



<u>Decision Ref:</u>	2021-0077
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Increase in interest rate
<u>Outcome:</u>	Rejected

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

The complaint relates to the Complainants' mortgage loan account.

The Complainants' Case

The Complainants submit that they took out a mortgage to purchase a holiday home in 2004. They state that they sold their Primary Dwelling House (PDH) in **2007**, and moved to their holiday home, which then became their PDH.

The Complainants contend that they were not aware that they should have "*reategorised*" their home as their PDH with the Provider at that time, and that they "*continued to pay the much higher Buy to Let interest rates for about 12 years without realizing it*".

The Complainants submit that they contacted the Provider, and made an appointment to discuss the matter, "*but got nowhere*". They further submit that they wrote to the Provider in **March 2019** "*officially asking that they put us on the PDH mortgage rates. This request was declined*".

The Complainants want the Provider to:

"Offer us options to switch to any one of their existing mortgage rates for PDH loans rather than insisting we stay on Buy to Let Rates"

And:

“Technically we would argue that they should also reimburse us for overcharging us since 2007 as they were aware that we were in our family home from that date”.

The Provider’s Case

The Provider in its Final Response Letter **28 May 2019** states;

“As confirmed to you in our letter of 28 March 2019 it has been noted that the mortgage property address is your family home.

I confirm that it is not the Bank policy to amend the current terms and conditions or interest rate applicable to your mortgage account”.

The Complaint for Adjudication

The complaint is that the Provider is refusing to offer the Complainants relevant interest rate options for the mortgage on their PDH.

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 3 March 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.

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In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

Analysis

The Complainants in this case applied for and were granted a mortgage in respect of a property in [rural Ireland].

It is accepted by both parties that at the time that the mortgage was created, the property represented an investment property (a holiday home) rather than a principal primary residence or 'Private Dwelling House' [PDH]. It is also accepted that the account opened was a 'Residential Investment Loan' facility.

The Complainants entered into a written agreement with the Provider following the Provider's issue of a Letter of Approval; the Complainants signed an 'Acceptance of Loan Offer' document on 9 December 2004. The Complainants were free to decline the Provider's offer however they choose to accept the terms presented to them and in doing so agreed to be bound by these. The Complainants' complaint about the Provider is that the Provider, upon request being made of it in 2019, refused (and continues to refuse) to transfer their mortgage to a different rate typically available for mortgages on PDHs. The Complainants also suggest that they should be reimbursed for having been overcharged since they moved their PDH to the mortgaged property in 2007 although the Complainants do, in fairness, acknowledge their "*own fault*" in this regard in failing to advise the Provider for several years of the fact that the mortgaged property was now their PDH.

By reference to the law of contract and the terms of the Complainants' account, there is no obligation on the Provider to agree to any request for a change to the terms of the account including an amendment to the applicable rate. There is no obligation on a financial service provider to advance more favourable terms available to the Complainants or to offer a modification to agreed terms.

There is an obligation on a financial service provider, upon being advised that a mortgaged property, which was previously considered to be an investment property, has become a PDH, to ensure that the account holders are provided with all the benefits and protections provided for in law in respect of mortgages secured on primary residences, in particular, the Code of Conduct on Mortgage Arrears. In this case, the Provider, upon being informed of the change, arranged for the Complainants to complete the requisite form to ensure those benefits and protections were extended. There is no suggestion that the Provider failed to advance those benefits and protections or that it breached any safeguards provided therein.

While I understand the Complainants' concerns and disappointment, for the reasons set out in this Decision, I do not uphold this complaint.

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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.