeds to the Complainants, is of lesser significance than the issues of maladministration raised by the Complainants, arising from the various instances of the Provider giving them incorrect information, as detailed above.

Accordingly, for the reasons outlined above my Decision is that this complaint is substantially upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is substantially upheld **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 of €1,500 (one thousand five hundred Euro) to an account of the Complainants' choosing, within 35 days of the Complainants furnishing the Provider with the details of their chosen bank account.
- 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**

11 June 2019

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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.

