



<u>Decision Ref:</u>	2021-0075
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to implement payment terms Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

The Complainants entered two mortgage loan agreements with a financial service provider in **2006** (Loan 1 and Loan 2; together, the **Loans**). The Loans were transferred to a third party purchaser in **2018** and the Provider, against which this complaint is made, was appointed to service the Loans on behalf of the purchaser. The Complainants signed Letters of Variation in **June 2019** extending the terms of the Loans.

The Complainants' Case

The Complainants explain they have mortgage loans in respect of two properties. Their loans were originally with a financial service provider and were subsequently sold to the Provider, against which this complaint is made [the Provider]. The Complainants state they had a financial arrangement with the financial service provider and believed this arrangement would continue when the loans were acquired by the Provider. The Complainants explain this was not the case and they had to re-negotiate with the Provider. From **January 2019**, the Complainants say the Provider increased their loan repayments from £384 to £950.

The Complainants explain they could not afford these repayments and immediately sought to re-negotiate with the Provider. The Complainants say that after a lot of back and forth and chasing up with the Provider, they eventually signed new agreements extending the terms of the loans and increasing their repayments. The Complainant advise that these agreements were signed on **25 June 2019** and returned to the Provider.

The Complainants state that “[t]he agreements both refer to the mortgage arrears which had accrued at the time and we understood that these arrears were including in the new figures.” However, the Provider began contacting the Complainants in **October 2019** asking that they pay the arrears. The Complainants say they advised the Provider that “... the figures did not make sense to us and we believed they were included in the agreement.” The Complainants explain that “[d]espite request[s] for a breakdown we have no better information.”

On **6 November 2019**, the Complainants say they logged a complaint with the Provider. The complaint was acknowledged on **13 November 2019** and the Provider wrote to the Complainants again on **4 December 2019**. The Complainants state that both letters advised that the Provider was investigating their complaint. However, no further information or correspondence was received. The Complainants say they also requested account statements which, the Complainants submit, show that the arrears were included in the agreement.

The Complainants explain these matters are causing them extreme stress. The Complainants want “... all the figures ... reviewed in order to ascertain if we have been overcharged.” The Complainants are also seeking compensation in respect of the Provider’s conduct.

The Provider’s Case

The Provider explains that the Complainants’ loans transferred from the financial service provider on **30 November 2018**. At the date of transfer, the Loans were in a part capital and interest repayment arrangements which was agreed during **2014**. The Provider advises that under these arrangements, the Complainants were expected to meet monthly repayments of £381.58 in respect of Loan 1 and £384.15 in respect of Loan 2. The arrangements had a term of 60 months and, at the expiry of the arrangements, the Complainants were expected to return to full capital and interest repayments. The Provider advises that the last repayments under the arrangements were due on **1 January 2019**.

The Provider says that on **29 January 2019**, it wrote to the Complainants to notify them that the arrangements expired on **1 January 2019** and that as of **1 February 2019** they were expected to meet full capital and interest repayments. On **31 January 2019**, the First Complainant contacted the Provider to advise that the Complainants would not be in a position to meet the full repayments. The Provider advises the Loans began billing for full capital and interest repayments and the Complainants did not make any repayments to the Loans during the period **February to August 2019**, with repayments recommencing on **10 September 2019**.

On **7 February 2019**, the Provider says the First Complainant contacted the Relationship Manager for the Loans to advise that the direct debit used to service the Loans had been cancelled as full repayments were not feasible. The Relationship Manager requested that the Complainants complete an Income and Expenditure (**I&E**) form. The Complainants’ completed form was received on **20 February 2019**.

The Provider says the Relationship Manager emailed the Complainants on **6 March 2019** setting out a list of documents required to assess their financial circumstances and these were received on **29 April 2019**.

The Provider states the Complainants emailed the Relationship Manager on **10 May 2019** advising that rental income from the secured properties was £450 and £500, and they could not afford to pay any more than this amount. On **14 May 2019**, the Provider advises that the First Complainant discussed the Complainants' financial circumstances with the Relationship Manager and answered some questions regarding the Complainants' income and expenditure.

On **16 May 2019**, the Provider says the Relationship Manager contacted the First Complainant to advise her that an 11 year term extension had been approved and that the loans would fully amortise in **2037** with monthly repayments being approximately £850.89. Letters of Variation (**LoVs**) for the repayment arrangements issued to the Complainants on **20 June 2019**. The Provider explains the LoVs set out the capital balances on the Loans as well as the arrears balances. However, the repayment instalments set out in the arrangements were not sufficient to clear the full outstanding balance within the 214 month term of the arrangements. The new repayments in respect of Loan 1 were £420.48 and £416.06 in respect of Loan 2.

The Provider advises that the Complainants signed and returned the LoVs on **2 July 2019** and the arrangements were implemented for the **August 2019** repayment instalment. The Provider advises that as at **1 August 2019**, the arrears on the Loans were £6,435.20 on Loan 1 and £6,039.96 on Loan 2.

The Provider submits the Complainants' contention that the Provider has incorrectly calculated their arrears is based on the belief that the Loans should have been billing for interest only repayments between **January** and **June 2019**. The Provider states the Complainants' repayment arrangement with the original lender was for a period of 60 months and, as per clause 4.5 of that arrangement, the Complainants were expected to return to full capital and interest repayments at the expiry of the arrangement. Following the expiry of the arrangement, the Complainants ceased repayments. The Provider states that the arrears arose because of the Complainants' decision to cancel the direct debit and not make repayments. The Provider states that while it understands the Complainants could not afford full repayments, they should have made repayments in an amount that met their affordability or alternatively, an amount they believed to be correct.

In terms of its customer service, the Provider states that on **7 February 2019**, the Relationship Manager spoke with the First Complainant and advised her that the Provider would require an I&E form as well as supporting documentation; however, the Relationship Manager failed to advise the First Complainant as to the specific documents required as part of the assessment process. The Provider advises that there was a period of 20 business days between when the Relationship Manager advised the First Complainant of what would be required and when he set out the specific documents required for the assessment process.

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The Provider says “... *this is thoroughly disappointing and would have contributed to any delay experienced by the Complainants.*”

On **16 May 2019**, the Provider says its Credit Committee approved a restructure of the Loans; however, the LoVs were not issued until **20 June 2019**. The Provider states that a period in excess of 20 business days between Credit Committee approval and the issuance of the LoVs is *disappointing*. Additionally, a typographical error on one of the LoVs required correction and consequently, corrected letters were issued on **26 June 2019**. The Provider acknowledges this “... *further contributed to the delay.*”

The Provider states that the LoVs were ambiguous in their content, unclear in the terms of the arrangements and what was expected regarding the arrears. The Provider advises that the repayment instalments set out in the LoVs were not sufficient to repay the total outstanding balances on the Loans, both principal and arrears. They were only sufficient to repay the principal balances at that time. The Provider says this is at odds with the information given to the First Complainant on **16 May 2019** and what was approved by the Credit Committee which approved an 11 year term extension to allow the Loans to fully amortise. The Provider states that the LoVs also did not include any cost of credit information for the arrangements. The Provider states this is *very disappointing* and the LoVs were not in the Provider’s approved templates for SME accounts.

The Provider states that it reviewed the account balances and repayment history of the Loans and have found no evidence of overcharging.

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to engage with the Complainants regarding the restructure of the Loans;
2. Led the Complainants to believe the outstanding arrears had been capitalised as part of an alternative repayment arrangement; and
3. Incorrectly calculated the arrears on the Loans.

Decision

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

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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

A Preliminary Decision was issued to the parties on 21 January 2021, 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 parties made the following submissions:

1. E-mail dated 27 January 2021, together with attachment, from the Complainants to this Office.
2. Letter dated 9 February 2021, together with attachment, from the Provider to this Office.
3. E-mail dated 11 February 2021, together with attachments, from the Complainants to this Office.
4. Email dated 5 March 2021, from the Provider to this Office.

Copies of these submissions were exchanged between the parties.

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

While there were a number of communications with this Office following the issuing of my Preliminary Decision, these communications did not raise any issues in relation to the complaint that would cause me to change my decision. They relate mainly to communications between the Complainant and the Provider regarding the calculation of arrears and offer to capitalise arrears.

Background

The Complainants entered two mortgage loan agreements with a financial service provider in **February 2006**.

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The Loans were acquired by a third party and it appears the Provider began servicing the Loans during **2018**. Prior to this, the Complainants entered an alternative repayment arrangement pursuant to a Letter of Offer dated **22 November 2013**. The arrangement offered and ultimately accepted by the Complainants on **4 December 2013**, was “... *an Interest and Partial Capital period ... for 60 months*” commencing on **1 January 2014**. Clause 4.5 of this arrangement stipulated, in essence, that on the expiry of the arrangement, principal and interest payments sufficient to repay the relevant loan over the remaining term would recommence.

By letter dated **7 January 2014**, the Complainants were informed that the first repayment under the new arrangement was due on **1 February 2014**. This arrangement expired in **January/February 2019**.

The First Complainant spoke with one of the Provider’s agents on **31 January 2019** and was advised as to who the Complainants’ Relationship Manager would be. A call back from the Relationship Manager was arranged during this call.

The First Complainant telephoned the Provider again on **7 February 2019** explaining that a call back was not received. The First Complainant was then transferred to the Relationship Manager. The Relationship Manager explained that the Complainants could apply for a new alternative repayment arrangement which was short term in nature or a term extension. The First Complainant then enquired about a term extension and the length of an extension. The Relationship Manager advised that he did not have the exact calculations to hand but the type of extension that would be considered was one that would reduce the Complainants’ repayments. As the current repayments were over £900, the Relationship Manager indicated a considerable term extension would be needed to bring repayments down to £350. Later in the conversation, the Relationship Manager advised that he would send a template of the information required to consider an alternative arrangement to the Complainants. The Relationship Manager advised the First Complainant that the Complainants should consider the templates and submit a written proposal together with supporting documentation.

The Relationship Manager emailed the Second Complainant on **6 March 2019** as follows:

“Many thanks for your email including documents.

There is further documentation that I will need to review and I have been advised that before proceeding with a proposal I will need this documentation. I will also need Income & Expenditure documents with an original signature so I will require the following is sent via post.

Please see below a list of documentation required. ...”

The list contained in this email comprises 14 separate bullet points. However, not all were relevant to the Complainants.

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The Complainants wrote to the Provider by letter dated **11 March 2019** enclosing a completed I&E form dated **12 February 2019**, a Statement of Affairs, payslips, bank statements and other income and tax related documentation.

The First Complainant telephoned the Provider on **19 March 2019** to enquire as to whether their documentation had been received. During this call, the First Complainant was advised that certain loan repayments had not been received. The First Complainant explained that the Complainants would not be making the repayments on the Loans as they could not afford to do so at their current level of over £900.

The Provider's agent also asked the First Complainant what type of arrangement she wished to have put in place. The Provider's agent asked if it was an arrangement similar to what had been in place previously with the original lender. The First Complainant indicated her agreement to this type of arrangement.

It appears that the Complainants provided account statements to the Provider under cover of an undated handwritten letter bearing the Provider's date stamp of **26 April 2019**.

The Complainants emailed the Relationship Manager on **7 May 2019** stating:

"We are in a position to continue with the payments we have been making for the last number of years. These payments are the 388/390 sterling as the rental payments coming in are only 450 & 500 sterling there isn't sufficient to pay more than this. However, the overall mortgage balance is very low so I would have thought this would be workable.

Can you please come back as soon as possible as we are very anxious to sort this out."

This email does not appear to have been responded to and the Complainants sent a follow-up email on **13 May 2019**.

The First Complainant telephoned the Provider on **14 May 2019** and spoke with the Relationship Manager. The Relationship Manager asked a number of questions regarding the I&E form. During this call, the Relationship Manager suggested a term extension and the First Complainant indicated her interest in such an arrangement.

The Relationship Manager then discussed an 8 year term extension. The First Complainant suggested the possibility of a 10 year term extension.

In a telephone call on **16 May 2019** the first Complainant was advised that the Complainants had been approved for an 11 year term extension. The First Complainant indicated that she would like to proceed with this arrangement. The Provider's agent advised that he would draft up the relevant documents and issue them to the Complainants for signing.

The Complainants emailed the Relationship Manager on **28 May 2019** explaining that they did not receive any letters from the Provider "... with the new terms of the mortgage." The Complainants also requested an update regarding the position with respect to the Loans.

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The Relationship Manager responded on **31 May 2019** stating that he would follow up on the letters and hoped they would be with the Complainants the following week. The Complainants emailed the Relationship Manager on **24 June 2019** advising that it had been 6 weeks since the new loan terms were agreed and they had yet to receive the relevant paperwork.

The Provider issued LoVs to the Complainants on **20 June 2019**, setting out the arrangement being offered in respect of each of the Loans. The subject line of each letter read as follows:

“Letter of Offer: 11 Year Term Extension”

The body of the letter explains that:

“ ...

Based on this information, [the Provider] is in a position to offer you an ARA in the form of: Extending the term of the mortgage for 132 months, as described below (the ARA).

Under the terms of the ARA, your revised monthly repayment amount will be £420.48 for 214 months commencing on 01/08/2019.

...

The below are current relevant details of your Mortgage Account:

...

By applying the terms of the ARA the following variations will occur:

- 214 monthly repayments of ... commencing on 01/08/2019 and ending on 01/04/2037.*
- This will be followed by:*

The term of the proposed ARA is for the remaining term of the mortgage, 214 as at 20/06/2019.

1. The mortgage term will be extended by 132 and will expire on 01/04/2037.

...”

The Complainants emailed the Relationship Manager on **25 June 2019** to inform him that the LoVs were issued with the same loan account number, being Loan 1. The Relationship Manager responded the same day advising that he would re-issue the LoV for Loan 2.

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It appears that revised LoVs issued on **26 June 2019**; however, copies of these letters do not seem to have been furnished by the parties. Although, it is likely these were drafted in similar terms to the first set of LoVs but amended to reflect the correct loan account number.

Analysis

It appears the First Complainant requested to speak with the Relationship Manager once she was made aware of the relevant relationship manager assigned to the Loans during the telephone conversation on **31 January 2019**. During this conversation, the First Complainant requested a call back from the Relationship Manager which, disappointingly, did not materialise.

It appears from the evidence that the First Complainant and the Relationship Manager first began to engage in terms of putting an alternative arrangement in place during a telephone call on **7 February 2019** when the First Complainant was advised to submit an I&E form together with other forms and documentation. During the February telephone conversation, the Relationship Manager indicated that he would forward the relevant template to the Complainants for consideration. The Relationship Manager also asked that the Complainants make a written proposal in respect of the Loans.

While certain correspondence has been provided by the parties, the correspondence issued following this conversation does not appear to have been provided. Nevertheless, I am satisfied it was received.

The Provider states that the Relationship Manager should have informed the First Complainant as to the documentation required in order to complete an assessment of the Loans during the February telephone conversation but failed to do so, and it was not until **6 March 2019** that a list of required documentation was provided. It is not clear what was sent to the Complainants following the February telephone conversation. As such, I am unable to determine whether the Relationship Manager failed to properly advise the First Complainant as to the required documentation during, and following on from, this conversation. In any event, I accept that a list of documentation should have been given to the First Complainant during this conversation.

If it is the case that **6 March 2019** was the first date on which a complete list of the required documents was provided to the Complainants, and having considered the evidence, this appears to be the case; this is quite disappointing. The Relationship Manager should have advised the First Complainant as to the documentation required either during the February telephone conversation or in the correspondence which issued on foot of this conversation.

The Complainants supplied the Provider with various forms and supporting documentation on **11 March** and **26 April 2019**. The Complainants emailed the Provider on **7 May 2019** requesting an update in respect of putting an arrangement in place for the Loans. A further email was sent on **14 May 2019**.

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These emails do not appear to have been responded to by the Provider. These emails should have been replied to. It is disappointing this did not occur and the Provider has not offered an explanation as to why this was the case.

The First Complainant was informed during a telephone call on **16 May 2019** that an 11 year term extension had been approved and that the Provider's agent would issue the relevant paperwork to the Complainants. Not having received the promised documentation, the Complainants followed-up with the Provider on at least two occasions and LoVs dated **20 June 2019** eventually issued. It is not clear why it took over a month to issue the LoVs and the Provider has not sought to explain why a delay occurred. Therefore, I accept that there was an unreasonable delay in issuing the LoVs. Further disruption was then caused by the fact the Provider failed insert the correct account numbers on the LoVs, causing further unreasonable delay in implementing the arrangement.

Having considered the LoVs, I find that they are drafted in a very confusing, unclear and ambiguous manner. While it is clear that a term extension was being offered, it is not clear whether it was for 132 months or 214 months. Further to this and as accepted by the Provider, the LoV did not provide any cost of credit information. This may have been caused or contributed to by the fact that the format of the LoVs, as advised by the Provider, were not in an approved template.

It is understandable that this may have caused confusion for the Complainants. However, if the Complainants were unsure or had any questions about the LoVs, it is reasonable to expect them to bring this to the Provider's attention (especially as the First Complainant is a solicitor) and no questions or queries appear to have been raised by the Complainants regarding the precise terms or effect of the LoVs.

In terms of the capitalisation of arrears, the Complainants submit it was their understanding that the outstanding arrears would be capitalised as part of the LoVs. During the February telephone conversation, the First Complainant was asked to submit a proposal regarding the Loans. A written proposal does not appear to have been submitted and there is no evidence of any written or express request that arrears be capitalised. Further to this, having considered the correspondence provided by the parties and the content of the various telephone conversations, there does not appear to have been any discussion regarding the capitalisation of arrears or any assurance that arrears would be capitalised.

During the telephone conversation on **19 March 2019**, the First Complainant indicated her agreement to the Provider's suggestion that an arrangement similar to the previous arrangement that was in place be assessed/considered by the Provider. This was an interest and part capital arrangement and does not involve the capitalisation of arrears. The conversation also shows that no prior proposals had been made by the Complainants regarding alternative arrangements.

Furthermore, the LoVs described the arrangement being offered as a term extension and there is no reference to capitalisation of arrears in the LoVs nor am I satisfied that the wording of the LoVs would reasonably give rise to the belief or understanding that the arrears would be capitalised.

Having considered the evidence and in particular the First Complainant's comments during the telephone call on **19 March 2019** that the Complainants would not be making the loan repayments, I am not satisfied that the Provider's conduct was the cause of arrears beginning to accrue on the Loans. Furthermore, it was at all times open to the Complainants to make whatever repayments they could afford in respect of the Loans. However, I am satisfied there were certain delays on the part of the Provider which have been identified above that delayed the term extension being put in place.

The Complainants state that the Provider has incorrectly calculated the arrears on their Loans. The Provider disputes this. The Loans were due to revert to full capital and interest repayments in or around **1 February 2019**. This was followed by a number of missed repayments causing arrears to accumulate and no arrangement was in place to capitalise these arrears. On considering the evidence and the parties' submissions, I am not satisfied that it has been established that the Provider incorrectly calculated the arrears on the Loans.

Goodwill Gesture

The Provider states that:

"... we recognise the failings in this case, and we recognise the inconvenience caused to the Complainants. Having considered all aspects of this complaint we offer the Complainants €3,000 by way of apology. We are also willing to offer the Complainants an arrangement which will recapitalise the arrears."

I consider this goodwill gesture to be a reasonable sum of compensation for the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainants, I do not uphold any aspect of 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

24 March 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.