



<u>Decision Ref:</u>	2020-0377
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to implement payment terms Failure to process instructions Maladministration
<u>Outcome:</u>	Rejected

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

This complaint relates to joint mortgage accounts.

The Complainants' Case

The Complainants state that they took out a tracker mortgage with the Provider on 3 May 2006 for a period of 28 years. The maturity date for this mortgage is May 2034. The Complainants further state that they took out another tracker mortgage on 24 May 2006 in respect of the same property for a period of 28 years. The maturity date for this mortgage is also May 2034.

The Complainants state that they contacted the Provider in January 2009 and requested that an additional payment of €200 per month be paid by direct debit to both mortgage accounts. The Complainants states that this was with the intention of reducing the term of both loans. In total, €400 was paid by the Complainants per month and this continued over a period of 39 months until April 2012 when the additional payments were ceased. In total therefore, the Complainants state that they made €15,600 in additional payments to the Provider over the period referenced.

The Complainants state that in October 2018, they realised that the term period of both of their mortgages had not been reduced at all despite them paying an additional €15,600 for that purpose.

Consequently, they made a formal complaint to the Provider and the Provider responded stating that the overpayments were used to reduce the standard balance and not the maturity date. The Complainants state that this assertion by the Provider is factually incorrect.

The Complainants state that it was always their intention to reduce the term of the mortgage by making these extra payments. They stated that the basis of their complaint is that they requested the Provider to increase their mortgage payments with the legitimate expectation that these payments would ensure a reduction in the maturity date of the mortgage.

The complaint is that the Provider wrongfully, and through a mistake of fact or law, led the Complainants to believe that their mortgage overpayments were contributing towards the early maturity date of their mortgages and/or in the alternative, that the Provider failed to act on the instructions of the Complainants in this regard.

The Complainants state that as a consequence of the Provider's wrongful or negligent acts or omissions, they have suffered a loss of €15,600 in overpayments to the Provider. The Complainants are seeking that this amount is now used to reduce the maturity date of the mortgage as "originally requested". The Complainants are also seeking to recover any interest payments or other expenses that were lost to them and they are seeking compensation in recognition of the worry and concern that they have suffered in relation to this matter and the many hours taken to recover old and lost files in order to sustain the complaint.

The Provider's Case

It is the Provider's position that it did not receive express instructions from the Complainants that the voluntary overpayments were to result in reducing the maturity date of the mortgages. The Provider's position is also that it was not agreed that this would be the case. The Provider states, amongst other things, that overpayments can be used by customers to clear their loans early or alternatively, to use the overpayments to reduce the standard repayments. The Provider further states that as the Complainants' overpayments were removed or stopped in 2012, the overpayments made operated to reduce the mortgage balances and therefore the standard monthly repayments. The Provider asserts that it is not possible to reduce both the standard monthly repayments and also the maturity date.

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.

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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 6 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 Complainants, upon discovering that the term of their mortgages had not been reduced, wrote to the Provider on 17 October 2018. Amongst other things, they stated that they had presumed that the Provider had "carried out our request as originally set out and that our term loan would be reduced in due course accordingly".

When one examines the express wording of the letter dated 20 January 2009, that is, the letter instructing the Provider that the Complainants were going to commence making overpayments on each account, there is no wording in the letter that refers to a reduction in the maturity date of either mortgage. In fact, the latter expressly states that it is the Complainants understanding that the increases "will not in any manner or form affect or change the existing terms of our mortgages". On the basis of this letter from the Complainants to the Provider and in the absence of any other documentary evidence to the contrary, I have no evidence to support the Complainants' assertion that they had requested that their term loans would be reduced in due course on foot of the increased payments.

The Provider's position is that it is acted upon the instructions of the Complainants in their letter of January 2009. The Provider further states that the Complainants benefited from reduced contractual monthly repayments every time the mortgage rate is reduced/changed as the balance had been reduced each month by their incremental overpayment.

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The Provider states that as the maturity date for the mortgages did not change, at each rate recalculation the Complainants previous overpayments were taken into account in the lower capital balance which resulted in a lower contractual monthly payment.

The Provider further submits that it is ultimately a matter for the Complainants to approach the Provider if they wish to amend the terms of their mortgage accounts, including a request to amend the maturity date of the mortgage loans. The Provider asserts that it cannot reasonably be expected to anticipate that a customer may be considering a request to amend their mortgage loan account terms and conditions.

In the circumstances of this complaint, I find that the Provider's response to the complaint is reasonable. This is in light of the fact that the request to implement the increased payments was subject to no other terms of the mortgage being affected or changed. The letter of 20 January 2019 from the Complainants to the Provider was clear and unambiguous and provided express instructions to the Provider. There was no reference or request in the letter of 20 January 2009 that there was an expectation or a presumption that the increased payments would result in a reduction of the term of the mortgages.

For the reasons set out in this Decision, 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

28 October 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.

