



<b><u>Decision Ref:</u></b>	2021-0020
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Interest Only
<b><u>Conduct(s) complained of:</u></b>	Failure to implement payment terms Delayed or inadequate communication Increase in interest rate Maladministration (mortgage)
<b><u>Outcome:</u></b>	Partially upheld

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

The complaint concerns a mortgage loan.

**The Complainants' Case**

The Complainants opened a mortgage account with the Provider in June 2008, the terms of which were that the Complainants would pay interest only for a period of 10 years, following which the payments would change to interest and capital payments.

The Complainants state that they received letters from the Provider dated **1 August 2014**, **1 August 2015**, and **30 July 2016** which stated that the Complainants would make "*interest only payments for the full term of the mortgage*". The Complainants attest that "*as we have based our financial planning around what has been confirmed to us by [the Provider] we are not in a position to commence Capital repayments on the 20<sup>th</sup> August 2018*". The Complainants further attest that their interactions with the Provider "*puts doubt in our minds as to who presently is the legal owner of our mortgage*".

The complaint is that the Provider informed the Complainants on three occasions that the mortgage was required to be paid on an interest-only basis for its full term, but that it is now wrongfully requiring them to make capital and interest repayments.

The Complainants want the Provider to maintain the mortgage on an interest-only basis for its full term.

### **The Provider's Case**

The Provider states that the Complainants signed a loan offer from the Provider on **19 June 2008**, which stated that their mortgage loan was repayable by way of 120 monthly interest-only payments, and 204 monthly capital and interest payments. The Provider refers to Section 4 of the Additional Conditions of the loan agreement, stating *"You have elected to pay interest-only on your mortgage for a period of 120 months...On expiry of this period, your repayments will increase to reflect the repayment of capital and interest. You should make provision in your financial planning for this increased payment"*.

The Provider acknowledges that it sent correspondence to the Complainants on **1 August 2014**, **1 August 2015** and **30 July 2016**, which stated that *"you agreed to make repayments on an interest only basis for the full term of your mortgage"*. The Provider attests that these letters *"were issued to you in error and did not correctly reflect your mortgage terms as outlined in your loan agreement dated 4 June 2008"*.

The Provider states that the capital and interest payments were due to begin on **20 August 2018**, but *"due to an administrative error, your mortgage remained on IO [interest-only] payments"*. The Provider attests that it applied €3,033.39 to the Complainants' mortgage *"in recognition of the delay in switching the mortgage account"*, as well as *"two cheques totalling €550...to cover the cost of any independent professional advice you may wish to seek regarding this matter"* with the remaining €150 covering *"any distress or inconvenience this error may have caused you"*. The Provider stated that the mortgage would change to capital and interest payments in **February 2019** as the Provider *"must adhere to the original terms of the mortgage as accepted by you"*.

The Provider attests that, while the loan had transferred to a third-party provider on **28 September 2018**, the Provider is dealing with this complaint as *"these issues were raised prior to the transfer of your account"*.

### **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.

/Cont'd...

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 30 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.

Following the issue of my Preliminary Decision, the Complainants made a submission under cover of their two e-mails to this Office dated 11 November 2020, copies of which were transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainants' additional submissions and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Prior to embarking on an analysis of the complaint it will be useful to reproduce certain relevant terms and conditions of the mortgage account and to set out the relevant passages of the correspondence relied upon by the Complainants.

#### **Mortgage Account Terms and Conditions**

The Provider relies upon Section 4 of the Additional Conditions of the Loan Agreement which provides as follows:

*You have an elected to pay interest only on your mortgage for a period of 120 months (the "Interest Only Period") at the rate set out in the Particulars of Offer. On expiry of this period, your repayments will increase to reflect the repayment of capital and interest. You should make provision in your financial planning for this increased payment.*

#### **Correspondence Relied Upon by the Complainants**

The Provider sent a letter to the Complainants dated 1 August 2014 regarding their mortgage loan. This letter includes the following sentence set out in bold and underlined on the first page of the letter immediately above the substantive part of the letter (that is, immediately above the greeting 'Dear [Complainants]'):

**Important Information about repaying your Interest Only Full Term mortgage**

/Cont'd...

In the body of the letter, the following is stated:

*In line with the terms and conditions on your account, you agreed to make repayments on an interest only basis for the full term of your mortgage. Interest only mortgage repayments means that you are only repaying the interest on your account over the term of the mortgage, No capital balance is being repaid by you and once the term expires, the Outstanding Balance will become due and owing.*

*We recommend that you review your financial arrangements regularly with your broker or an independent financial adviser in order to ensure that you will be in a position to repay the Outstanding Balance owing at the end of your mortgage term.*

Thereafter advice is provided as to how the 'Outstanding Balance' might be paid and a number of options are listed including the following:

*Changing your interest only mortgage to capital and interest repayments.*

A letter sent on 1 August 2015, one year after this first letter of August 2014, contains identical passages. A further letter sent a year later again on 30 July 2016 contains largely similar wording.

### **Analysis**

The Complainants opened a 27-year term mortgage account with the Provider in June 2008 wherein they agreed to make interest-only payments for a period of 10 years and wherein they agreed to increase their regular payments to interest and capital payments following the expiry of that initial 10-year period. Some six years later, the Complainants received a letter on 1 August 2014 which stated that interest-only payments were applicable in respect of the "full term of the mortgage". Letters sent by the Provider in August 2015 and July 2016 repeated this position. The Provider accepts that these letters were sent but states that they were sent "in error". Furthermore, the Provider, whilst acknowledging these mistakes, and having offered compensation in respect of them, maintains that it is entitled to insist on compliance with the terms of the mortgage as agreed by the Complainants in June 2008.

Prior to embarking on the substantive analysis, it will be useful to document the Provider's response to the letters of August 2014, August 2015 and July 2016 (hereinafter the 'three letters') which it states were sent in error. The Provider's initial response was set out in a letter of 10 July 2018 in reply to a letter written by the Complainants which had enclosed the three letters. The letter of 10 July 2018 explained that the three letters had been sent arising from an "administrative error" and offered "sincere apologies for this error". The letter indicated that the account would switch to interest and capital payments on 20 August 2018, as provided for in the original loan agreement.

Following further correspondence from the Complainants in which a complaint was raised, the Provider decided to suspend the switching of the account to interest and capital payments pending the outcome of an internal review.

/Cont'd...

A substantive response was issued to the Complainants on 12 December 2018. This letter stated that €3,033.39 had been credited to the mortgage account “*in recognition of the delay switching your Mortgage Account to Capital & Interest repayments*”. This figure equated to the amount of interest charged on the account between the date the account had been scheduled to switch to interest and capital payments (20 August 2018), and 31 January 2019. The letter also provided an additional amount in compensation for the three letters sent in error, explained in the following terms:

*We are also aware that over the lifetime of your Mortgage Account, you may have received correspondence from [the Provider] which wrongly indicated that your Mortgage Account would remain Interest Only for the full term of your Mortgage Account.*

*[The Provider] understand that customers make financial decisions based on the information they provide and this information may have impacted decisions you have made.*

*As a result [the Provider] recognises that you may wish to seek independent professional advice in relation to this matter and are providing a payment of €400 to cover the cost of any advice you may seek, but you are under no obligation to use the funds for this purpose.*

*A further €150 is included as a payment to cover any distress and inconvenience this error may have caused you.*

*The payment for €550 has been split equally between parties on the account, and your share of €275 enclosed.*

The foregoing offer was rejected by the Complainants. In rejecting the offer, my understanding is that the amount of €550 offered to the Complainants (in the form of separate cheques made out to each of them in the amount of €275) was not lodged or credited to any account belonging to the Complainants. My understanding is, however, that the amount of €3,033.39 was credited to the Complainants’ account and has not been reversed.

The first and most important question which I must address is whether the Complainants should be entitled to have their mortgage account maintained as an interest only account for the full term of the mortgage on the basis of the three letters. I am not satisfied that the Complainants are entitled to hold this position.

The Complainants executed the mortgage agreement in June 2008 in the full knowledge that it provided for the commencement of capital and interest payments after an initial 10-year period of interest only payments. The June 2008 mortgage agreement is the document governing the relationship between the parties and it is this agreement that regulates the respective rights and entitlements of the parties.

/Cont’d...

Beginning in August 2014, and repeated both one year and two years later, the Provider sent correspondence to the Complainants which contained information entirely inconsistent with the June 2008 mortgage agreement. However, much in the same way that a letter from the Provider could not unilaterally alter the executed agreement in a manner that would disadvantage the Complainants, nor can the Provider unilaterally alter the agreement in a manner that favours the Complainant. There is an executed agreement between the parties and changes could be made to that agreement only with the consent of all parties.

That is not the end of the matter however as, in certain instances, conduct on the part of one party can serve to prevent, or to 'estop', that party from relying on the strict terms of an agreement. Again however, I am not satisfied that such circumstances exist in this case. The Complainants received the three letters. The Complainants, at the point that they received the three letters, were aware or ought to have been aware, that their mortgage agreement provided for capital and interest payments following the initial 10-year interest only period.

Notwithstanding the fact that the Complainants had this knowledge, and notwithstanding that the Complainants recognised that the content of the three letters was inconsistent with their executed mortgage agreement, the Complainants took no steps to seek to clarify the matter. The Complainants state that, instead, they simply operated on the basis that the account was now to be considered a full-term interest only account with contingent implications for their financial planning. On the contrary, I am of the view that, having identified the inconsistency, the reasonable approach would have been to contact the Provider seeking clarity.

It will be apparent from the foregoing that I do not consider the Complainants to be entitled to have their mortgage account maintained as an interest only account for the full term of the mortgage. That is not to say that I do not consider them to be entitled to compensation. The sending of the three letters in the terms as drafted was undoubtedly most regrettable and clearly caused confusion to the Complainants. Furthermore, the repetition of the mistake on two occasions clearly compounded matters. The fact that I have suggested that the Complainants should have sought clarity from the Provider does not detract from the fact that the Provider caused this problem as a result of its own "*administrative error*". It is appropriate that the Provider offered its "*sincere apologies*" and it is further appropriate that the Provider offered compensation for its error. I will now turn to an analysis of the compensation offered.

The Provider offered money to the Complainants under three headings. In the first part, it credited the Complainants' account with an amount equivalent to the interest charged on the account in the period when it was conducting its internal review. The Provider characterises this payment as "*in recognition of the delay switching your Mortgage Account to Capital & Interest repayments*". I make no comment on this payment which the Provider has clearly deemed appropriate and which is connected to the somewhat long period during which the matter was under review by the Provider.

/Cont'd...

The second element of the money offered to the Complainants was a figure of €400 to facilitate the securing of legal advice (albeit there was no requirement for the money to be put to that purpose). This seems to me to have been a reasonable allowance for the Provider to make.

The final element of the money offered to the Complainants was a cumulative figure of €150 offered “as a payment to cover any distress and inconvenience this error may have caused you”. In essence, in light of the manner in which the Provider constructed its offer to the Complainants, this seems to me to be the sole component of the offer that can properly be characterised as compensation for the sending of the three letters. I am not satisfied that this figure is adequate in the circumstances.

The Provider made a serious error which it repeated on two occasions over the course of a two-year period. The Complainants state that this error has seriously compromised their financial position albeit I should note that no specifics of this compromised position have been provided.

In the circumstances, in recognition of the gravity of the error, and in reflection of the fact that the error was repeated on two occasions, I direct compensation to the Complainants in the amount of €2,000. To this figure should be added the amount of €400 for legal advice which the Provider deemed appropriate and of which the Complainants are not yet in receipt.

For the reasons outlined in this Decision, I partially uphold this complaint and direct compensation of €2,000, plus the amount of €400 offered by the Provider, as set out above.

### **Conclusion**

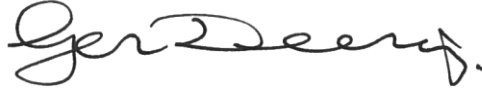
My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b), (c) and (e)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €2,000, plus the amount of €400 offered by the Provider, to an account of the Complainants’ choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

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**

26 January 2021

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.