



<b><u>Decision Ref:</u></b>	2020-0100
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Maladministration (mortgage)
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns the Complainants' six mortgage loan accounts, held with the Provider.

The complaint is that the Provider failed to honour the arrangement the Complainants state that was set by it in relation to each of the mortgage loan accounts in **2018** and that it proceeded to pass the Complainants' mortgage loan accounts to a third party service provider.

**The Complainants' Case**

The Complainants submit that the mortgage loan accounts in question pertain to six buy-to-let properties purchased by them over approximately a seven year period and are categorised as interest only mortgage loan repayment accounts with the capital balance to be paid at the end of the term of each of the mortgage loan accounts.

The Complainants submit that on **9 June 2018**, prior to the expiry of the interest only period on the mortgage loan accounts, they submitted up to date Standard Financial Statements, for the mortgage loan accounts, as requested by the Provider. The Complainants submit that they supplied all the information requested by the Provider, pertaining to the Standard Financial Statements, within a timely manner.

The Complainants submit that on **29 June 2018**, the Provider's representative who was assigned to their mortgage loan accounts, contacted them with two new repayment options for their consideration. The Complainants submit that these options were as follows:

- (i) to extend the six mortgage loan accounts for a further 25 years with full capital and interest rate repayments; or
- (ii) to sell all the properties and refinance the shortfall.

The Complainants submit that they contacted the Provider on **11 July 2018**, to confirm that they were proceeding with the full capital and interest rate repayment over the 25 year term extension option.

The Complainants submit that on **17 July 2018**, the Provider contacted them to inform them that their mortgage loan accounts were being sold to a third party entity and that it no longer had any dealings with the account. At this point the Complainants submit that the offer which had been put forward by the Provider was withdrawn. The Complainants submit that the Provider's representative verbally confirmed to them on this phone call and on a prior voicemail message that he had offered them a 25 year term extension, for all six mortgage loan accounts, to include full capital and interest rate repayments.

The Complainants submit that the third party service provider which took over the management of each of their mortgage loan accounts had no interest in making any arrangement with the Complainants. The Complainants submit that the Provider entered into a negotiation process concerning each of their mortgage loan accounts, without any intention of concluding an arrangement.

The Complainants submit that in **2013**, they underwent a similar alternative repayment arrangement with the Provider, through a different representative. The Complainants submit that at that time the Provider's representative's initial proposal, which was agreed to by the Complainants, was put into place by the representative, without the need for further credit approval by the Provider.

The Complainants submit that the review of their mortgage loan accounts in **2018** was handled in a similar informal manner to the ARA process in **2013**. The Complainants submit that it was therefore, their understanding that a full analysis of each of their mortgage loan accounts and their affairs was already confirmed by the Provider, prior to the representative putting forward the two options, for their consideration.

In response to the Provider's formal response to the complaint, the Complainants submit that the reference to the proposal having to be referred to a credit department by the Provider is a *"blunt tool used by the [Provider] on this occasion to disconnect from commitments it has made to its customers"*.

By way of email dated **24 September 2019**, the First Complainant submitted an audio recording dated **17 July 2018** between the First Complainant and the representative of the Provider. In these recordings the First Complainant states that the representative of the Provider makes the following statements in relation to future dealings with the third party service provider:

*“You can tell them that you were in discussion with me, and at the time I was prepared to look at €2875 (pm), that is within our policy for investment properties only if you could go back on full repayment with that term extension (25 years), and I was offering that, it’s on recorded voicemail, I certainly would not deny that I said that to you, and you can say to them, that, that is what I was looking for you as a means to stop you selling properties, and I have no problem with that.”* (emphasis added)

Ultimately, the Complainants want the Provider to revert to the arrangement which they submit it set out to them in **2018**, pertaining to each of the mortgage loan accounts in question.

### **The Provider’s Case**

By way of response, the Provider submits that the Complainants previously held six residential investment property mortgages with the Provider. The Provider states that these six mortgage accounts are no longer with the Provider and were transferred to a third party Provider in **February 2019** under the terms of a loan sale.

The Provider states that the alternative repayment arrangements that were agreed on the accounts previously were in place up to **27 July 2018**. The Complainants’ Standard Financial Statement was received by the Provider on **21 June 2018**. The Provider wrote to the Complainants on **23 June 2018** to advise that further supporting information was required before a financial assessment could be made. A representative from the Provider contacted the First Complainant on **25 June 2018** to advise of receipt of information; however he advised that he was unavailable until **29 June 2018** and advised that he would contact the First Complainant then.

On **29 June 2018**, the representative contacted the First Complainant and advised that the only possible options were:

- (i) to extend the six mortgage loan accounts for a further 25 years with full capital and interest rate repayments; or
- (ii) to sell all the properties and refinance the shortfall.

The Provider claims that its representative stated during this phone call that any proposals would need to be run by its credit department for approval. The Provider also states that at this point in time, the representative of the Provider was not aware of the Provider's plan to pass the properties to the third party service provider to manage.

The Provider states that on **11 July 2018**, the First Complainant attempted to contact the representative of the Provider unsuccessfully. The representative of the Provider sent a text message to the First Complainant acknowledging the missed call and stating that he would contact the First Complainant on **17 July 2018**.

On **13 July 2018** a letter issued to the Complainants advising that their mortgages were to be managed by the third party service provider going forward from **23 July 2018**.

On **17 July 2018**, the representative of the Provider contacted the First Complainant. He advised that the mortgages were being moved to the third party service provider from **23 July 2018**. The representative of the Provider told the First Complainant that he would need to deal with the third party service provider in future and it was not possible to extend the term of the loans prior to the accounts being transferred.

The Provider rejects the statement of the Complainants that the Complainants accepted an offer that was subsequently withdrawn. The Provider states that it was clear in the phone conversation between its representative and the First Complainant that any proposal would need to be approved by the Provider's credit department. The First Complainant stated that if approval is granted, written confirmation is provided to a customer to confirm this. The Provider states that no written confirmation of an approved proposal was provided to the Complainants. Furthermore, the Provider states that even had the Complainants been successful in contacting the Provider's representative on **11 July 2018**, the representative would still have had to put a proposal together, which would usually take a day or two, and then that proposal would have been submitted to the credit department for review. The Provider states that that credit decision would not have been approved prior to the confirmation that the accounts were being transferred to the third party service provider.

The Provider states that it was a coincidence that the accounts were up for review at the time of the transfer to the third party service provider.

The Provider states that all of the mortgage loans in question were draw down on a capital and interest repayment basis. The Provider notes that the accounts were transferred to interest only for a number of years prior to **July 2018** but this was not to be applicable for the duration of the mortgage terms. The Provider states that this was known by the Complainants given the periodic correspondence between the parties wherein the Complainants sought extensions of the interest only arrangements. The Provider states that the annual mortgage statements issued to the Complainants listed the repayment method on the mortgage loan accounts as "interest only" because that was the repayment method at the time those mortgage statements issued. The Provider re-iterates that the mortgage accounts were not drawn down as interest only mortgages for the life of the mortgages.

The Provider submits that it does not have any record of an agreement being put into place prior to the six mortgage loan accounts being passed to the third party service provider.

The Provider made an offer of €100 to the Complainants as a goodwill gesture in recognition of the distress and inconvenience the subject of the complaint has caused to them.

### **The Complaints for Adjudication**

The primary complaint for adjudication in this instance is that the Provider failed to honour an arrangement the Complainants state was set by it in relation to each of the mortgage loan accounts in **2018** and that it proceeded to pass the Complainants' mortgage loan accounts to a third party service provider.

### **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 19 February 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, I set out below my final determination.

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In relation to jurisdiction, the Complainants have provided evidence that the annual turnover of their rental operation is less than €3 million per year. Therefore, they fall within the definition of consumers for the purpose of taking a complaint to this Office.

I note that all parties to the complaint are in agreement that on **29 June 2018**, the Provider's representative who was assigned to the Complainants' mortgage loan accounts, contacted the Complainants with two new repayment options for their consideration. These options were as follows:

- (i) to extend the six mortgage loan accounts for a further 25 years with full capital and interest rate repayments; or
- (ii) to sell all the properties and refinance the shortfall.

I note that the Complainants contend that these options constituted a firm offer to them and they submit that they accepted this offer, or certainly attempted to accept this offer, prior to the transfer of the loans to a third party service provider. However, I accept that even had the Complainants succeeded in making contact with the Provider's representative prior to the transfer of the loans to a third party service provider, that representative would still have had to put a proposal together and then that proposal would have to have been submitted to the Provider's credit department for review. In other words, I accept that the options discussed with the Complainants for repayment were only options and did not constitute a firm offer by the Provider, capable of being unilaterally accepted by the Complainants in the absence of approval from the Provider's credit department. This is supported by the audio recording of a telephone conversation dated **29 June 2018** wherein a representative of the Provider stated to the First Complainant that *"everything I say to you has to be approved by credit"* and further by the audio recording of a telephone conversation dated **4 October 2018** wherein the same representative of the Provider stated to the First Complainant that the comments made by him in relation to the restructuring of the loan were suggestions/options rather than offers.

I also accept that the annual mortgage statements issued to the Complainants by the Provider listed the repayment method on the mortgage loan accounts as "interest only" because that was the repayment method at the time those mortgage statements issued. It is clear from the evidence furnished to this Office during the course of this complaint that the mortgage accounts were not drawn down as interest only mortgages for the life of the mortgages.

Furthermore, I accept that the evidence furnished to this Office, and in particular, the loan documentation and terms & conditions therein, clearly establishes that the Provider is entitled to transfer the Complainants' loan accounts to a third party service provider to manage said loans.

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While I understand the upset and frustration the Complainants feel, I must accept that the Provider was not bound to accept the repayment options discussed between its representative and the Complainants and was furthermore entitled to transfer the Complainants' loans to a third party service provider and accordingly, I do not 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**

12 March 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.**