



<u>Decision Ref:</u>	2021-0074
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Failure to implement payment terms
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the repayment terms of the mortgage loan agreement which the Complainants entered into with the Provider in **2007**.

The Complainants' Case

The Complainants submit that they entered into an agreement with the Provider for a €500,000 loan amount to be secured on their primary residential property, which was repayable over 20 years on an interest only repayment basis.

On the **15 November 2017** the Provider called for a direct debit on the Complainants' account for a repayment reflecting both capital and interest. The Complainants then contacted the Provider querying why the repayment had increased from an interest only repayment amount to a capital and interest repayment amount. The Complainants submit that the Provider responded that the loan agreement stipulated that the Complainants would pay interest only, for the first 10 years only, and that this repayment arrangement would then switch to capital plus interest thereafter, for the remainder of the term.

The Complainants contend that this was not consistent with their understanding of the loan terms and conditions. They submit that they were unable to make the requested capital plus interest repayments and were left with no option and had to cancel the direct debit instruction, and they continued to repay the loan on the basis of interest only.

The Complainants say that as a result, the Provider deemed the loan to be in default and it has warned of legal recovery action unless they commence capital and interest repayments and clear the arrears, which they say they are not in a position to do.

The Complainants requested a copy of the loan agreement from the Provider. This resulted in the provision to them by the Provider of the loan agreement, on which the Provider relies. The Complainants also submitted a data access request to the Provider and as part of the documentation they received in response to that data access request, they received a copy of a loan agreement dated 27 August 2007 which, they submit, supports their understanding of the agreement being for continued "interest only".

The Complainants submit that the Provider insists on relying upon a version of the loan agreement which is different from the version the Complainants received from the data access request they had made to the Provider. The Complainants submit that the Provider can offer no explanation as to why two agreements exist, bearing the same date, but with different repayment terms and conditions.

The Complainants' representative, by letter of **10 December 2019**, stated that he and the Complainants do not accept that the certified copy of the loan agreement made available by the Provider, was a certified copy of the original loan agreement. He says that the version the Complainants rely on, which was received through a data access request, contains page numbers and references, whereas the version which the Provider relies on bears no such references.

The Complainants and their representative also say that the Complainants received annual statements, issued by the Provider, which support the Complainants' understanding of the loan agreement terms. The Complainants say that they informed the Provider that loan statements prior to October 2017 also confirmed that the loan was "interest only" for its full term. The Complainants also refer to a letter of 15 October 2007 in support of their understanding of the terms of the mortgage, which stated "*Your mortgage is an interest-only mortgage*".

In addition, as a consequence of this matter, the Complainants state that the Provider has made incorrect reports to the Irish Credit Bureau (ICB) and the Central Credit Register (CCR) in respect of their loan which, they submit, is impacting their respective businesses.

The Complainants' representative states that the Complainants are not looking for any debt write-off of capital or interest. Rather the Complainants will repay the loan in full by the expiry date of August 2027, in line with the terms of the agreement which they entered into.

The Provider's Case

The Provider, in its final response letter of **10 April 2019**, stated that it accepts that the Complainants had received an incorrect version of the loan offer from the Provider's mortgage operations department and it apologised for that error.

The Provider notes that the loan offer that the Complainants rely on, did not expressly specify the capital and interest repayment amounts, and it did refer to an interest only period. The Provider also states however that the letter of loan offer the Complainants rely on, was not the loan offer which was signed and accepted in the presence of their solicitors, and used to drawdown the loan. The Provider says that this has been confirmed by its system documentation, and the mortgage department.

The Provider has stated that the Complainants' loan account repayments reverted to full capital and interest repayments, because the interest only term expired. It also states that the account went into arrears because the repayments which were made by the Complainants only covered the interest element of the loan, in circumstances where interest and capital payments were falling due. The Provider says that the Complainants' ICB and CCR profiles would therefore reflect this.

The Provider made an offer of €150 to the Complainants, subsequently increased to €500, which remains open to them, in recognition of its error in making available an incorrect version of the loan agreement to them, in response to their Data Access Request.

The Complaint for Adjudication

The Complainants' complaint is that in 2017, the Provider wrongfully switched the repayment terms of their mortgage loan from "interest only" to "capital and interest".

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties on **12 February 2021**, 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Loan Offer Letter relied on by the Provider

The Provider relies upon a version of the Loan Offer Letter dated **27 August 2007** and apparently signed by the Complainants on **21 September 2007**. The Provider states that it has compared this with the original document held in storage, and that the version supplied to this Office has been confirmed to be an exact copy of the original.

This version provides as follows:

IMPORTANT INFORMATION AS AT 27/08/2007

1. <i>Amount of credit advanced</i>	€500,000.00
2. <i>Period of Agreement</i>	20 years
3. <i>Number of repayment instalments</i>	240
4. <i>Amount of each payment from 27/09/2007</i>	€1,979.17
5. <i>Amount of each payment from 27/09/2017</i>	€5,242.43
6. <i>Total amount repayable</i>	€866,592.00
7. <i>Cost of credit (5 minus 1)</i>	€366,592.00
...	

Loan Offer Letter relied on by the Complainants

The Complainants rely on a different loan offer letter citing the same mortgage account number, which they received from the Provider via a data access request. This letter of loan offer, which is also dated **27 August 2007**, and which also was apparently signed by the Complainants on **21 September 2007**, provides as follows:

IMPORTANT INFORMATION AS AT 27/08/2007

1. <i>Amount of credit advanced</i>	€500,000.00
2. <i>Period of Agreement</i>	20 years
3. <i>Number of repayment instalments</i>	240
4. <i>Amount of each payment from 27/09/2007</i>	€1,979.17
5. <i>Total amount repayable</i>	€975,000.00
6. <i>Cost of credit (5 minus 1)</i>	€475,000.00
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Analysis

The Provider maintains that the Complainants agreed to a loan, providing for a 10-year interest-only period, followed by a 10-year capital and interest period.

The Complainants contend that on the contrary, they in fact signed up for a 20-year “interest-only” loan.

There appear to be signed loan offer letters supporting each of these propositions. The Provider maintains that the version of the letter it relies upon is an exact copy of the original which it holds in storage and, furthermore, that it matches precisely the documents which were digitally scanned into its system, upon receipt from the Complainants’ solicitor on **25 September 2007**.

When asked to offer an explanation for the anomaly, the Provider has advised that in fact, no less than three different versions of the loan offer were put together, over the course of July – August 2007. The Provider says, in that regard, that there was an initial loan offer dated **25 July 2007** which provided for capital and interest payments for the full term of the loan. This was not accepted by the Complainants.

The Complainants’ representative has made submissions, following the issue of the Preliminary Decision of this office, to the effect that more attention should be paid to what terms the Complainants applied for in 2007. In my opinion however, it is not unusual for a loan to be drawn down on terms which differ from an original application, as the needs and/or the desires of borrowers can vary over a period before drawing down a loan, or indeed the lender may be unwilling to offer the borrowing on a borrower’s preferred terms. The critical issue in this instance is what terms were agreed between the parties. Whatever the Complainants’ original preferences as to the terms upon which to borrow monies, the question is what terms were specified in the particular letter of loan offer, which the Complainants ultimately executed by way of confirmation of the parties’ agreement, and which then formed the contractual arrangement on which the monies were ultimately drawn down.

The Provider says that after the initial loan offer dated **25 July 2007**, which was not accepted, two other loan offer letters were then created dated **27 August 2007**, the first of which provided for a 20-year interest-only loan (which I will refer to as the “interest-only” loan offer) and the second of which provided for a 10-year interest-only period, followed by a 10-year capital and interest period (which I will refer to as the “half and half” loan offer).

Critically, I note that the Provider maintains that the interest-only loan offer letter was deficient and “*never issued to the Complainants*”. It says that the Complainants only acquired a copy of this letter, on foot of their data access request in 2017, and not before. The Provider goes to state that the “half and half” loan offer letter *did* issue to both the Complainants and to their solicitor, and that it was this letter of loan offer which was executed by the Complainants, and returned to the Provider via the Complainants’ solicitor, in 2007.

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It seems to me that the Provider's position is such that, if the "interest-only" loan offer letter was not issued to the Complainants in or around August 2007, it would have been impossible for the Complainants to have signed that letter of loan offer in September 2007, as they contend they did. Indeed, the Provider's position is such that the "interest-only" loan offer letter which it holds in its records (and which the Complainants acquired via the Data Access Request) must be unsigned; the version of that letter of loan offer, supplied to this Office by the Provider bears no signatures.

It seems to me that the signature page of the loan offer letter relied upon by the Complainants, is identical in every manner to the signature page of the loan offer letter relied upon by the Provider.

However, I consider it to be notable that although the pages of the interest-only loan offer letter relied upon by the Complainants, bear identifiable page numbers and reference coding (which seems to be consistent with a data access request) the signature page which follows, bears no such details.

Ultimately, I am persuaded by the Provider's submission that the "half and half" loan offer letter which it relies upon, is identical to the signed original version it holds in storage. I note in that regard, the steps taken by the Provider to gain access to this original and I note the signed verification on each copy page, which is included in the evidence. I am also persuaded by the Provider's submission that the "half and half" loan offer letter which it relies upon, is identical to the signed documents, which were digitally scanned into its system upon receipt of same from the Complainants' solicitor on 25 September 2007.

It seems from the evidence that the letter of loan offer relied upon by the Complainants, may be a composite of (i) the pages of the "interest-only" loan offer letter (acquired by the Complainants by Data Access Request in 2017) together with (ii) the signature page of the "half and half" loan offer letter. It remains entirely unclear how these pages came to find themselves incorrectly presented together as a single coherent document.

I accept that the weight of the evidence indicates that the Complainants duly executed the "half and half" loan offer letter which is relied upon by the Provider and that the terms of this letter form the basis of the loan agreement between the parties. I take the view that the Complainants should of course be allowed by the Provider to have sight of the original document in a suitable way, should they so wish.

Whilst the Complainants' representative has suggested that the Complainants' solicitor may take up the original, on accountable trust receipt, this method for the Complainants to gain access to sight of the original, may not be an acceptable one to the Provider. Accordingly, the parties should continue to liaise in that regard, with a view to finding an appropriate solution which indeed will need to be suitable to the current COVID-19 environment. Whilst the Complainants have suggested that the Decision of this Office should be postponed, pending their access to sight of the original executed loan offer letter, I do not consider that necessary as I have found on the basis of the evidence available, that the "half and half" letter of loan offer, is the relevant contractual document in place between the parties.

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The final matters to be addressed are a letter dated **15 October 2007**, and the bank statement dated **14 October 2016** as relied upon by the Complainants (which it stated to be representative of other statements received).

The letter of 15 October 2007 states that *“your mortgage is an interest-only mortgage”*. The bank statement dated 14 October 2016 describes the *“Repayment Method”* as *“Interest Only”*. The Provider maintains that these descriptions were accurate, insofar as they were stated on documents issued during the period in which the account was operating on an interest-only basis. The Provider highlights that the documents do not state that the interest-only period was to continue for the full 20-year term of the mortgage.

Naturally, it would have been preferable if any documents, which issued to the Complainants and which referenced the ‘repayment method’ or ‘account type’, had cited the exact ‘half and half’ nature of the loan. I consider this a failing on the part of the Provider, as it has added to the confusion but I am satisfied that the offer of compensation of €500 by the Provider (which I note remains open for acceptance) adequately addresses this aspect of the matter. Certainly, I can see no basis on which this correspondence could be interpreted as varying the specific contractual agreement between the Complainants and the Provider, as set out in the executed “half and half” loan offer letter.

Finally, the Complainants take issue with not having been notified of any impending switch from interest-only repayments to capital and interest repayments. In particular, the letter from the Complainants’ advisor to this office dated **26 May 2020** states that the Complainants never received the Provider’s letter of 16 October 2017 and he goes on to state that *“this is confirmed in one of the recorded telephone conversations”*.

This position is re-confirmed in another letter from the Complainants’ advisor of **15 June 2020**. The telephone conversation in question, which dates from November 2017, is to be found within the evidence made available to this Office, in the audio file with a title ending “F000” and, at 6 minutes 44 seconds into the call, the First Complainant does indeed dispute having received the letter of 16 October 2017. Subsequently, at 2 minutes 8 seconds into the same call, the First Complainant quotes from the letter:

“I’m looking at the letter I got from you, the 16th of October 2017, ‘10 years and one month remaining’....”

This audio evidence may well be confusing as the Complainants’ representative has submitted that this reference was in fact to the other letter of 16 October 2017. I note that the address on both letters was identical, and it is a mystery therefore as to why the Complainants received one of those letters, but not the other one which sought to notify them of the new monthly payment falling due a month later. In any event, I have noted the terms of the letter in question which placed the Complainants on notice of this change in the repayment and I accept that the letter was issued by the Provider, albeit that it may somehow have gone astray.

Whilst the Complainants may believe that they had a specific arrangement in place from 2007 onwards, that they would maintain “interest only” repayments only over a 20 year period until 2027, when the capital would fall to be discharged, the evidence before me does not bear this out. Indeed, I am mindful that the “interest only” letter of loan offer, which I am satisfied on the evidence is not the correct loan offer letter, and which the Provider has described as “deficient” does not, in any event, refer to any outstanding lump sum falling due for payment by the Complainants, in August/September 2027.

Clearly, the inability of the Complainants to meet the capital and interest repayments falling due, pursuant to the executed “half and half” loan agreement they entered into in 2007, has given rise to significant consequences for them, insofar as their credit profiles have been thereby affected.

I would encourage the parties to continue to liaise with a view to ensuring that a suitable restructure, or alternative repayment arrangement, can be agreed between them, which may facilitate repayments over and above what the Complainants have been paying by way of “interest only” to date, such that the Provider may not consider it necessary to seek recovery of the secured property. I take the view that this would be in the best interests of both parties.

Noting the compensatory payment which has been offered by the Provider in recognition of a smaller issue, and that this remains open to the Complainants for acceptance, I do not accept that the Provider has been guilty of wrongdoing or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**, that should ground a finding in favour of the Complainants, as a basis to uphold the complaint.

Accordingly, for the reasons outlined above, I am not in a position to uphold this complaint that the Provider wrongfully switched the repayment terms of their mortgage loan from “interest only” to “capital and interest”.

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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

23 March 2021

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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.

