



<u>Decision Ref:</u>	2019-0201
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Premature ceasing of arrears negotiations Level of contact or communications re. Arrears Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

Background

This Complaint concerns the failure of the Provider to agree that an interest only payment arrangement had been entered into between it and the Complainant in 2011.

The Complainant's Case

The Complainant holds a mortgage loan account with the Provider.

In 2011 the Complainant began making interest only repayments on the loan. The Complainant states that it was agreed that the Provider would accept interest only repayments. He states that this was verified by way of two telephone calls to agents of the Provider (4/2/11 at 11:46 and 23/2/11 at 12:47); on the second telephone call the Complainant states that he was advised to put the arrangement in writing and send it to the Provider, which he duly did on 23 February 2011.

In July 2013 the Complainant contacted the Provider about his account and was surprised to see arrears of some €50,000 on the account.

The Complainant states that arising out of these arrears, which he states have arisen due to the Provider's error, the Provider took steps to effect a repossession and sale of the property. As part of this process, the Provider sought and received title deeds to the

property from his solicitor. The Complainant believes this amounts to the deeds being procured inappropriately by the Provider. He states these events have also caused him embarrassment and humiliation.

The complaint is that the Provider has unfairly, unreasonably and in breach of its representations to him, refused to place the Complainant on interest only repayments since 2011. The Complainant wants the Provider to honour its agreement for interest only repayments from 2011, a resulting reduction/elimination of his arrears, and for the title deeds to be returned to him (or a nominated solicitor).

The Provider's Case

The Provider denies that it agreed to accept interest only repayments for the loan, in 2011 or at all. It states that it is unaware of any such arrangement being agreed. The Provider also states that it had an unqualified undertaking from solicitors representing the Complainant to furnish the Provider with good marketable title to the 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 Complainant was 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 **11 March 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.

24 March. The Complainant made a further submission which was exchanged with the Provider

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16 April. The Provider made a further submission which was exchanged.

29 May. The Complainant made a further submission which was exchanged with the Provider.

28 June. The Provider responded which was exchanged with the Complainant

9 July. The Complainant made a further submission.

No further submission was made by either party to the dispute.

Following the consideration of all of the evidence and submissions from the parties, including the Post Preliminary Decision submissions, I set out my final determination below.

The Complainant took out a mortgage with the Provider in July 2006, whereby the Provider advanced the sum of €300,000 to him to be repaid over 20 years. The loan agreement sets out capital plus interest repayments of €1,755.33 at the then applicable rate of interest (ECB + max 1.10%). The loan was secured over property in the North East.

On **21 August 2007** the Complainant sought a moratorium on repayments for a period of 2 or 3 months. The Provider did not accede to this request.

Repayments were made without incident from drawdown until February 2008, when a direct debit was returned unpaid on the account, and arrears began to accrue.

By March 2009 the arrears balance on the account had exceeded €19,000.

On **4 March 2009** the Complainant's solicitors wrote to the Provider. It appears that this letter was in response to an enforcement notice. The Complainant's solicitor advised that the Complainant would make a payment of €2,000 and then within the next 6 weeks he would set up a direct debit to make repayments of €500 per week. By letter dated 9 March 2009 the Provider indicated that it would be "provisionally agreeable" to this proposal, and would review the situation after 3 months.

The Complainant did not make the payments that he had indicated he would. No repayments were made until November 2009 when a payment of €3,000 was made to the account. At that stage the arrears amounted to approximately €32,000. The Complainant made repayments from time to time on the account and by the end of 2010 the arrears balance was nearly €44,000. On **3 February 2011** the Provider issued correspondence indicating that it was entitled to take possession of the property.

The Complainant spoke by telephone with the Provider **on 4 February 2011, 23 February 2011 and 24 February 2011**. Telephone call recordings from February 2011 have not been located, but a log notes of those calls have been furnished by the Provider.

The log notes for the **4 February 2011** call state that the Complainant advised that he had got a lease signed for 4 years and 9 months and would be in a position to make payments of €650.00 per month (being the rent received from the tenants) from April 2011.

The **23 February 2011** log notes state that the Complainant was advised that €650 would cover the interest of €529.29 but the “bill” is €1579.37 and arrears were €46,959.59.

The **24 February 2011** log notes state that the Complainant confirmed the premises had been rented, that the rent received would be passed on to the Provider, that he was aware he had missed a number of months of “526 interest only” but he hoped that 650 per month “will suffice”.

While it is very disappointing that recordings of these calls are not available, I do not believe they are essential for me to determine the complaint.

I would point out that the log notes do not reflect an agreement for interest only repayments having been reached. However, in the absence of recordings, these logs are of limited evidential value.

The Complainant’s letter of **25 February 2011** adds no weight to the suggestion that an interest only repayment arrangement had been agreed – it simply confirms that the Complainant intends to make payments of €650 per month from April 2011.

It is of note that, in spite of the Complainant’s proposal to make repayments of €650 per month from April 2011, this did not occur. The Provider describes the repayment pattern as follows: *“A lodgement of €550 was received on **27th May 2011** and again on **31st July 2011** and then sporadic repayments were received fluctuating from €200 to €800 between September 2011 and June 2013”*.

I note that in his Post Preliminary Decision submission of **24 March 2019** the Complainant states, *“I resent the remark ‘sporadic payments’ by the bank, interest only was overpaid.”* In its response dated **16 April**, the Provider states, *“the wording ‘sporadic payment’ was used to identify that the lodgements [were] made to the account on varying dates and for varying amounts.”* I note from the evidence supplied that those lodgements were made to the account on varying dates and for varying amounts with no particular pattern.

The Provider sent enforcement correspondence to the Complainant in April 2011, which urged him to make contact with it in relation to the account. There is no evidence that the Complainant made contact with the Provider on foot of this correspondence. In December 2012, contact was finally made with the Complainant and he was advised to attend a branch to fill out a standard financial statement. It appears that this did not happen until July 2013.

Telephone recordings have been furnished from December 2012 onwards, by which point the Complainant states that he understood that he had been on interest only repayments since 2011. However, I have considered the content of these calls and I find they do not support the Complainant’s contention that an interest only arrangement was in fact agreed.

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The mortgage account statements being received by the Complainant post February 2011 reflected mounting arrears. This ought to have confirmed to the Complainant that no interest only agreement was in place. The Complainant received enforcement correspondence in April 2011, which he appears to have ignored. I do not consider this to be consistent with him understanding that he had the benefit of an interest only repayment arrangement. I note that the Provider did offer alternative repayment arrangements in April 2010 and August 2010 it issued correspondence confirming this to the Complainant. No similar correspondence issued in relation to the alleged agreement in 2011.

Furthermore, the Complainant's position is undermined by the fact that, even if an agreement had been reached whereby the Provider agreed to accept interest only repayments (thereby halting the arrears), the Complainant did not, in fact, make the payments. In other words, even if a deal was reached, the Complainant did not honour his side of it. Any such arrangement would be contingent upon the Complainant making the repayments on a regular, monthly basis. This did not occur.

In fact, throughout the course of this mortgage the Complainant consistently put forward proposals to the Provider which he then did not honour.

In the circumstances, I cannot accept that the Provider has unfairly, unreasonably or in breach of its representations to him, refused to place the Complainant on interest only repayments since 2011.

I note that the Complainant in his Post Preliminary Decision submission of **29 May 2019**, suggests that his solicitor may have acted without his authority. That is not a matter which this Office can investigate or adjudicate on, since there is a more appropriate forum where such an allegation can be dealt with. Similarly the Complainant has made allegations that the provider retrospectively generated a letter, "To misrepresent their position which constitutes fraud with intent on the part of the [Provider]". This Office does not investigate allegations of fraud and such matters are more appropriate for An Garda Síochána and the Courts.

As a consequence of the foregoing, there is no evidence to ground a decision that the enforcement measures taken by the Provider or the sale of the loan to a third party institution have occurred in any manner other than in accordance with the Provider's entitlements under the terms of the mortgage agreement. In addition, on the basis of the information with which I have been furnished, the Complainant's claim that the Provider has procured the title deeds to the property inappropriately from his solicitor is without merit. The Provider is entitled to hold the deeds to the property the subject matter of the mortgage, the outstanding balance of which was nearly €300,000 in March 2018.

For the reasons outlined above, I do not to 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

29 July 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.