



<u>Decision Ref:</u>	2020-0010
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainants' mortgage loan account with the Provider.

The complaint is that the Provider is wrongfully and/or unreasonably seeking capital and interest payments from the Complainants on their mortgage loan account, in circumstances where it indicated both verbally and in writing that the mortgage loan account was "*interest only*" for the full term of the mortgage loan, until its expiry date of **12 September 2026**.

The Complainants' Case

On **29 August 2008**, the Provider sent an offer of further advance loan agreement to the Complainants for their consideration. The amount of credit advanced was €120,000 which was repayable by 120 interest only repayments followed by 96 capital and interest repayments.

The Complainants signed the loan agreement on **2 September 2008** indicating their acceptance to the mortgage and the associated repayment terms and returned it to the Provider. The mortgage account was set up on **12 September 2008** and the first interest only repayment became due by direct debit on **20 October 2008**. The Complainants submit that they took out this mortgage loan for the purpose of renovating their family home.

The Complainants submit that since the mortgage loan account was sold to them by the Provider, they have received numerous letters from it, stating that the mortgage loan account is an 'Interest Only Full Term Mortgage' with **12 September 2026** as the expiry date.

The Complainants submit that on the basis of these letters from the Provider, they planned to make a lump sum payment in **2026** for the outstanding amount on the mortgage loan account.

The Complainants further submit that on **24 April 2018**, prior to making the decision to support their son's career path, they contacted the Provider's third party administrator to ensure that they were in a suitable financial position to afford the decision. The Complainants submit that the Provider's third party administrator confirmed to them during this telephone call, that their mortgage loan account was an interest only mortgage loan account, for the full term of the loan account. The Complainants state that their decision to support their son's career choice was based on this information supplied by the Provider.

The Complainants state that on **21 June 2018**, they received a letter from the Provider's third party administrator which stated that the mortgage loan repayments were due to increase significantly from €200 per month to €1350 per month in order to include capital and interest on the loan. The Complainants submit that this correspondence was contrary to all previous correspondences which they had received from the Provider, in addition to the information supplied to them on the telephone call on **24 April 2018**.

The Complainants submit that had they been made aware much earlier by the Provider that their monthly mortgage loan repayments were due to increase with the introduction of capital and interest, they would not have chosen to support their son's expensive career path as they would not have been in a position to afford it. They also state that they would have used a smaller budget when making the decision to upgrade their house. They state that as a result of the incorrect information provided to them, they now *"do not have enough uncommitted money to raise [the mortgage loan repayments] by [approximately] €1150 per month from October 2018"*. In essence, the Complainants' contention is that if the Provider had fully informed them on an on-going basis of the correct terms of the mortgage loan account, and informed them earlier of the expected repayments on the account, they would have been in a more favourable financial situation in terms of being able to afford the monthly capital and interest repayments on the mortgage loan account from **October 2018**, onwards.

The Complainants acknowledge that the mortgage loan account agreement was for a ten year interest only term, but they submit that the Provider changed this agreement in its numerous correspondences to them and they relied on this information when making financial decisions and budgeting for the future. The Complainants assert that the Provider is not willing to accommodate their financial difficulties, which were as a result of the Provider's inaccurate and conflicting information.

Ultimately, the Complainants state that the Provider is wrongfully and/or unreasonably seeking capital and interest payments on the Complainants' mortgage loan account

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notwithstanding that it indicated both verbally and in writing that the mortgage loan account was interest only for the full term of the mortgage loan until its expiry date of **12 September 2026**. Arising from this, the Complainants want the Provider to charge interest only for the full term of the mortgage loan account.

The Provider's Case

By way of response, the Provider acknowledges that due to an error in the setup of the mortgage loan account, the repayment method for the account was incorrectly set up as a full term interest only repayment mortgage, instead of a ten-year interest only repayment followed by a switch to capital and interest repayments for a period of eight years.

As a result of this error, the Provider acknowledges that interest only reminder letters were automatically issued to the Complainants on **12 September 2016**, **1 October 2016** and **12 September 2017**, incorrectly stating that the mortgage repayments were interest only for the full mortgage term and that any capital and any unpaid/accrued interest would become due and owing in full when the mortgage expired on **12 September 2026**. In addition as a result of this error, a representative of the Provider's third party administrator confirmed to the First Complainant during a telephone call on **24 April 2018**, that the mortgage repayments were interest only for the full mortgage term.

The Provider submits that following a review of the Complainants' mortgage account in **June 2018**, correspondence was issued to the Complainants on **21 June 2018** to confirm that the mortgage account was due to change from interest only repayments to capital and interest repayments effective from **20 October 2018**. This correspondence stated that the Provider estimated the Complainants' new monthly capital and interest repayment would be €1,351.05.

Following a telephone conversation with the First Complainant on **26 June 2018** to discuss the content of the letter dated **21 June 2018**, the Provider undertook a review of its correspondence to the Complainants. As a result of this review, the Provider contacted the First Complainant by telephone to explain that the letters stating that the mortgage was an "*interest only full term mortgage*" were sent in error and to confirm that a letter of apology would be issued to the Complainants in relation to same. During this telephone call, the First Complainant expressed dissatisfaction that the Provider was unable to honour the previous interest only correspondence issued to the Complainants and as a result of this, an internal complaint was raised on the Complainants' behalf.

This internal complaint was investigated and upheld by the Provider due to the incorrect information contained within the correspondence sent to the Complainants. The Provider offered a cheque in the sum of €100.00 to the Complainants as an apology for any inconvenience caused. However, the Provider explained to the Complainants that the mortgage would still switch to capital and interest repayments effective from **20 October 2018** in accordance with the terms and conditions of the mortgage and the Complainants' signed offer of further advance loan agreement, dated **29 August 2008**.

The mortgage loan account was transferred by the Provider to two third party providers on **28 September 2018**. As a result of the Provider's ongoing investigation into the matter, the third party providers did not switch the Complainants' account onto capital and interest repayments in **October 2018**, instead waiting until **February 2019** to make this switch.

The Provider made a payment of €885.66 to the mortgage account in **February 2019**, which represented all interest accrued or due to accrue between when the mortgage should have switched to capital and interest payments in **October 2018** and **31 January 2019**. This payment was used to reduce the outstanding balance of the mortgage and was reflected in the capital and interest repayment that would become due in **February 2019**. In addition two cheques for €275.00 (€550.00 total) were issued to the Complainants of which €400 was to cover the cost of any independent professional advice the Complainants wished to seek regarding the matter and €150.00 was to cover any distress or inconvenience this error may have caused.

Further correspondence was issued to the Complainants on **1 February 2019** to confirm that the monthly mortgage repayment had changed to capital and interest and the Complainant's new monthly capital and interest repayment would be €1,381.91 effective from **20 February 2019**. The Complainants have maintained their full capital and interest repayment each month to date since it became due on **20 February 2019**.

The Provider acknowledges that the conflicting information that the Complainants received did not comply with provisions of the Consumer Protection Code 2012 (as amended) ('the CPC'). However, it asserts that as the mortgage provider it is contractually obliged to comply with the terms and conditions of the mortgage and therefore it had no alternative but to switch the mortgage accounts to capital and interest repayments. The Provider notes that the repayment terms of the mortgage were clearly outlined on the Complainants' loan agreement dated **29 August 2008** and the Provider had advised the Complainants that they should obtain legal advice before that document was signed. The Complainants signed the loan agreement indicating that they had read and understood the nature and contents of same and their signatures were witnessed by a solicitor.

Finally, the Provider also states that as the mortgage loan account has now been transferred to two third party providers, all decisions relating to the administration of the mortgage must be made by these third party providers.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and/or unreasonably sought to change the Complainants' mortgage to a capital and interest basis, in **October 2018**, notwithstanding that it had indicated both verbally and in writing that the mortgage loan account was "*interest only*" for the full term of the mortgage loan, until its expiry date of **12 September 2026**.

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

It is accepted by the Provider that the repayment basis for the Complainants' mortgage was incorrectly set up on its system as a full term interest only repayment mortgage, instead of a ten-year interest only repayment period, followed by a switch to capital and interest repayments for a period of eight years. As a result of this error, the Provider acknowledges that interest only reminder letters were automatically issued to the Complainants on **12 September 2016**, **1 October 2016** and **12 September 2017**, incorrectly stating that the mortgage repayments were interest only for the full mortgage terms and that any capital and any unpaid/accrued interest would become due and owing in full when the mortgage expired on **12 September 2026**. Indeed, the Complainants say that there were many more such letters sent to them, which created this expectation on their part.

It is also noted that, as a result of this error, a representative of the Provider's third party administrator wrongly confirmed to the First Complainant, during a telephone call on **24 April 2018**, that the mortgage repayments were "*interest only*" for the full mortgage term. These errors are certainly regrettable, and it is accepted by the Provider that its actions in relation to the mortgage loan account ran contrary to the provisions of the CPC. Having taken note of the above, I accept that once the Provider became aware of the mistake in relation to its communications with the Complainants, it engaged fully with the Complainants and acted speedily, seeking to resolve the issue.

It is clear that the terms of the agreement which the Complainants entered into in **2008**, specifically outlined that the borrowing would be the subject of 120 “*interest only*” repayments, together with 96 “*capital & interest*” repayments. It is for that reason that I do not consider it appropriate for this office to impose an amendment to that underlying contractual arrangement, as a result of the Provider’s errors in the way in which the account was set up, and in its communications with the Complainants.

Since the preliminary decision of this office was issued to the parties, the Complainants seek to maintain that the doctrine of Estoppel should apply. They say that both they and the Provider “*relied on verbal and written changes to the contract*” and they maintain that the mortgage loan account repayments should continue on an interest only basis for the full term of the loan, until **September 2026**.

I do not however accept that either

- the letters referring to “*interest only*” (eg. the letters issued on **12 September 2016**, **1 October 2016** and **12 September 2017**)

or

- the telephone conversation between the First Complainant and the Provider’s third party representative on the **24 April 2018** (incorrectly stating that the mortgage repayments were interest only for the full mortgage term and that any capital and any unpaid/accrued interest would become due and owing in full when the mortgage expired on **12 September 2026**)

constituted a legally binding commitment from the Provider to change the underlying terms of the loan, as contended by the Complainants.

It is noted that this loan has been sold by the Provider to a third party owner, and it is important for the Complainants to be aware that they have a contractual obligation to repay the monies borrowed (to the purchasers of that loan) in the way which was set out to them, clearly and unambiguously in **August 2008**, at the time when the loan agreement was entered into. Accordingly, I accept that the Provider was entitled to refuse the Complainants’ request to maintain interest only payments for the full duration of the mortgage term.

I have had regard to the particular circumstances of this case however, in particular the serious failings on the part of the Provider in its communications with the Complainants, subsequent to the mortgage loan being entered into, and the understandable distress and anxiety this caused to the Complainants. I therefore consider it appropriate to partially uphold this complaint, and noting that the sums of €885.66 and €550 have already been issued to the Complainants by the Provider, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainants, by way of capital reduction to their account balance, to reflect the level of difficulty which has been caused to the them by the Provider’s errors as outlined. This payment, it is hoped, will afford the Complainants an ongoing saving in respect of the remaining payments to be made to the mortgage account between now and the end of the term in September 2026.

Conclusion

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- 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) (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 in the sum of €7,000, by way of a payment to the Complainants' mortgage account, in reduction of the capital balance.
- I also direct that interest is to be paid by the Provider on the said compensatory payment of €7,000, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within 35 calendar days of today's date.
- 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

8 January 2020

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.