



<u>Decision Ref:</u>	2019-0296
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Refusal to grant mortgage Dissatisfaction with customer service Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants hold a buy-to-let (BTL) mortgage with the Provider. The Complainants' mortgage loan account has been subject to interest-only repayments for a number of years. On **28 March 2017** the Provider wrote to the Complainants informing them that repayments on their account were due to revert to full capital and interest repayments commencing on **24 October 2017**.

On **16 June 2017** the Complainants applied to the Provider for a term extension/alternative repayment arrangement. The Provider did not make a formal decision on the Complainants' application until **16 November 2017**. The Complainants assert that the Provider mismanaged their application and unreasonably refused their request for a term extension/alternative repayment arrangement.

The Complainants' Case

The Complainants submit that the Provider has acted in breach of the Consumer Protection Code and its own code of conduct in relation to business banking. The Complainants state *"In our case, they certainly have not 'put the interests of our customers financial needs at the heart of what we do'..."* They say that the Provider's *"... desire to exit the but-to-let market and remove tracker rates seems to be paramount with complete disregard and indeed contempt for us, their customers."*

The Complainants state that the Provider has failed to respond to or engage with them in order to achieve a mutually acceptable outcome in respect of their mortgage loan. Referring to a letter from the Provider dated **28 March 2017**, the Complainants state they “... were certainly led to believe by the [Provider’s] letter of 28th March 2017 ... that there would not be an issue with continuing on a tracker rate over an extended 12 year term.”

The Complainants have set out their complaint as follows:

“Our complaint in that [the Provider has]

- 1. Mismanaged our file resulting in punitive level of mortgage repayments with little or no time to make alternative payment arrangements with another provider.*
- 2. Unreasonably refused to agree to our request for a term extension/alternative payment arrangement to discharge Mortgage Account Number [...] in full over a 12 year period, to Sept 2029.”*

In respect of the first aspect of their complaint the Complainants point to correspondence between themselves and the Provider beginning with their request for an alternative repayment arrangement on **13 July 2017**. It is pointed out that a decision did not issue from the Provider in respect of this request until **16 November 2017**. This decision was verbally communicated to the First Named Complainant on **14 November 2017** by the Provider’s case manager. This was a number of days after the Complainants’ mortgage repayments increased to over €8,300 per month.

The Complainants state that the correspondence exchanged between the parties does not reflect the numerous phone calls made by the Complainants to the Provider in an attempt to get a timely response to their correspondence. The Complainants state that on **12 January 2018** the Provider acknowledged its poor level of customer service and made “... a token compensatory offer which we have rejected as it does not reflect in any meaningful manner, the hardship and stress that has ensued for us.”

The Complainants state that the second aspect of their complaint is a significant issue for them. They say that the Provider’s language in previous correspondence was somewhat vague. However, in a letter dated **31 January 2018** the Provider clarified why it did not support their request for a term extension of 12 years. The Complainants submit that the grounds for refusal are threefold and are attributable to (i) the Complainants’ repayment record, (ii) the extended level of reduced payments, and (iii) uncertainty around future repayment capacity upon reaching the age of 70.

The Complainants state that the reason given by one of the Provider’s agents in telephone conversations which took place on **14 November 2017** and **11 December 2017** in respect of the refusal of a term extension, only related to the fact that the Provider had already applied an extended level of reduced repayments in respect of the Complainants’ mortgage. The Complainants state that if this was the basis for the Provider’s refusal of their request then

/Cont’d...

a decision could have been made more quickly by the Provider in July, when the Complainants submitted their request for a term extension. The Complainants state that two additional grounds for refusal are now being relied on by the Provider.

The Complainants have addressed each of the grounds of refusal under separate headings in their submission. I note that the Complainants state, when dealing with their repayment record, that they were advised by a member of staff in the Provider's Arrears Support Unit, that the repayment of €8,300 due on **13 November 2017** would be reversed when a decision on the request for a term extension was formally made. The Complainants state that this led them to believe that the term extension was going to be approved and that it was not necessary to lodge the additional funds required to meet the increased repayment.

The Provider's Case

The Provider states that the letter dated **28 March 2017** was issued to the Complainants to advise them that repayments on their mortgage were due to revert to full capital and interest repayments of €8,464.89 on **24 October 2017**. The letter advised the Complainants that if the term of the loan was extended by 12 years to **13 September 2029**, then monthly repayments would be €1,369.37. The letter also advised that if the term was extended by 15 years to **13 September 2032**, then monthly repayments would be approximately €1,141.83.

The Provider submits that this letter went on to say: *"If you wish to amend the term of the loan, Lending Approval is required as this term exceeds the original sanctioned term."*

The Provider states that it is clear that in order for the term to be extended, lending approval would be required. The Provider states that this letter in no way indicated that there would not be a problem with extending the term of the Complainants' mortgage. This letter did not constitute an offer to the Complainants and was provided for information purposes only. It clearly stated that in order for a term extension to be put in place, lending approval would first be required.

The Provider refutes the Complainants' assertion that its paramount consideration was to exit the BTL market and to remove tracker interest rates. When carrying out an assessment of the Complainants' financial circumstances in **November 2017** the Provider considered the Complainants' repayment capacity, age and previous forbearance granted. The Provider acknowledges the fact that the Complainants' mortgage being on a tracker rate, was taken into consideration when their financial circumstances were assessed but this was not the primary consideration in its decision. The Provider stresses that regardless of the interest rate that was being applied to the Complainants' account at the time the assessment was being carried out, it would not have been agreeable to the term extension proposed by the Complainants.

The Provider states that the Complainants wrote to one of its branches on **16 June 2017** with their proposal to extend the term on their mortgage. The Complainants' letter dated **13 July 2017** was received by the Provider on **18 July 2017**. When the letter was received in

/Cont'd...

the Provider's branch a Standard Financial Statement (**SFS**) was issued to the Complainants as this was required to support their proposal for a term extension. The Provider states that the First Complainant called to its branch with the SFS but it was not fully completed. He took the SFS home with him and was advised to return it directly to the Provider's Home Mortgages Section.

The Provider states that, as the proposal contained in the Complainants' letter of **13 July 2017** related to a mortgage account, it was sent by the branch to the Provider's Home Mortgages section. When the letter was received in this section it was scanned to the Complainants' file but due to human error, it was not brought to the attention of the Provider's Arrears Support Unit and no further action was taken in respect of the Complainants' proposal at that time.

The Provider states that the First Complainant called its Home Mortgages section on **26 September 2017** looking for an update on the proposal. The Provider's agent advised him that the letter had been received but not actioned. The Provider's agent informed him that the matter would be escalated and apologised for the delay. An SFS was then issued to the Complainants on **27 September 2017**.

The Provider states that the Complainants submitted an SFS dated **10 October 2017** and supporting documentation. In a letter provided with the SFS the Complainants stated that they were seeking to extend the term of their mortgage by either 12 or 15 years with repayments on a full capital and interest basis. The Provider states that if the term of the mortgage had been extended by 12 years, the Complainants would both have been over the age of 70 when the term expired. This is well beyond retirement age and is outside the Provider's policy with respect to term extensions.

Following an assessment of the Complainants' financial circumstances in **November 2017** the Complainants' mortgage was deemed unsustainable due to their lack of repayment capacity and the 84 months of previous forbearance of interest-only repayments. The Provider states that the Complainants' mortgage had been approved for 5 years of interest-only from the date of drawdown in 2004. The Complainants were then facilitated with a further 7 years of interest-only repayments.

The Provider states that having considered the above matters, its view was that given that the Complainants' property was in positive equity, it was in the Complainants' best interest to sell their BTL property and clear the mortgage account in full. The Provider states, referring to the Lender's Report in the evidence furnished, that when the Complainants' previous applications for interest-only repayments from 2010 were considered, the strategy was always for the Complainants to sell their BLT properties. The Provider submits that if it was its paramount consideration to remove the tracker rate from the Complainants, it would not have previously facilitated them with 84 months of interest-only repayments.

Dealing with the Complainants' submission that they were told by one of the Provider's telephone representatives "... *not to worry and that a decision on the alternative payment arrangement would be backdated to cover the November instalment*", the Provider states that it can only identify one call which is relevant to this submission. The call took place on

/Cont'd...

9 November 2017 and was made by one of the Provider's agents carrying out the assessment of the Complainants' financial circumstances.

The agent advised the First Complainant that the assessment had been carried out and had been referred back to the Provider's credit team for decisioning. The agent further advised the First Complainant that *"if anything was to be put in place it can be backdated for this months as well, just depending on the decision on what I get back"* and *"if there was anything put in place on the account it can be backdated for this month."*

The Provider submits that it is clear that the First Complainant was advised that the backdating of any alternative repayment arrangement was contingent on such an arrangement being approved. At no time were the Complainants advised that a decision on the alternative repayment arrangement would be backdated to cover the November instalment, or that their proposal for a term extension would be approved.

The Provider acknowledges that the First Complainant was informed during this call that a decision was expected the following day and that a member of staff would contact him however, this never happened. The First Complainant was advised of the outcome of the Provider's assessment on **14 November 2017**. The Provider *"... apologises for this customer service failing ..."* Further to this, the Provider states that it:

"... identified some further customer service failings in the course of the investigation into this complaint, namely, the failure of the case assessor to telephone the First Named Complainant the next day as promised during the call on 9 November 2017, failure to respond to the Complainants' letters of 17 and 20 November 2017 until January 2018 and incorrect information provided to the Complainants in relation to the internal Appeals process during the telephone call of 28 November 2017."

The Complaint for Adjudication

The complaint is that the Provider:

1. Mismanaged the Complainants' situation resulting in increased mortgage repayments leaving them with no adequate time to put alternative arrangements in place; and
2. Unreasonably refused the Complainants' request for an alternative repayment arrangement.

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

/Cont'd...

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 29 August 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.

In the absence of any substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainants' position is that they were led to believe from the Provider's letter dated **28 March 2017** that there would not be an issue with continuing on a tracker interest rate over a 12 year term extension. This letter states:

"If [sic] confirm the above home account will revert back to full capital and interest repayments of €8,464.89 on the 24/10/2017.

Following reverting back to full capital and interest repayments, if you were to extend the term of your home loan to expire in 12 years the revised expiry date of your loan would be 13/09/2029, with revised repayments of approximately €1,389.37.

Following reverting back to full capital and interest repayments, if you were to extend the term of your home loan to expire in 15 years the revised expiry date of your loan would be 13/09/2032, with revised repayments of approximately €1,141.83.

...

If you wish to amend the term of the loan, Lending Approval is required as this term exceeds the original sanctioned term. Please contact your branch as they hold all the necessary documentation and will be able to advise you further.

Please note that the above is only an estimation and is subject to variation."

This letter gave the Complainants almost 7 months' notice that their mortgage repayments were due to revert to full capital and interest repayments of approximately €8,465. It then offered the Complainants an estimate of what their repayments were likely to be if their mortgage term was to be extended by either 12 or 15 years.

/Cont'd...

The letter further stated that if the Complainants wished to amend the term of their mortgage, then lending approval would be required. Finally, the letter advised the Complainants to contact their local branch for further assistance.

A further letter dated **15 September 2017** was sent by the Provider to the Complainants some 6 months later, reminding them that the interest-only period on their mortgage was due to expire on **24 October 2017** and repayments would automatically revert to full capital and interest repayments following the final interest-only repayment.

Almost 3 months after the Provider's March letter the Complainants replied to the Provider, by letter dated **16 June 2017** with the following proposal:

"...Our proposal is therefore to move account [...] to full annuity repayments with effect from January 2018 over a 12 year period. As per your letter of the 28th March, repayments at current interest levels will be in the region of €1,400. This will require the interest only arrangement to continue from October of this year to January 2018."

On receipt of the Complainants' proposal, an SFS was issued to the Complainants. There is no evidence to indicate that a completed SFS was returned to the Provider. It is the Provider's case that the First Complainant returned this SFS to its branch but it was incomplete. While it seems that a completed SFS was returned, the First Complainant contacted the Provider's Home Mortgages section on **26 September 2017** for an update on the status of the Complainants' proposal. It was at this point that it became apparent that the Complainants' proposal had not been actioned by the Provider once it was forwarded from branch level. The Complainants submitted a further SFS dated **10 October 2017**.

The Provider informed the Complainants by letter dated **16 November 2017** that their application for a term extension was unsuccessful. This letter states:

"Further to your request for an alternative repayment arrangement on your account we are writing to advise you that we are not in a position to offer you an alternative repayment arrangement as your mortgage is unsustainable."

In assessing your case we used the information you provided in your Reduced Repayment Form together with any accompanying documentation. Based on your financial circumstances we do not believe that you will be able to return to full contractual repayments in the foreseeable future. However, we are committed to working with you and there are a number of options available to you in your circumstances and we would ask you to consider them."

A number of call recordings have been submitted by the Provider and all have been reviewed. In a call that took place between the First Complainant and the Provider on **9 November 2017** the First Complainant was informed that the Complainants' application was being reviewed by the Provider's credit team and a decision was expected the following day. The Provider's agent told the First Complainant that regardless of whether a decision was received it would call the First Complainant the following day. The Provider's agent further informed the First Complainant that the application had to go through two stages and that:

/Cont'd...

“... anything to be put in place it can be backdated for this month as well so just depends on the decision on what I get back ... if there was anything to put in place on the account it can be backdated for this month as well ...”.

In the first of two calls which took place on **14 November 2017**, the Provider’s agent informed the First Complainant that:

“... whatever arrangement that they come up with they will apply it retrospectively ...”

In the second call that took place on **14 November 2017** this time with the Provider’s case manager the First Complainant was told that there would be no further forbearance. The First Complainant was informed that as the application related to a BTL the Provider’s decision could not be appealed. Towards the end of the call the First Complainant stated that his only option was to consider getting a mortgage from another financial services provider.

During a call on **28 November 2017** the First Complainant stated:

“... there was meant to be some arrangement that was to be coming to and that was to be backdated to November and then out of the blue correspondence came out and the arrangement was cancelled ...”

Finally, in a call which took place on **11 December 2017** the First Complainant stated:

“... My understanding all along was that this thing was going to be extended ... and then something changed ... from conversations I’ve had with various colleagues in there ...”

The Complainants are dissatisfied with what was in fact a commercial decision of the Provider as to whether or not to vary the mortgage agreement in place. It is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the re-negotiation of the commercial terms of a mortgage loan which is a matter for the Provider and the Complainants and does not involve this Office as an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial service provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants.

Having considered the evidence and submissions of the parties I do not accept that the Provider’s letter dated **13 July 2017** is capable of having the meaning attributed to it by the Complainants. The Provider did not at any point indicate to the Complainants that a term extension would be granted or approved. Furthermore, I do not consider that the Provider’s conduct in refusing the Complainants’ application for a term extension was unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants. However, I note that the Provider’s letter dated **16 November 2017** refusing the Complainants’ application did not set out the reasons as to why their application was

/Cont’d...

refused. It was only following a number of telephone calls from the First Complainant to the Provider, the Provider's Final Response letter dated **12 January 2018** and a further letter from the Provider dated **31 January 2018** in response to the Complainants' correspondence, that the Complainants were able to ascertain the precise reasons.

Finally, I do not accept that the Complainants did not have time to make arrangements with alternative financial services providers. While the Provider failed to action the Complainants' letter thereby causing a delay in processing their application, it was at all times open to the Complainants to put in place whatever alternative arrangements they thought necessary, given in particular that there was no guarantee that the Provider would agree to their alternative repayment proposal.

A number of customer service failings are evident from this complaint. I take the view that the Provider's conduct has fallen below the standard of customer service expected of financial service providers when dealing with their customers. The Provider has acknowledged these failings and has apologised to the Complainants. In recognition of the failings identified by the Provider it stated in September 2018 in its response to the formal investigation of this complaint that it *"... would like to increase the goodwill gesture being offered to the Complainants to a total payment of €3,000."*

The Complainants take the view that this offer did *"not adequately deal with the issue...will cover most of our legal costs of switching mortgages but does not reflect the significant costs we will incur going forward or indeed the significant savings made by [the Provider] at our expense."*

In my opinion, it was a commercial decision for the Complainants to make, as to whether or not to switch mortgage providers. The Provider is not responsible for the legal costs which the Complainants incurred when they elected to switch their borrowing to another mortgage provider.

I consider the Provider's offer to be a reasonable sum for the inconvenience caused to the Complainants by certain aspects of the Provider's customer service, as distinct from their substantive complaints.

For the reasons outlined above, I am satisfied that the evidence does not bear out the Complainants' contentions that the Provider mis-managed their situation resulting in increased mortgage payments and leaving them with no adequate time to put alternative arrangements into place.

Neither am I satisfied that the Provider acted unreasonably or in a discriminatory manner when it refused the Complainants' request for an Alternative Repayment Arrangement.

In those circumstances, whilst I am satisfied that the Provider has a case to answer to the Complainants for its customer service failings, details of which are outlined above, nevertheless in circumstances where the Provider has acknowledged the wrongdoing in question, and has made an offer of compensation available to the Complainants at an early

/Cont'd...

stage of the formal investigative process, in order to address that wrongdoing, which I consider to be adequate amount, therefore on the basis that this settlement offer remains open to the Complainants for acceptance, I do not consider it necessary or appropriate to uphold this complaint.

I note indeed that since the Preliminary Decision was issued to the parties on 29 August 2019, the Complainants have indicated a desire to accept that Provider's compensatory offer of €3,000. I also note that the Provider is in a position to issue the said payment to the Complainants expeditiously, once this investigation is concluded by the issue of this legally binding decision.

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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

23 September 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.