



<b><u>Decision Ref:</u></b>	2020-0055
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Delayed or inadequate communication Arrears handling - Mortgage Arrears Resolution Process
<b><u>Outcome:</u></b>	Rejected

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

#### **Background**

The Complainants entered into a mortgage loan agreement with a financial service provider in **May 2004**. This financial service provider subsequently merged with the Provider. In **January 2009**, the Complainants entered into a five-year interest only arrangement. The Complainants state that they were mis-informed as to the type of repayments due on the expiry of this arrangement. The Complainants further state that the Provider failed to notify them of the expiry of the interest only arrangement and also failed to offer them alternative repayment options.

#### **The Complainants' Case**

The Complainants state that in **January 2009** they commenced a five-year interest only period on their mortgage. This interest only period was to end in **January/February 2014**. At the time the Complainants entered into this interest only arrangement, their mortgage was held with another financial services provider. The Complainants state that they

*"... were mistakenly led to believe at the time that it would pay off the remaining interest and at the conclusion there would be little or none left to pay only the capital so with that in mind five years seemed logical."*

The Complainants also say that they

*“... realise that we signed the transfer to interest only document with the details but this for us was going through the motions not what we understood it to be.”*

The Complainants state that in **March 2014** they realised that the five-year interest only term had come to an end but no correspondence was received from the Provider to advise them of this. The Complainants states that they contacted the Provider on **21 March 2014** to find out what their repayments under the mortgage were going to be. The Complainants state that it was not until **15 April 2014** that they received official notification that the interest only period was over and that the repayments on their mortgage would be €1,731.77 per month. The Complainants state that they

*“... were blown away as this was a big difference from paying €800 euro per month on interest only and not in line with what we had been led to believe in 2009 which was that repayments would not exceed €1200 euro per month.”*

The Complainants state that

*“[c]onsidering the financial climate in 2014 and the way it was delivered we didn't think it was negotiable so we kind of got the fear factor and re-evaluated our situation.”*

The Complainants state that they decided to sell their home and rent a property in Dublin which reduced their commuting costs. The Complainants submit that they took this course of action with a view to securing another mortgage in the future and purchasing a smaller property. The Complainants advise that their house went on sale in **April 2014** and only one offer was received. The Complainants state that they sold their house at a loss, as it was purchased for €395,000 in **2004** and sold in **2014** for €220,000 with a shortfall of €20,000 on the existing mortgage. The Complainants state that all of this made for a financially difficult time. The Complainants state that they informed the Provider that were experiencing difficulty in meeting their monthly repayments and *“... in fairness to the [Provider] they came up with a reduced payment plan but from the month of May to October which however was too little too late and still not enough to cover the costs associated with everything that was going on and we couldn't even service that.”* The Complainants states that they informed the Provider of their situation and explained this in a phone call. The Complainants state that they are *“... not sure the reality of the situation was sinking in there even after my calls.”*

The Complainants state that the Provider finally allowed their house to be sold in **August 2014** *“... with us taking the remainder of the shortfall, €20K (which we are still servicing).* The Complainants state that in **January 2018** they asked themselves how they ended up in their current situation and state that *“[w]e can only determine the principal reasons are: a) Being mis-informed about the interest only deal and b) Lack of sufficient notice and options before coming off interest only.”*

In a letter to the Provider dated **31 May 2018**, the Complainants state that “[w]hen making the [Provider] aware of the difficulties making repayments in 2014 and the reasons involved, I believe we asked for a stay on the mortgage as requiring a deposit and a month rent in advance to secure rented accommodation as well as paying a mortgage was not feasible leading to some payments being missed. I am confident this was mentioned in a phone call between myself and [the Provider] around that particular time as well.”

### **The Provider’s Case**

The Provider states that, as outlined in its letter of **10 May 2018**, it has acknowledged that there was a delay in expiring the five-year interest only alternative repayment arrangement (ARA). However, it is

*“... unable to explain why the Complainants were not provided with at least one month’s notice of the expiration of the Interest Only Period and the new monthly repayment amount, this appears to be due to human error in not expiring the arrangement correctly.”*

The Provider states that its records show that the First Complainant contacted it on **21 March 2014** to query why the interest only arrangement had not expired on the account. The Provider states that its records also show that the Complainants’ ARA expired on **23 April 2014** and a letter issued to the Complainants to advise them of the new capital and interest repayments of €1,656.77 due from **27 April 2014**. The Provider states that in its letter of **10 May 2018** it apologised to the Complainants for not notifying them of the expiry of their interest only arrangement, one month prior to its expiry. The Provider states that in an effort to atone for this lapse in service, the ARA that was agreed and to commence in **May 2014**, was backdated to include the **April 2014** repayment and this was executed by way of an arrears adjustment of €756.77 on **26 May 2014**.

The Provider states that the first record it has of the Complainants advising it that they would not be in a position to meet their full capital and interest repayments, is **30 April 2014**. The Provider states that when the First Complainant contacted it on **21 March 2014** to query why the interest only arrangement had not expired, he advised that he wished to return to capital and interest repayments and to change the due date of the mortgage. Following this, the Provider states that the First Complainant contacted the Provider on **15 April 2014** to advise that he wanted to return to capital and interest repayments and the repayment amount was confirmed to him. The Provider submits at that point in time there were no arrears on the Complainants’ account and the First Complainant did not mention the possibility of any financial difficulty.

The Provider states that the First Complainant then contacted it and advised that the Complainants were not in a position to make the full monthly repayments and an ARA was agreed for €900 per month. The Provider states that the First Complainant called on **9 May 2014** and was transferred to its resolution assessment team where a financial statement was completed over the phone. The First Complainant advised the Provider that the property was on the market since **February 2014** and he was requesting an extension of the interest only arrangement until the property was sold. The Provider states that an ARA of

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€900 was agreed for 6 months from **27 May 2014** to **27 November 2014** to allow time for the property to be sold. At the end of the call the Provider states that the First Complainant advised that he was happy with this outcome and thanked to Provider's agent for her help. The Provider states that at no point during the conversation did the First Complainant request a longer term ARA as the house was on sale since **February 2014** and the Complainants were living in Dublin. The Provider states that the First Complainant appeared happy with this ARA and it was backdated to take effect from **April 2014**.

The Provider submits that, based on the above, full capital and interest repayments did not fall due on the account and the Provider submits that this had no impact on the Complainants' monthly repayments.

The Provider states that the first direct debit for the ARA returned unpaid and was paid manually by the Complainants. The second and subsequent repayments also returned unpaid with the First Complainant confirming on **3 July 2014** that the Complainants were unable to make the agreed payments under the ARA.

On **19 June 2014** the First Complainant contacted the Provider to advise that they had received an offer on the property of €220,000. The Provider states that the First Complainant advised that he wanted to sell the property as he did not think he would receive any better offers. The Provider states that as the mortgage would not be redeemed in full and there would be a shortfall, the account was referred to its Field Team who manage shortfall sales. On **27 June 2014** a field agent contacted the First Complainant and discussed the shortfall sales process and a call was arranged for **9 July 2014**. Following this call, a meeting was arranged between the parties to discuss the shortfall proposal which was put forward by the Complainants. On **3 July 2014** the First Complainant contacted the Provider to again advise that he could not meet the ARA repayment. The Provider states that the Complainants received a letter from its debt management company dated **25 July 2014** accepting their proposal to pay €220,000 on the mortgage and confirming that the Complainants would remain liable for any outstanding shortfall resulting from the sale of the property.

The Provider refutes the Complainants' statement that everything was *"too little, too late."* The Provider states that at no point did it advise the Complainants that they must sell the property in question. Referring to the telephone conversation of **9 May 2014** the Provider states that the First Complainant advised its Resolution Assessment Team that the property had been on the market since **February 2014** for €235,000. The First Complainant also advised that the Complainants were living in rented accommodation in Dublin and as the landlord was selling the property, they had to vacate this property by **1 July 2014** and accordingly wanted their property sold before then and therefore, a long term arrangement was not needed. The Provider states that its agent advised that the Provider would look to put a longer term arrangement in place as it was difficult to tell when the property would be sold and that if the Complainants chose a shorter term arrangement a Standard Financial Statement (SFS) would be required every three months. The Provider states that at no point did its agent advise that the property must be sold, the call proceeded and the SFS was completed based on the First Complainant's confirmation that the Complainants wished to sell their property as soon as possible and clear their mortgage.

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The Provider states that during subsequent meetings and conversations with its Field Agent in **July 2014**, it was advised that the property had been on the market for six months, this is in line with the First Complainant's confirmation during the call on **9 May 2014** that the property was on the market since **February 2014**, prior to the Complainants being aware of the capital and interest repayments that would be in place following the expiry of the interest only arrangement.

The Provider states that the First Complainant explained to its Field Agent that they needed to sell the property, as the area where they were living no longer suited them as the First Complainant worked in Dublin and the Complainants' children were attending school in Dublin. The Provider states that the First Complainant advised that they needed to sell the property and the stress of the sale had taken a lot out of the Complainants' family. The Provider states that it was advised that the Complainants believed that if they could sell the property and service the shortfall, they would be much better off. The Provider submits that it has done everything requested of it by the Complainants to assist them with their circumstances.

Following the sale of the property and the allocation of the sale proceeds to the Complainants' account on **16 September 2014**, the Provider states that the Complainants have been making the repayments on their account as they fall due. The interest rate applied to the shortfall balance is 0%. The Provider states that in the shortfall proposal put forward by the Complainants they indicated that they would seek to take out a loan with another financial services provider to clear the shortfall balance, but this has not materialised.

Addressing the Complainants' point about requesting a stay on their mortgage, the Provider states that it does not have any record of a request for a stay or moratorium on the mortgage. It states that it is standard practice for a note of each telephone conversation to be recorded on its system and it does not have any record of such a request.

The Provider also refutes that there was confusing and conflicting correspondence and phone calls. Referring to the call which took place on **9 May 2014**, the Provider states that the Complainants advised that they did not require a long term arrangement, as the property was on sale and they wanted to clear the mortgage as soon as possible. The Provider states that at no point did it put pressure on the Complainants to sell the property.

### **Time Limits**

**Section 51(2)** of the *Financial Services and Pensions Ombudsman Act 2017*, sets out the time limits within which a complaint in respect of the conduct of a financial service provider must be made to this Office. **Section 51(2)** makes it clear that a complaint regarding a "long-term financial service" must be made:

*"... within whichever of the following periods is the last to expire:*

*(i) 6 years from the date of the conduct giving rise to the complaint;*

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*(ii) 3 years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct giving rise to the complaint;*

*(iii) such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period.”*

The Complainants entered into an interest only arrangement on **19 January 2009**. The Complainants state that they were mis-informed about the interest only arrangement they were entering into. It was their understanding that, at the end of the interest only period, the interest portion of their mortgage would be fully paid and the amount outstanding would only be the capital portion of their mortgage. The evidence in this complainant indicates that the Complainants became aware that this was not the case, on or around **15 April 2014**. The Complainants made a formal complaint to this Office in **October 2018**.

As this element of the complaint was not made within a period of 6 years of the date of the conduct complained of, or within 3 years of the Complainants becoming aware of the issue, this aspect of the matter falls outside the jurisdiction of the FSPO, on the basis of the evidence made available.

### **The Complaint for Adjudication**

The complaint is that the Provider failed to provide the Complainants with sufficient notice that their interest only arrangement was coming to an end and failed to offer the Complainants alternative repayments options, when the interest only arrangement ended.

### **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.

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A Preliminary Decision was issued to the parties on 14 January 2020, 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 additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

## **Analysis**

### ***Delay in Expiring Interest Only Arrangement***

The Complainants entered into a mortgage loan facility with a financial services provider in **May 2004**. On **19 January 2009** the Complainants entered into an arrangement with this financial services provider to make their loan an “interest only” facility for five years. This arrangement was due to expire in **April 2014**.

I note from the documentary evidence available, that it is clear that the Complainants agreed in 2009 that on the expiry of this arrangement, the Complainants’ repayments were to revert to capital and interest for the remainder of the term of the loan. The capital and interest repayments were to be calculated by reference to the

*“... balance outstanding, the interest rate applicable and the term remaining at that time.”*

Prior to the expiry of the interest only arrangement, the financial service provider merged with the current Provider against which this complaint is made.

I am satisfied from the evidence in this complaint that the Complainants were aware that their interest only arrangement was due to expire in or around **March/April 2014**. The Complainants acknowledge that they realised in **March 2014** that their interest only arrangement had come to an end and contacted the Provider by telephone on **21 March 2014** to find out what their repayments were going to be. Furthermore, in a submission to this Office dated **21 June 2019**, the Complainants state that *“In 2014 we remarked [to] ourselves that the interest only period had expired and contacted the bank in good faith to alert them of this.”* On **24 April 2014** the Provider wrote to the Complainants to inform them that their interest only arrangement had ended and that the new monthly repayments of €1,731.77 were due from **27 April 2014**.

The Provider acknowledges that there was a delay in expiring the Complainants’ interest only arrangement and informing the Complainants of its impending expiry. While I accept that the Provider did not give the Complainants advance notice that their interest only arrangement was due to end and also delayed in expiring the Complainants’ interest only

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arrangement, there is no evidence to suggest that the Complainants were adversely affected by the Provider's delay. I note that an ARA was agreed between the parties in **May 2014** and this was backdated to include the **April 2014** repayment so as not to prejudice the Complainants' position. This backdating of the ARA was executed by way of an arrears adjustment of €756.77 on **26 May 2014**.

In its submissions to this Office dated **26 July 2019** the Provider states that “[a]s a gesture of goodwill and in an attempt to resolve matter the [Provider] would like to increase the offer of redress mentioned in our resolution letter from €150 to €500.”

I take the view that this goodwill gesture offered by the Provider is a reasonable sum of compensation for the delay on the part of the Provider regarding the expiry of the Complainants' interest only arrangement, particularly given the action taken by the Provider in May 2014, to backdate the ARA. It will be a matter for the Complainants to decide if they wish to accept this offer from the Provider, but if they wish to do so, the Complainants should contact the Provider expeditiously, as the Provider cannot be expected to hold that offer open indefinitely.

#### ***Failure to Offer Alternative Repayment Options***

The Complainants state that the Provider failed to provide them with alternative repayment options following the expiry of the interest only arrangement. 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 or an alternative repayment arrangement which is a matter for the Provider and the Complainants and does not involve this Office whose role is 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.

It is important to bear in mind the that a term of the interest only arrangement was that the Complainants' loan would revert to full capital and interest repayments when it expired and this is what occurred in **April 2014**. When the interest only arrangement expired, the Provider was not obliged to offer the Complainants any alternative repayment options. This was entirely a matter within the commercial discretion of the Provider.

The Provider states it was not aware prior to **30 April 2014** that the Complainants would not be in a position to make their capital and interest repayments. I note that two telephone conversations took place between the First Complainant and the Provider prior to this date, on **21 March 2014** and **15 April 2014** respectively. While the Provider has not furnished this Office with recordings of these conversations, I note that the Complainants have not identified precisely when they made the Provider aware of their financial difficulties. However, irrespective of whether or not the Complainants made the Provider aware of their financial difficulties prior to **30 April 2014**, the point remains that the Provider was not obliged to offer the Complainants any alternative options once the interest only arrangement ended as it had been agreed that when this arrangement ceased, the

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Complainants' repayments were to revert to capital and interest for the remainder of the term of the loan. Once the Provider was advised of the Complainants' position, which I accept was no later than **30 April 2014**, an ARA was in fact then agreed and put in place following the telephone conversation which took place on **9 May 2014**. I note that there is no evidence to suggest that the Complainants were dissatisfied with the terms of this ARA.

In a submission to this Office dated **31 May 2018**, the Complainants assert that when making the Provider aware of their difficulty making their repayments, they believed that a stay on their repayments was requested from the Provider during a phone call around this time. This general submission is lacking in specific detail as the Complainants have not indicated the date on which the request was made, to whom it was made, or the Provider's response to the request. In response, the Provider advises that it does not have any written record of any such request having been made. There is no documentary evidence, either from the Complainants or the Provider, to suggest a request for a stay/moratorium was made.

While the Provider has only furnished a recording in respect of one of the telephone conversations which took place between the parties on **9 May 2014** (where the question of a stay/moratorium was not discussed), I take the view that while it is possible that a request for a stay/moratorium could have been made by the Complainants, there is insufficient evidence to support this contention. In any event, I note that the ARA agreed between the parties following the call on **9 May 2014** did not include a stay/moratorium and even if such a request was made, it was entirely at the Provider's discretion whether or not to grant or refuse a stay/moratorium. The absence of any such form of forbearance was not highlighted or questioned by the Complainants in 2014 and I note that the first assertion that such a request was made in 2014, appears to be in the Complainants' submissions on **31 May 2018**.

Taking the above matters into consideration, I do not accept that the Provider's conduct complained of in respect of these matters was unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants. Accordingly, I do not consider that it would be reasonable to uphold this complaint.

### **Conclusion**

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** 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**

5 February 2020

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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.

