



<u>Decision Ref:</u>	2020-0376
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Maladministration (mortgage)
<u>Outcome:</u>	Substantially upheld

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

The Complainant entered into two loan agreements with the Provider in **2007 (Loan A and Loan B; together, the Loans)**. The Loans were subject to interest only repayments for the first 5 years. In **June 2013**, the Complainant entered into a 3 years interest only arrangement in respect of the Loans. In **December 2014**, the Provider approved a restructure agreement which involved the capitalisation of the arrears on the Loans. The Complainant understood that repayments following the capitalisation would be on an interest only basis for the remaining terms of the Loans. The Provider states this is not the case and that repayments were on a capital and interest basis following the expiry of the interest only arrangement.

The Complainant's Case

The Complainant's solicitors explain in a letter dated **15 June 2018** that the Provider has failed to respond to a large amount of the Complainant's correspondence and have repeatedly asked that he complete a Standard Financial Statement (**SFS**) which the Complainant has duly done.

On **15 March 2017**, the Complainant made a formal complaint to the Provider. A Final Response letter was received on **16 June 2017**. On **27 February 2018**, the Complainant submitted an appeal to the Provider's Arrears Support Unit (**ASU**) and on **17 April 2018**, the Provider informed the Complainant that his appeal had been declined and the original decision upheld. The Complainant was also advised to complete a further SFS. It is stated that the Complainant "... has been more than patient throughout this process having been given the same response each month that his matter is still being investigated and to expect a response at a later date."

On **7 June 2018**, the Provider issued a Final Response letter rejecting the Complainant's letter of **27 February 2018**.

It is stated the Complainant *"... wishes to contest the decision made by [the Provider] and requests that they acknowledge their mistake and return both mortgages to an interest only plan as set out in [the Complainant's] Letters of Offer ..."*

In a further letter prepared by the Complainant's solicitors dated **18 December 2018**, they advise that this complaint is based on the fact that the Complainant was misled through correspondence and communication with the Provider with respect to the interest only term of the Loans. It is explained that the Complainant's initial position is set out in its letter dated **15 June 2018**.

The Complainant's solicitors, in outlining the Complainant's position, state that the arrangement entered into in **2013** which allowed for a 3 year interest only period was not superseded by the capitalisation agreements in **2014**, which were to last for the remaining term of the loan. Referring to the second pages of the loan offers, *Letter of Offer: Capitalisation*, and dated **1 December 2014**, it is stated the Complainant's monthly repayments were €349.24 and €436.24 for the duration of the loans.

The Complainant was told during a telephone conversation on **7 November 2016** that any correspondence advising that the 3 year interest only period was coming to an end were automatically generated letters and the Complainant could fill out the SFS to consider alternative options but he did not have to accept them as an alternative to his current arrangement.

In a further telephone conversation on **8 December 2016**, the Complainant was told that he could ignore the Provider's letters and consequently, the Complainant began to disengage with the Provider and ignore further correspondence.

It is submitted that the Complainant's assertions to the Provider that the interest only periods were to last for the terms of the loans were *"... neither corrected nor explained to him by [the Provider's] representatives in such telephone conversations."* It is also stated that the Complainant *"... failed to explore whether the interest only period could be extended as he had been informed by [the Provider] that the interest only period would continue."*

As outlined above, the Complainant's solicitors advise that subsequent complaints were met with continuous delays, and many letters received no reply. It is further outlined that Loan B has been included in a loan sale which was notified to the Complainant on **2 August 2018** *"... which could have been avoided had he been correctly informed."*

In resolution of this complaint, the Complainant *"... seeks a return to interest only and a retrospective application of same."*

The Provider's Case

Restructure

The Provider states the accounts to which this complaint relate are in respect of two residential investment properties. The Provider advises Letters of Offer *Capitalisation of Arrears, 3 Years Interest Only & Term Extension* issued to the Complainant on **13 May 2013** in respect of Loan A and on **14 May 2013** in respect of Loan B. The Complainant signed and returned the relevant documents, however, it was noted the incorrect amount was entered under the payment details section and the Complainant's signature had not been witnessed. The Provider contacted the Complainant on **11 June 2013** to notify him that documentation had been reissued with the correct amounts and that his signature needed to be witnessed.

On **10 June 2013**, the Provider issued a Letter of Offer to the Complainant offering *Capitalisation of Arrears, 3 Years Interest Only & Term Extension*. The Provider has cited extensively from these letters. The Complainant signed and dated the documentation on **24 June 2013** agreeing to the offer. The 3 year interest only period was applied to Loan B from **14 July 2013** and Loan A from **12 August 2013** as can be seen from the Provider's letters dated **2 July 2013** and **6 August 2013**.

The Provider submits that the documentation issued to and accepted by the Complainant on **24 June 2013** clearly detailed that the offers were capitalisation of arrears, 3 years interest only and a term extension. It states that these letters related to a restructure agreement and did not alter the conditions set out in Letters of Approval. These letters clearly stated the Provider's conditions in relation to interest only loans were still applicable as set out in the Special Condition of each loan: clause A in Loan A and clause 7 in Loan B.

The Provider states correspondence issued to the Complainant on **2 July 2013** and **6 August 2013** advising him that the amendments contained in the Letter of Offer had been completed.

Capitalisation

By **December 2014**, arrears stood at approximately €1,390 on Loan A and €1,175 on Loan B. The Complainant was advised by one of the Provider's agents on **15 May 2014** that as repayments had not been made on Loan A, Loan B and a third loan account, (**Loan C**), the Provider would not be able to split Loan C. The Provider's agent advised that Loan A and Loan B had been restructured the previous summer and the reasoning for the trial period on Loan C was to ensure the Complainant could meet the repayments on all three loan accounts prior to implementing a split loan on Loan C. The Complainant was asked to complete an SFS to determine if it was possible to reconsider implementing a split loan.

The Complainant completed an SFS on **27 May 2014**. Following the assessment and to facilitate the splitting of Loan C, the Provider offered to capitalise the arrears on Loan A and Loan B following a successful 6 month trial period.

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The Provider states that the correspondence issued to the Complainant on **1 December 2014**, was clearly stated to be *Letter of Offer: Capitalisation*. The Provider outlines this letter, stating it specifically related to capitalisation and does not refer to the interest only period applied in **2013** nor was there any reference to extending the interest only period for the duration of the Loans. The Provider submits the original terms of the Loans were set out in the Letters of Approval issued to and accepted by the Complainant prior to drawdown. The original term was extended by agreement in **June 2013**.

Referring to the *Restructure Agreement: Capitalisation*, the Provider points out that the comparison of *Without Restructure Agreement* and *With Restructure Agreement* detail the amount of the full payments at the current interest rate only arrangement amount. It states that it was also *strongly recommended* that the Complainant seek independent legal and financial advice. The Provider contacted the Complainant by telephone on **11 December 2014** to query if the documentation had been received and if he had any questions. The Provider states that the Complainant advised the Provider's agent that he was happy with everything.

A letter dated **22 December 2014** issued to the Complainant advising that Loan B had been restructured. While the letter advised of the remaining term, the Provider submits nowhere does it state the monthly repayment amount is applicable for the remaining term of the loan nor, it argues, does it state the loan would remain on interest only repayments for the term of the loan. The Special Conditions contained in the Letter of Approval continued to apply.

Expiry of Interest Only Arrangement

On **12 July 2016**, prior to the expiry of the 3 years interest only period, the Provider issued correspondence to the Complainant advising that the interest only facility was due to expire on **1 August 2016**. This letter advised the Complainant:

"One of the conditions which you agreed to when signing your 'Alternative Repayment Arrangement' is that upon the expiry of the 3 year Interest Only period, your account will revert to monthly Capital and Interest repayments ...

It is important that you now engage with us to arrange completion of an update Income & Expenditure review. ..."

The Provider continues by quoting extensively from this letter.

Telephone Conversations

The Complainant contacted the Provider by telephone on **7 November 2016** querying why the Loans were being amended to capital and interest. The Provider *"... acknowledges that the Complainant was incorrectly advised during this telephone call that the Bank were completing a review of mortgages with interest only repayments."*

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During a subsequent telephone call on **8 December 2016**, “... *the Bank appreciates that the agent should have verified the details before agreeing with the Complainant that he could ‘ignore those letters’ and would like to apologise for any confusion that arose as a result. The Bank acknowledges that misinformation was provided to the Complainant and would like to apologise for same.*” The Provider explains that it offered the Complainant €1,000 for its service failing by letter dated **2 August 2019** but did not receive a response.

The Provider explains that several attempts were made by the Portfolio Manager, in particular on **14 December 2014**, and other agents to contact the Complainant to discuss the matter, however, they were unable to reach the Complainant.

Failure to Respond to Correspondence

In response to the Complainant’s contention that he did not receive a response to letters dated **19 January 2017** and **22 February 2017**, the Provider states correspondence was received from the Complainant on **20 January 2017** and this was forwarded to the relevant section. On **26 January 2017**, a letter issued to the Complainant advising him of the arrears and provided a contact number should he have any queries. The Provider explains further correspondence issued on **14 and 15 February 2017**.

On **20 and 24 February 2017**, the Provider received further correspondence from the Complainant which was forwarded to the relevant section. The Provider states that telephone contact was attempted on **28 February 2017** in relation to the Complainant’s recent correspondence.

The Provider asserts that prior to receipt of the above letters, it had made several attempts to contact the Complainant to discuss his accounts and an appointment to complete an SFS was agreed. This was subsequently cancelled by the Complainant. The Provider has outlined these contacts in its submissions. The Provider states that it “... *appreciates that it should have responded to the Complainant’s letter received on 20 January 2017 and apologises for this service issue.*” The Provider states it offered the Complainant €1,000 on **2 August 2019** for this service issue but no response was received.

Formal Complaint

The Provider explains that it received a formal complaint on **20 March 2017**. This was acknowledged by the Provider on **24 March 2017**. Further correspondence issued to the Complainant on **18 April 2017** advising that the complaint was still being investigated. Similar correspondence issued on **17 May 2017** and **15 June 2017**. A Final Response letter issued on **16 June 2017**.

The Complaints for Adjudication

The complaints are that the Provider:

1. Misrepresented, from around **2014**, that Loan A and Loan B were subject to interest only repayments for the remaining terms of the Loans; and
2. Failed to reply to the Complainant's communications in a timely fashion or at all.

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 2 October 2020, outlining my preliminary determination 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.

The Loans

By Letter of Approval dated **15 March 2007**, the Provider agreed to advance the sum of €440,000 to the Complainant for a term of 25 years, Loan A. The monthly repayments under the loan were €1,686.87.

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The Special Conditions set out the repayment terms as being interest only for the first 5 years, stating as follows:

“A. [The Provider] will accept monthly repayments, as set out in the Letter of Approval, representing repayment of interest only ... for the first five years from the date of cheque issue or such other period as [the Provider] may decide.

[The Provider] reserves the right to review the deferral of the repayment of principal at any time during the term of the loan, including the first five years of the term and may require the applicant to cease the interest only repayment and require the repayment of principal and interest and the applicant will immediately arrange to pay the revised monthly repayment comprising the repayment of principal and interest calculated over the remaining term so that the principal and interest will be discharged within the existing term of the loan.

B. The principal and interest will, in such circumstances, be repaid under a payment schedule based on the amount of the loan outstanding at the date of review, the remaining term of the loan and the interest rate applicable at that time ... If no review is made during the term of the loan or if a review or reviews are made which result in the continuation of the deferral of payment of principal for a further period or periods, a payment equal to the principal ... must be repaid at the expiry date of the term or on the redemption date of the loan, if earlier. ...”

The Provider wrote to the Complainant again on **11 April 2007**, advising:

“1. The monthly instalment referred to above represents the monthly interest payable under this loan. The repayment of interest only on the loan will be subject to review in accordance with the special conditions referred to in the Letter of Approval.”

By Letter of Approval dated **13 July 2007**, the Provider agreed to advance the sum of €354,500 to the Complainant for a term of 25 years, Loan B. The monthly repayments under the loan were €1,506.62 and expressed to be on an interest only basis. Clause 7 and clause 8 of the Special Conditions are essentially the same as those outlined above in respect of Loan A, and state that interest repayments were on an interest only basis for the first 5 years.

The Provider wrote to the Complainant on **27 August 2007**, advising:

“1. If you have taken out an interest only loan, the monthly instalment referred to above represents the monthly interest payable under this loan. The repayment of interest only on the loan will be subject to review in accordance with the special conditions referred to in the Letter of Approval.”

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The Interest Only Arrangement

The Provider wrote to the Complainant, separately in respect of Loan A and Loan B on **13 May 2013**. These letters state:

“Letter of Offer: Capitalisation of Arrears, 3 Years Interest Only & Term Extension

Further to your recent telephone conversation with us, I am pleased to enclose documentation regarding the option to capitalise your arrears, avail of a 3 year interest only facility and term extension on your mortgage account.

New Payment Amount Due

Please be aware that your monthly repayment will change and you will pay more interest over the term of your loan as a result of capitalising your arrears and extending your term.

...

*Please be advised acceptance of this offer will **not** affect your mortgage rate.*

...

Next Important Steps

We recommend that you receive independent legal and financial advice before you accept this offer. ...”

The Agreement to Capitalise Outstanding Arrears, Make Interest Only Payments for a Period of 3 Years and Extend the Mortgage Term document enclosed with the Provider’s letter states:

“Whereas:

- A. *Your current method of repaying your mortgage is by monthly repayments of capital and interest at the current interest rate of 1.85% and subject to the mortgage conditions.*
- B. *We have offered:*
 - i) *to change the method of monthly payment from repayments of capital and interest to payments of interest only for a period of 3 years starting from the date on which your first interest only payment becomes due under this Agreement and to extend the mortgage term for the period specified in this agreement.*
 - ii) *to add any arrears to the capital outstanding on your loan.*

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- C. *You have agreed to these changes and agree to make the payments in the manner set out in this Agreement.*

Now This Agreement Witnesses:-

1. *That in consideration of [the Provider] agreeing to capitalise current arrears, extend the mortgage term and to change the existing repayment arrangement as already described, you agree:*

a) ...

b) *To make monthly repayments of interest only as may be varied from time to time in accordance with your mortgage conditions ... for a period of 3 years from the date the first interest only payment become due under this Agreement.*

c) ...

d) *On expiry of the 3 year period and for the remainder of the term of the mortgage as extended (unless agreed otherwise), that the method of repayment will be by way of monthly repayments of capital and interest."*

An *Important information regarding Interest Only payments* document was also furnished with the Provider's letters. This details, amongst other matters, what will happen on the expiry of the 3 year interest only arrangement and potential implications of such an arrangement. An identical letter was sent to the Complainant again on **14 May 2013** in respect of Loan B.

Letters in essentially identical terms, and enclosing the same documentation, were issued to the Complainant on **10 June 2013** in respect of both loans. The only apparent difference between the two documents is the applicable interest rate. I understand these letters were issued due to errors on previous correspondence and the fact the Complainant's signature was not witnessed. The Complainant signed the agreement enclosed with Provider's letter of **10 June 2013** in respect of Loan B on **24 June 2013**. A signed acceptance of the agreement in respect of Loan A does not appear to have been furnished.

Moratorium

The Provider wrote to the Complainant separately in respect of Loan A and Loan B on **18 June 2014** to advise him that a 6 month moratorium had been approved which would result in monthly repayments of €512 and €410 for the duration of the respective arrangements. These were accepted by the Complainant on **26 June 2014**.

The Provider wrote to the Complainant on **18 November 2014** in respect of Loan A to advise him that this arrangement was due to expire on **12 December 2014**. A similar letter was issued on **20 November 2014** in respect of Loan B, with that arrangement expiring on **14 December 2014**.

Capitalisation of Arrears

The Provider wrote to the Complainant on **1 December 2014** in respect of the Loans, following an assessment of his arrears, to inform him that the Provider had approved the capitalisation of the arrears. These letters state:

“

Letter of Offer: Capitalisation

Further to our recent assessment, I am pleased to advise you that we have approved you for a Capitalisation. This means that we will spread your arrears (including any interest owing) of [arrears] over the remaining term of your loan.

New Repayment Amount Due

Please be aware that your monthly repayment will increase and you will pay more interest over the term of your loan as a result of us capitalising your arrears.

...

Conditions of a Capitalisation

If you agree to your arrears being capitalised, you will be required to meet certain conditions which are outlined in the enclosed “Capitalisation Conditions”. These include:

- ...
- ...
- *You must pay your monthly capitalised repayment amount when due.*

...

Important Next Step

We strongly recommend that you receive independent legal and financial advice before you accept this offer. ...”

The Complainant accepted the capitalisation agreements by signing the enclosed *Restructure Agreement: Capitalisation* on **10 December 2014**. The Provider’s *Capitalisation Conditions* were referred and attached to this document.

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These conditions state:

- “a) ...*
- b) Following the Capitalisation, the monthly repayment will be calculated to reflect the interest rate, balance outstanding and remaining term of the loan.*
- ...*
- d) You confirm that you have received independent legal and financial advice or have been given an opportunity to obtain such advice before signing the Restructure Agreement form.*
- ...*
- f) You acknowledge that your mortgage repayments will increase following the Capitalisation to ensure that the mortgage is still paid within the original agreed term.*
- ...”*

The Provider wrote to the Complainant on **22 December 2014** advising him of the amount capitalised in respect of Loan A and Loan B, and the revised instalment amounts calculated at the current interest rate.

Expiry of Interest Only Facility

The Provider wrote to the Complainant on **12 July 2016** to advise him that the interest only facility on each loan was due to expire on **1 August 2016** and, on expiry, repayments would revert to capital and interest repayments. The Provider wrote to the Complainant on **1 December 2016** to notify him that the Loans' repayments had reverted to principal and interest.

Following the expiry of the interest only arrangement, a number of letters were sent to the Complainant advising him that the direct debits on the loan accounts were returning unpaid. Separate letters regarding the accumulation of arrears on these accounts were also issued.

Correspondence

The Complainant wrote to the Provider on **19 January 2017**, enclosing a copy of the letters dated **1 December 2014** and stated:

“On 12th and 14th January 2017 direct debits were bounced because the incorrect amounts were sought.

Mortgage account number [Loan B] correct amount is 337.87.

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Mortgage account number [Loan A] correct amount is 422.65.

This is in accordance with agreements I have with bank since December 2014. ...

Please rectify this error and the arrears caused by it."

While the Complainant received three letters from the Provider following this, none appear to be specifically in response to or address the above letter.

The Complainant wrote to the Provider again by letter dated **16 February 2017**, referring to his previous letter and highlighting the same error. The Complainant wrote to the Provider on **22 February 2017**, stating Loan A and Loan B were permanently restructured to interest only facilities for the remaining terms of both loans in **2014** and requested that the Provider "[p]lease sort out this error saying I owe arrears which are not owed."

A formal complaint was made by letter dated **15 March 2017**. Referring to the two loan accounts, the Complainant explained that he received letters advising him that the interest only arrangement was coming to an end.

However, the Complainant contacted the Provider on "... numerous occasions ... and was told to ignore these letters are there were mistake (sic)." The Complainant also stated that his letters of **19 January 2017** and **22 February 2017** had not been responded to.

On **19 April 2017**, the Complainant wrote to the Provider as follows:

"... Full repayments are interest only for term of mortgages and in conditions there is no review written in conditions. I look forward to hearing from you as soon as possible."

The Complainant wrote to the Provider on **16 May 2017** referring to a previous telephone conversation outlining his position:

"On November 7th 2016 and on 8th December 2016 I was told clearly on phone and its in your phone notes that mortgage is interest only.

On previous phone call person said she would write to [Provider's Agent] to explain that both mortgages were on interest only which she did not as was told on phone this was not done.

I have seen the notes on file for 7th November and 8th December 2016 that state I was told mortgages were interest only and its in the notes."

The Provider responded to the Complainant's letter of **15 March 2017** by way of a Final Response letter dated **16 June 2017**. In essence, the Provider referred the Complainant to clause (d) of the letters of **13** and **14 May 2013**, stating the interest only arrangement was for a period of 3 years unless agreed otherwise.

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The Provider also noted that arrears accumulated in **December 2013** and the Provider agreed to capitalise the arrears on **1 December 2014**. The Provider explained the capitalisation of the arrears was separate from the interest only arrangement.

The Provider wrote to the Complainant on **7 February 2018** to inform him that having assessed a previously submitted Standard Financial Statement, it was not in a position to offer any alternative repayment arrangements. The Complainant wrote to the Provider on **27 February 2018** requesting that the Provider review, amongst other loan accounts, Loan A and Loan B. The Complainant repeated the points made in previous correspondence regarding the interest only arrangement. This appears to have been received by the Provider on **6 March 2018**. The Provider wrote to the Complainant on **5 April 2018** advising that the matter was still being investigated and the Provider would be in contact with the Complainant as soon as the investigation was complete.

A Final Response letter dated **17 April 2018** was issued by the Provider advising the Complainant that its Appeals Board had reviewed his appeal and was upholding the decision of the ASU. The letter also advised that *"[a]ny additional queries raised in your letter of appeal are currently being investigated under separate reference number ... and a response will be issued to you in due course."*

The Provider wrote to the Complainant on **3 May 2018** to update him that it was still investigating the matter and that it hoped to be in a position to issue a response by **1 June 2018**. A letter in similar terms was issued to the Complainant on **1 June 2018** indicating that the Provider hoped to be in a position to issue a response by **2 July 2018**. A Final Response letter was issued on **7 June 2018**. In essence, the Provider referred to its previously issued Final Response letter dated **16 June 2017** as its response to the complaint. However, the Provider did explain the reason for the delay in responding to the Complainant was that it was experiencing an unprecedentedly high volume of complaints.

The First Complaint

The Complainant entered into the Loans with the Provider in **2007**; both of which were subject to interest only repayments for the first 5 years. The Complainant then entered into an agreement in **June 2013** regarding the capitalisation of arrears, a term extension, and interest only repayments. In terms of the interest only aspect of this agreement (the **Interest Only Arrangement**), it was agreed that the Complainant would make interest only repayments under the Loans for 3 years and, on the expiry of the 3 year period, repayments, unless agreed otherwise, would revert to capital and interest. A 6 month moratorium was agreed between the parties in **June 2014**.

The Provider informed the Complainant by letter dated **1 December 2014** and titled *Letter of Offer: Capitalisation* that it had approved the capitalisation of the arrears on the Loans. This letter enclosed a *Restructure Agreement: Capitalisation* and the *Capitalisation Conditions*. I will refer to the documents furnished to the Complainant on **1 December 2014** as "the Restructure Agreement".

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In essence, the Complainant appears to have understood that, pursuant to this Restructure Agreement, the arrears on the Loans were being capitalised on the basis that the Loans would be subject to interest only repayments for their remaining terms. It is not clear how the Complainant formed his understanding as to the operation of the Restructure Agreement. The Complainant may have understood the Restructure Agreement to be a continuation or extension of the Interest Only Arrangement or he may have simply relied on the Restructure Agreement itself.

Recordings of telephone calls have been furnished in evidence. I have considered the content of these calls.

During a telephone conversation which appears to have taken place in **March/April 2017**, the Complainant stated “... *these mortgages were restructured in 2014 ... and I was told that the two [location] ones [the Loans] were interest only for the term of the mortgage.*” The Complainant has not elaborated on this point in his complaint to this Office nor has he provided any details of who made this statement, when it was made nor is there any documentation to show this was the basis on which the Restructure Agreement was approved or being offered. The Complainant then explained that he was in contact with a financial adviser: “*I got a financial adviser to look at the mortgages, the contract and he said that I’m on interest only as well.*”

The Restructure Agreement was offered at a time when the Loans were subject to the Interest Only Arrangement. It is because of this that the new repayments under the Loans following capitalisation were calculated on the basis of interest only repayments. However, this did not mean the Provider was offering interest only repayments for the duration of the Loans. The monthly repayments were calculated in conjunction with the conditions applicable to the Loans at that time. The Interest Only arrangement was offered and accepted on the basis that it would last for 3 years unless otherwise agreed, and when it expired, repayments would revert to capital and interest.

Further to this, the documentation furnished to the Complainant in respect of the Restructure Agreement did not specifically reference the Interest Only Arrangement nor it did not state the Restructure Agreement was being offered on an interest only basis. Moreover, the Provider did not indicate to the Complainant that the Interest Only Arrangement was being extended to or incorporated into the Restructure Agreement. The Interest Only Arrangement and the Restructure Agreement were separate agreements. Additionally, having considered the telephone conversations between the Provider and the Complainant from **2014**, there is no evidence to suggest the Provider advised the Complainant otherwise.

The Restructure Documents

The documentation furnished to the Complainant in respect of the Restructure Agreement could have better explained the manner in which the monthly repayments were calculated, referenced the fact repayments were based on the Interest Only Arrangement, or that monthly repayments would revert to capital and interest repayments on the expiry of the

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Interest Only Arrangement meaning a change/increase in repayments on the expiry of that arrangement. In particular, the *Restructure Agreement: Capitalisation* in respect of Loan A states:

“Once the arrears have been capitalised your instalment will increase from €434.90 to approximately €436.24”*

In the *With Restructure Agreement*⁴ section it states:

<i>“Reduced Payments¹</i>	0	X	€0.00	=	€0.00
<i>Full Payments¹</i>	263	X	€436.24	=	€114,731.12
<i>Arrears</i>					€0.00
<i>Capital to be repaid</i>					€455,646.84”

The *Restructure Agreement: Capitalisation* in respect of Loan B is set out in a similar format.

The format of the *Restructure Agreement: Capitalisation* is likely to have created a misleading impression regarding the manner in which repayments under the Loans were calculated and repayable, particularly as *Reduced Payments* are zero and *Full Payments* are €436.24 for 263 months, being the full term on Loan A.

In such circumstances, the Provider should have explained that repayments under the Restructure Agreement were subject to the Interest Only Arrangement until this arrangement expired, and the effect this would have on monthly repayments. This is not clear from any of the documents furnished by the Provider in **December 2014**. While the Complainant stated that he obtained financial advice in respect of the Restructure Agreement, he has not given any details surrounding the precise nature of the advice received beyond an indication of his adviser’s understanding of the Restructure Agreement. However, this does not overcome the misleading nature of the *Restructure Agreement: Capitalisation* or the lack of adequate explanation regarding the operation of the Restructure Agreement in the specific context of the Complainant’s Loans. Accordingly, I accept that the Restructure Agreement was set out in a misleading and confusing manner.

Notwithstanding this, I do not accept that this means the Complainant’s Loans should be subject to interest only repayments for their remaining terms. The Restructure Agreement should be read in conjunction with the Interest Only Arrangement. This means that while the Interest Only Arrangement was in operation, the Complainant’s repayments were calculated on an interest only basis and would change once this arrangement ended. Furthermore, as noted above, it was not expressly stated that the Restructure Arrangement was being offered on an interest only basis.

Subsequent Telephone Contact

The Provider has furnished 68 telephone call recordings in respect of this complaint, 27 of which are voicemails. However, 44 of the recordings furnished by the Provider are undated. This has made it essentially impossible to determine the dates on which the various calls took place.

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The Complainant has taken issue with two calls that took place on **7 November 2016** and **8 December 2016**. These calls, while I am satisfied have been furnished by the Provider and are amongst the 44 undated calls, have not been labelled by the Provider. When the Provider is responding to a complaint to this Office and is providing call recordings, I would expect that such call recordings are dated or are identifiable by reference to the date on which they took place. It is disappointing that the two calls identified by the Complainant have not been labelled or dated by the Provider.

The Complainant explains he was told during a telephone conversation on **7 November 2016** that any correspondence advising that the 3 year interest only period was coming to an end were automatically generated letters and that he could fill out the SFS to consider alternative options but he did not have to accept them as an alternative to his current arrangement. The Provider states that the Complainant made contact on **7 November 2016** and queried why the Loans were being changed to capital and interest repayments. The Provider *"... acknowledges that the Complainant was incorrectly advised during this telephone call that the Bank were completing a review of mortgages with interest only repayments."*

During a further telephone conversation on **8 December 2016**, the Complainant states he was told that he could ignore the Provider's letters and consequently, the Complainant began to disengage with the Provider and ignore further correspondence.

In response to this, the Provider states it: *"... appreciates that the agent should have verified the details before agreeing with the Complainant that he could 'ignore those letters' and would like to apologise for any confusion that arose as a result. The Bank acknowledges that misinformation was provided to the Complainant and would like to apologise for same."*

I accept that the Complainant was given incorrect advice during these calls. However, even though this unfortunately occurred, it does not change the terms of the Restructure Agreement or the Interest Only Arrangement. The Restructure Agreement was entered into and accepted by the Complainant two years earlier. Further to this, the advice given during these calls does not appear to be the source or cause of the Complainant's understanding of the terms of the Restructure Agreement, but this would have compounded the Complainant's misunderstanding.

The Second Complaint

The Complainant wrote to the Provider on **19 January 2017** identifying an error in respect of the repayments under the Loans. While the Provider issued three letters to the Complainant subsequent to this, none are in relation to the Complainant's letter. The Complainant wrote to the Provider again on **16 February 2017** and **22 February 2017** before making a complaint to the Provider on **15 March 2017**. There is no evidence of these letter being responded to, either in the documentation furnished by the parties or section 4 of *Schedule of Evidence 2(b)* of the Provider's Formal Response which contains a list of correspondence between the parties. The Provider issued a Final Response letter 3 months later, on **16 June 2017**.

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The Provider wrote to the Complainant on **7 February 2018** to inform him that, having assessed a previously submitted Standard Financial Statement, it was not in a position to offer any alternative repayment arrangements. The Complainant wrote to the Provider on **27 February 2018** requesting that the Provider review, amongst other loan accounts, Loan A and Loan B. This letter appears to have been received by the Provider on **6 March 2018**.

The Provider wrote to the Complainant on **5 April 2018** advising that the matter was still being investigated and the Provider would be in contact with the Complainant as soon as the investigation was complete. It is not clear why it took one month for the Provider to acknowledge the Complainant's letter.

A Final Response letter was issued by the Provider on **17 April 2018**. The letter advised the Complainant that the Appeals Board had reviewed his appeal and was upholding the decision of the ASU. The letter also advised that *"[a]ny additional queries raised in your letter of appeal are currently being investigated under separate reference number ... and a response will be issued to you in due course."* The Provider wrote to the Complainant on **3 May 2018** to update him that it was still investigating the matter and that it hoped to be in a position to issue a response by **1 June 2018**. A letter in similar terms was issued to the Complainant on **1 June 2018** indicating that the Provider hoped to be in a position to issue a response by **2 July 2018**. A Final Response letter was issued on **7 June 2018**.

In essence, the Provider relied on its Final Response letter dated **16 June 2017** as its response to the complaint. While the Provider explained the delay in responding to the Complainant was due an unprecedentedly high volume of complaints, given the nature and extent of the Provider's response and its reliance the Final Response letter issued on **16 June 2017**, it is not clear why it took the Provider until **7 June 2018** to issue this letter.

It is clear that the Provider failed to respond to the Complainant's correspondence in a timely fashion or at all.

Compliance with the Consumer Protection Code

The Consumer Protection Code 2012 (CPC) requires that a regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

2.2 acts with due skill, care and diligence in the best interests of its customers;

...

2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;

...

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2.8 corrects errors and handles complaints speedily, efficiently and fairly;

4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following: a) the urgency of the situation; and b) the time necessary for the consumer to absorb and react to the information provided.

It is my view that the manner in which the Provider has dealt with the Complainant's loan accounts and subsequent requests for an explanation falls short of what is required of it under the CPC.

Goodwill Gesture

The Provider states in its submission dated **4 December 2019** that:

"Having reviewed the Complainant's complaint and in an effort to reach an amicable resolution, the Bank offered a gesture of goodwill in the amount of €1,000.00 for the service issues identified, however, the Complainant did not accept same. I wish to advise that this offer will remain open should the Complainant wish to accept same at a later date."

The Provider has acknowledged a number of shortcomings in respect of the service provided to the Complainant and offered compensation in the sum of €1,000. However, in light of the Provider's failures and their impact on the Complainant as set out above, I do not consider the offer of €1,000 to be a reasonable sum of compensation for the Provider's conduct as it does not address the totality of the matters complained of. In these circumstances, I substantially uphold this complaint and direct the Provider to pay a sum of €4,000 to the Complainant.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (b) and (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 Complainant in the sum of €4,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

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I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

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.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

28 October 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.