



<u>Decision Ref:</u>	2021-0134
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Partially upheld

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

This complaint relates to a mortgage loan account that was held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' residential investment property.

The loan amount was €220,000 and the term of the loan was 10 years. The particulars of the Letter of Approval dated **19 September 2007** detailed that the loan type was an *"Endowment Residential Investment Loan 3 Year Fixed Rate."*

The mortgage loan account was redeemed in **November 2017**.

The Complainants' Case

The Complainants submit that they drew down a *"Residential Investment Loan"* in the amount of €220,000 in **2007** on a three year fixed interest rate of 5.45%. They state that the monthly repayment during that period was €899.43.

The Complainants state that the mortgaged property *"was and is the family's home"* and *"never was residential investment"*. They submit that their mortgage repayments were *"wrong"* and that *"we should have been on the tracker loan from 2007"*.

The Complainants detail that a tracker interest rate was applied to the mortgage loan on **25 September 2010**. They outline that they paid the mortgage on an interest only basis and on the tracker rate for seven years.

The Complainants submit that the First Complainant contacted the Provider in **September 2017** to query "*what way would [they] pay the loan*". They state that the First Complainant was "*very surprised*" to be advised by the Provider's employee that there was "*60 months left on the loan ... he went on to say it would have the same agreement interest only at tracker*". The Complainants detail that they requested this information in writing and the Provider's employee said that they would get a letter in "*a few days*".

The Complainants outline that they did not receive a letter and so they contacted the Provider again. They submit that a different employee of the Provider "*reported again*" the same information that was outlined to them in the first telephone call. They submit that they "*asked again for it in writing*" and were "*told it would take a few days.*" They state that again, they did not receive a letter. They further submit that they contacted the Provider a third time and spoke to another employee and it was the "*same story*".

The Complainants outline that the Provider has since informed them that it "*could not locate*" any of these calls.

The Complainants are seeking a "*refund for the seven years we were on [the] residential investment*" interest rate. They further submit that "*We feel we should be given the loan as promised of €220,000 for the 60 months interest only on the tracker rate.*"

The Provider's Case

The Provider submits that the Complainants completed their application for mortgage facilities on **26 July 2007** through their chosen broker. It outlines that the Provider "*did not have any direct contact with the Complainants when the terms of the mortgage were being negotiated. The suitability of the loan product for the Complainants was a matter between the Complainants and their chosen broker.*"

The Provider states that tracker rates were offered to new and existing customers in **2007**. It states that the Complainants' application for credit included the option of a tracker interest rate in respect of their mortgage loan, which they did not select, and instead they "*opted for an Interest Only Endowment product for a fixed rate period of 5 years.*"

The Provider outlines that an earlier draft loan agreement dated **14 September 2007** was also a Residential Investment Loan offered on a five year fixed interest rate, but was not entered into by the Complainants.

The Provider states that pursuant to a Letter of Loan Approval dated **19 September 2007** the Complainants were offered an *“Endowment Residential Investment Loan”*. It states that this loan agreement *“was the one into which the parties entered and which governed the parties’ contractual relationship.”* It states in any event, that neither loan agreement referred or related to a home loan.

The Provider details that on **28 September 2007** the loan was drawn down in the amount of €220,000 on a three year fixed rate of 5.45%, over a term of 10 years on an interest only basis. It states that on the expiry of the fixed rate period the Complainants were entitled to be offered a further fixed rate or a variable rate. It refers to **Special Condition A** and **General Mortgage Loan Approval Condition 5** to support this.

The Provider states that the loan offer was *“accepted by the Complainants with the benefit of independent legal advice, and the Complainants acknowledged with their signatures dated 19 September 2007 that the Complainants solicitor had explained the terms and conditions of the loan to them.”*

The Provider states that it *“is satisfied that the Complainants’ mortgage loan account was appropriately classified as an “investment loan”*. It outlines that the Provider’s file notes show that *“the Complainants’ intention was for the mortgaged property to be rented on completion, for the sum of €1,500 per month. The notes also confirm that the Complainants were considering clearing the mortgage with the proceeds from the sale of a [Country] rental property.”*

The Provider outlines that *“Twenty days prior to the expiry of the initial three year fixed interest rate period, the Bank issued an options letter to the Complainants, setting out the various interest rate options, including a tracker rate ECB + 0.80%.”* The Provider details that the *“options letter was not returned to the Bank”* and on **28 September 2010**, in the absence of an instruction from the Complainants, the account defaulted to the tracker rate of 1.80% (ECB + 0.80%). The Provider submits that the Complainants’ mortgage loan account remained on a tracker interest rate of ECB + 0.80% until it was redeemed on **20 November 2017**.

The Provider submits that the Complainants had never applied nor been approved for an extension to the term of their loan. It states that the telephone calls that occurred between the First Complainant and the Provider between **19 September 2017** and **29 September 2017** *“may have been unclear as to whether the term of the Complainants’ mortgage had been extended by 60 months, as a result of the information provided to the first-named Complainant during the telephone calls by the Bank’s customer support representatives.”* The Provider details that in *“recognition of this uncertainty regarding the extension of the mortgage term”* it is willing to offer the Complainants the sum of €500.00 as a gesture of goodwill and in resolution of this aspect of the Complainants’ complaint.

The Complaints for Adjudication

The complaints for adjudication are as follows;

- a) The Provider did not offer or inform the Complainants about the option of a tracker interest rate when they applied for the mortgage in **July 2007**; and
- b) The Complainants were misinformed by the Provider that the term of their mortgage loan account had been extended by 60 months in **September 2017**.

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 14 April 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.

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

Before dealing with the substance of the complaint, I note the application for the mortgage loan was submitted by the Complainants to the Provider through a third party broker. As this complaint is made against the Respondent Provider only, it is the conduct of this Provider and not the broker which will be investigated and dealt with in this Decision. The Complainants were informed of the parameters of the investigation by this office, by letter, which outlined as follows;

“In the interests of clarity, the complaint that you are maintaining under this complaint reference number is against [the Provider] and this office will not be investigating any conduct of the named Broker in the course of investigating and adjudicating on this complaint.”

Therefore, the conduct of the third party broker engaged by the Complainants, does not form part of this investigation and Decision for the reasons set out above.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2007** and in **2017**.

I note that the copy **application for credit** furnished in evidence is illegible in parts. The Provider has advised that this is the only copy *“on file with the Bank and from the Broker.”*

The Complainants signed the **application for credit** on **26 July 2007**. The *“Details of mortgage required”* section outlines as follows;

“purchase price/value of property
€220,000
Loan type Interest Only

amount of loan required
€220,000
repayment term required
5 years.”

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In response to the question “*Type of Loan*” the option “*Interest Only – Endowment*” was ticked. The other options were Repayment, Interest Only – Pension, Interest Only – Other, and Other.

In response to the question “*Rate Type*” the option “*Fixed*” was ticked. The other options were Tracker, Variable, Discount, Split and Other.

“*5 Year Int Only*” was written in response to the question “*please specify the initial fixed period sought*” and “*10 yrs*” was written in response to the question “*Term*”.

The Provider has furnished in evidence copies of published marketing documents entitled “**Lending Interest Rates**” which I understand were effective between **February 2007** and **August 2007**.

The “**Lending Interest Rates**” that were effective on **02 July 2007**, outline as follows;

“Repayment Home Loans

Rates applicable to New Home Loans

	RATE	APR
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV <80% loan <€500K</i>	4.60%	4.9%
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV <80% loan €500K+</i>	4.55%	4.8%
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV 80% - 95% loan <€500K</i>	4.70%	5.2%
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV 80% - 95% loan €500K - €1M</i>	4.70%	5.0%
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV 80% - 95% loan €1M+</i>	4.55%	4.8%
<i>Tracker Rate LTV 95% + loan <€500K</i>	5.10%	5.2%
<i>Tracker Rate LTV 95% + loan €500K+</i>	4.90%	5.0%

...

Residential Investment Property Loans & Commercial Mortgages

Rates available on request.

The rate applicable to individual customers is determined in accordance with loan documentation.”

I note that tracker interest rates were on offer generally by the Provider when the Complainant applied for the mortgage loans in **July 2007**. The **Lending Interest Rates** document was published by the Provider at the time and it clearly outlined the types of interest rates that were available for different types of mortgage loans, including tracker rates.

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I note that the document did not set out the specific interest rates available for Residential Investment Property loans. Rather the document detailed that such rates were available “on request”.

The fact that tracker interest rate options were available generally as part of the Provider’s suite of products at the time, did not oblige the Provider to offer the Complainants a tracker interest rate on this loan application. There is also nothing to suggest that if a request was submitted by the Complainant seeking the application of a tracker interest rate to the mortgage loan that this would have resulted in the Provider acceding to that request and issuing a Letter of Offer on that basis.

It is important for the Complainants to understand that, notwithstanding the fact that tracker interest rates were available from the Provider at that time, there was no obligation on the Provider, contractual or otherwise, to give the Complainants the option of a tracker interest rate on their mortgage loan when they made the application to the Provider in **July 2007**.

If the Complainants wished to pursue the potential option of applying for a tracker interest rate mortgage loan at the time in **July 2007**, the Complainants could have indicated to the Provider that they had a preference for a tracker rate. It does not appear however that the Complainants did so. The Complainants applied for a mortgage loan on a fixed interest rate and the Provider offered the Complainants a fixed rate, which was accepted by the Complainants, having acknowledged that the terms and conditions of the mortgage loans were explained to them.

The Provider’s file notes furnished in evidence dated **27 July 2007**, detail as follows;

“ ...

APPLICANTS HAVE BOUGHT A SITE IN [LOCATION] WITH PLANNING PERMISSION(COST 140K) FOR A 3 BET [sic] DETACHED HOUSE. THEY REQUIRE 220K TO BUILD THE HOUSE. ^^[FIRST COMPLAINANT] RECEIVED A PENSION FROM [EMPLOYER] FOR 13,717pa, HE WAS A [OCCUPATION] FOR [EMPLOYER] FOR THE PAST 30 YEARS AND WHEN HE RETURED HE GOT A JOB AS A [OCCUPATION] FOR THE LAST YEAR. ^^THEY WILL RENT THE HOUSE FOR E1500 PER MONTH ON COMPLETION, REPAYMENTS E1008 PER MONTH. 1.48 TIMES COVER. ^THEY ALSO OWN A 2BED APT IN [LOCATION], VALUE 196Kgbp, MORTGAGE O/S 80Kgbp. RENTAL INCOME 600gbp PER MONTH. REPAYMENTS 319gbp PER MONTH. THEY WILL CONSIDER CLEARING THE LOAN FROM THE PROCEEDS OF THE SALE OF THE [COUNTRY] PROPERTY IN 5-10 YEARS TIME.

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^^THEY HAVE NO O/S LOANS AND HAVE ABOUT 152.3K IN SAVINGS, SOME OF THIS WILL BE USED TO BUY THE SITE.^^THEY REQUIRE A LOAN OF 220K OVER A 10 YEAR TERM BASED ON INTEREST ONLY FOR THE FIRST 5 YEARS TO BUILD A DETACHED 3 BED HOUSE WITH ATTIC CONVERSION..."

It appears that the Complainants' stated intention at that time was to rent the mortgaged property for €1,500 per month. This somewhat contradicts the Complainants' submission that the property was always intended to be used as the family home.

The Provider has outlined that a loan offer was issued to the Complainants on **14 September 2007** which provided for a residential investment loan on a five year fixed interest rate. A copy of this loan offer has not been furnished in evidence to this office. Nonetheless it does not appear to be disputed between the parties that this initial loan offer was not signed or accepted by the Complainants.

The Provider issued a **Letter of Approval** dated **19 September 2007** to the Complainants, which details as follows;

<i>"Loan Type:</i>	<i>Endowment Residential Investment Loan 3 Year Fixed Rate</i>
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<i>Purchase Price / Estimated Value :</i>	<i>EUR 360,000.00</i>
<i>Loan Amount :</i>	<i>EUR 220,000.00</i>
<i>Interest Rate :</i>	<i>5.45%</i>
<i>Term :</i>	<i>10 year(s)</i>
<i>Monthly Instalment :</i>	<i>EUR 999.17"</i>

The **Special Conditions** to the **Letter of Approval** details as follows;

"Special Conditions

A. GENERAL MORTGAGE LOAN APPROVAL CONDITION 5 "CONDITIONS RELATING TO FIXED RATE LOANS" APPLIES IN THIS CASE. THE INTEREST RATE SPECIFIED ABOVE MAY VARY BEFORE THE DATE OF COMPLETION OF THE MORTGAGE.

...

F. GENERAL MORTGAGE LOAN APPROVAL CONDITION 2.5 RELATING TO STAGE PAYMENTS APPLIES. ANY FEES TO BE DEDUCTED FROM THE LOAN CHEQUE AS SPECIFIED IN THESE CONDITIONS WILL BE DEDUCTED FROM THE FIRST STAGE PAYMENT.

..."

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General Condition 5 of the **General Mortgage Loan Approval Conditions** details as follows;

“5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.

5.2 The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.

5.3 Whenever repayment of a loan in full or in part is made before the expiration of the Fixed Rate Period the applicant shall, in addition to all other sums payable as condition of and at the time of such repayment, pay whichever is the lesser of the following two sums;

(a) a sum equal to one half of the amount of interest (calculated on a reducing balance basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or

(b) a sum equal to [the Provider’s] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid if [the Provider] loaned such sum to a Borrower at its then current New Business Fixed Rate with a maturity date next nearest to the end of the Fixed Rate Period of the loan, or part thereof, being repaid.

5.4 Notwithstanding Clause 5.1 [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee.”

The **General Mortgage Loan Approval Conditions** also outline;

*“IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:
“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.””*

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The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **19 September 2007**. The Acceptance of Loan Offer states as follows;

“1. I/we the undersigned accept the within offer on the terms and conditions set out in

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval conditions*
- iii. [the Provider’s] Mortgage Conditions*

copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.

...

4. My/our Solicitor has fully explained the said terms and conditions to me/us.”

It is clear to me that the **Letter of Approval** envisaged an initial three-year fixed interest rate and thereafter a variable rate option, which could be adjusted by the Provider from time to time. There was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on the expiry of the fixed interest rate period. It is clear that the Letter of Approval provided for a Residential Investment Loan.

The Complainants accepted the Letter of Approval, having confirmed that it had been explained to them by their solicitor. If the Complainants were not happy with the terms of the Letter of Offer, including the loan type or the type of interest rate that would apply either from inception or on expiry of the fixed interest rate period, the Complainants could have decided not to accept the offer made by the Provider.

The Provider’s internal note dated **27 September 2007**, detailed:

<i>“Event</i>	<i>27/09/2007</i>	<i>CHEQUE DISBURSED FOR EUR000043000.00 BY THE</i>
	<i>11:49:29</i>	<i>HEAD OFFICE MPC”</i>

The **mortgage loan statement** shows that the first stage payment of €43,000 was drawn down on **28 September 2007**, with a *“Holdback Amount”* of €177,000 on the same date.

The **mortgage loan statements** show that the remaining stage payments were drawn down as follows;

- A *“Further Advance”* of €30,000 was drawn down on **16 October 2007**.
- A *“Further Advance”* of €42,000 was drawn down on **27 November 2007**.

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- A "Further Advance" of €34,000 was drawn down on **17 December 2007**.
- A "Further Advance" of €49,000 was drawn down on **03 March 2008**.
- A "Further Advance" of €22,000 was drawn down on **29 April 2008**.

An **options form** has been provided in evidence which details as follows;

"Current options available:

You may only select one option.

...

		MONTHLY	
		REPAYMENT	
		EUR	
<input type="checkbox"/> Interest Only	- Currently: 5.45%	911.08	...
<input type="checkbox"/> Principal and Interest	- Currently: 5.45%	2832.55	...

...

Please select one of the above options and return the attached form before the expiry date to: [Provider address].

...

- *[The Provider's] Loan Approval conditions in relation to interest only mortgages are still applicable."*

The Complainants signed the options form on **11 August 2009** and selected the "Interest Only" option.

The Provider has outlined that "Twenty days prior to the expiry of the initial three year fixed interest rate period, the Bank issued an options letter to the Complainants, setting out the various interest rate options, including a tracker rate ECB + 0.80%." The Provider details that the "options letter was not returned to the Bank" and on **28 September 2010**, in the absence of an instruction from the Complainants, the account defaulted to the tracker rate of 1.80% (ECB + 0.80%) which it remained on until the mortgage loan account was redeemed on **20 November 2017**.

I note from the **mortgage loan statement** that a rate of 1.80% was applied to the mortgage account on **28 September 2010**.

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The Provider has not furnished the options letter which it states was issued to the Complainants prior to the expiry of the fixed interest rate period in **September 2010**. Nor has it provided any explanation as to why the options letter has not been furnished. This is most disappointing.

Provision 11.5 and 11.6 of the Consumer Protection Code 2012, outline as follows;

“A regulated entity must maintain up-to-date records containing at least the following

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer’s contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information [and documentation] concerning the consumer.*

A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.”

The Complainants’ mortgage loan was incepted for a term of **10 years** commencing from **September 2007** and the options letter purportedly issued prior to the expiry of the fixed interest rate period in **September 2010**. The Complainants’ mortgage loan account was redeemed in **November 2019**. The Provider is obliged to retain this correspondence on file for six years from the date the relationship with the mortgage holder ends. It is therefore unclear to this office as to why this evidence have not been furnished by the Provider, in the absence of any explanation.

The Provider has summarised its tracker policy as follows;

“... [in mid] 2006, the Bank introduced a policy of offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest although their loan contract did not specify an entitlement to be offered a tracker rate at maturity (this initiative was taken against the backdrop of the competitive mortgage market at that time).

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First Complainant: Yeah. So what happens now? ... I was expecting to hear from you but nobody has contacted me or tried to contact me or sent me a letter or anything for a meeting of any description

Provider: Yeah, when did it expire, just last week was it?

First Complainant: No next week the 28th I think it is ... the 28th of September

Provider: Just one second and I'll just have a look through your account, ok? Just hold the line there a moment ...

So I am just going to have to just call through to another department, because it is telling me that it is expired but then it's telling me that there is still something left on the term

...

Yeah see it's not making any sense what I am seeing now, because it's telling me the term is expired but then it's also showing an amount remaining.

First Complainant: What amount is remaining?

Provider: Like 60 months.

First Complainant: Still 60 months available?

Provider: Yeah, but like I don't know if that's accurate, I just need to call over to the mortgage head office and see what's going on with it like cause like usually if the term has expired it will come up term remaining 0 months, and this isn't, so I just need to call over and see if they can eh...

First Complainant: Well can you get back to me on that, who am I talking to?

Provider: Yeah Yeah I can actually that would be better actually again.

First Complainant: Then we will know where we are then...

Provider: Yeah I will send on an email now to our Mortgage Head Office and see what's happening with that..."

It is clear from this telephone call that the Provider's employee intended to investigate the matter further to clarify the term remaining on the mortgage loan and would then revert to the First Complainant.

I note that following the telephone call the Provider's employee sent an internal email to the Provider's mortgage department on **19 September 2017**, which stated:

"Just a quick query about above loan its coming up term has expired on [Complainants] but it is also saying there 60 mths still remaining.

/Cont'd...

Customer basically just wants to know what happens now its expired but I just wanted to confirm that this loan has in fact expired and there is not 60 months left on it.any help appreciated.”

The Provider’s mortgage department replied to the Provider’s employee on **20 September 2017** as follows;

“Please note that when the term expires on all IO loans, the system automatically adds on 60 months.”

I have considered a further audio recording of a telephone call between the First Complainant and an employee of the Provider, which took place on **20 September 2017** and included the following exchanges;

“...

Provider: So I just spoke to [employee of Provider]... who you were speaking to earlier on, so the original call you were, you were just curious about what happened next to the mortgage now that you have come to the end of term, right?

...

First Complainant: Yeah yeah

Provider: So your mortgage was taken out, it was taken out on interest only, ok so the way those mortgages work normally you over the course of the term you would pay off the interest on it, then when you come to the end of the mortgage term you would normally pay back the entire principal balance, OK.

First Complainant: OK

Provider: So now if everything went in accordance with that set up they would be expecting you to make a one lump sum payment 220,000 euro, ok?

First Complainant: OK

Provider: Now, the way its been done here is the mortgage services have confirmed that they have added on 5 years to the term and that effectively is to allow you to pay off the €220,000 over the course of that 5 years.

...

First Complainant: And how am I going to pay that, would you pay that on a monthly basis? What would the repayments be?

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Provider: Yeah so its going to be basically the same as it was up until now you just have to be making monthly repayments as they were.

First Complainant: But then I'll be ... making payments in 5 years

Provider: Yes yeah or or if you have the funds available you can pay off €220,000 or any sum of money towards that you know?

...

First Complainant: OK OK so would you be sending me out a letter stating all that? Or what happens?

Provider: Yes so, I mean the term has been extended, so I would expect there to be a letter on file, I'm just going to check that now, two seconds ... OK sorry about that [Complainant] there doesn't appear to be a letter on the system yet for this but if you would like ... But if you would like I can request for the back office team to try to get something out to you

...

First Complainant: Is this agreement, this agreement that you said ... saying I can extend for 5 years, is this normal or is it just a one off or what?

Provider: So yeah, I mean, normally how these mortgages perform is, or the way they are expected to perform anyways, you pay off the interest on the principal for the life for the life of the mortgage then once you reach the end of the mortgage then we would expect you usually to pay off the entire principal amount ... So up until now effectively, what you have been paying is the interest on the principal amount OK so have you, have you spoken to anyone there about your financial situation recently with us at all?

First Complainant: No no not at all, I am not worried about that ... Do you do this all the time or is it just...

Provider: No no this is standard where there is an interest only loan like yours that is the standard how things are normally done

First Complainant: Is it?

Provider: Yes.

First Complainant: Right OK, listen I look forward to the letter and I'll hope to understand it more and I'll be in contact with your office, Do I need to I just keep paying the monthly repayments paying the interest on the 28th ... for the next five years.

Provider: Yes, so your direct debit is still set up so it will just continue automatically to go in there, yeah.

/Cont'd...

...”

Another employee of the Provider sent a further internal email on **20 September 2017**, as follows;

“This customer called into me [employee of the Provider] this evening.

This is an IO RIP Term Expired loan & it seems as though the term has been extended by 60 months.

The customer initially called into [Provider service] and spoke with [employee of Provider] who queried this as I can see from Imaging and [employee of Provider] advised this was automatically added to the term by the system.

As the customer stated she took the loan out for a 10 year term and was under the presumption the term was due to expire this year – the customer has asked for a letter to be sent explaining the term has now been extended by 60 months? Can you issue this letter as soon as possible please.

Also I was hoping you could clarify:

- 1. Is this the case on all IO BTL loans?*
- 2. If so, is it always extended by 60months?*
- 3. Do the repayments remain on IO for the extended term?”*

A further internal email sent between employees of the Provider on **22 September 2017**, and detailed as follows;

“...

- 1. ... This is the case for all IO loans*
- 2. ... Yes it is always extended to 60 months*
- 3. ... Yes the repayments remain on IO for the extended term”*

I have considered a further audio recording of a telephone call between the First Complainant and the Provider, which took place on **26 September 2017** and included the following exchanges;

“...

/Cont’d...

Provider: ...Yeah it was just regarding the interest only Buy to Let and the term extension on the account ... So what was the letter that you requested to be sent out just confirming yeah?

First Complainant: Yeah yeah...just confirming ... was it not the case the letter was to come out to me anyway?

...

Provider: You will pay ... you will still only be paying the interest only ... 0.8%, which is yeah so it's still the tracker rate ... the repayments remain, remain the same on interest only for the extended term which is the 60 months ...

Its just the way the system works, just automatically extends it by 60 months, its just the system that is in place for interest only loans.

First Complainant: OK ... so when will I get my letter?

Provider: Well it wasn't a letter that [name of employee] was sending out to you

First Complainant: What was he sending out?

Provider: It was ... I'm not too sure what it was that he was sending out to you. It's something I would have to ask him about ... but as far as I can see here, it was an email he sent off, basically asking to see what was going on

...

First Complainant: Alright ... can you send me off a letter confirming that confirming that so I won't be mixed up.

Provider: Well I wouldn't be able to send you a letter confirming it. Now I can send off an email to see if it's possible.

First Complainant: I don't know why that would be difficult

Provider: ...So [Complainant] I have just sent off an email to the Mortgage department and what I've said in the email, I'll read it out to you, it basically just says, could this customer please be issued with a letter confirming that her term has been extended by 60 months on her interest only Buy to let expired term loan and that all repayments will remain the same as per previous conversations on our system from 22 September 2017, kind regards [Name of employee].

First Complainant: That's perfect [name] couldn't ask for better than that.

/Cont'd...

Provider: Is there anything else I can help with you today?
First Complainant: No I think that's about just it...so that will be out in the next few days.
Provider: Yeah...So if I get an update in any way saying that they can't do it what I'll do is I'll give you a call and I'll let you know.
..."

During the course of the telephone call the Provider's employee emailed the Provider's mortgage department on **26 September 2017**, as follows;

"Could this customer please be issued with a letter confirming that her term has been extended by 60 months on her IO RIP expired term loan and that all repayments will remain the same please. As confirmed see imaging 22-09-2017"

The Provider's mortgage department responded on **27 September 2017** as follows;

"This is not something we would issue out, the term hasn't been extended by us to 60 months. This is done automatically in order to give time for the customers to pay the balance. The loan is still expired and the customers will be contacted to clear the balance or come to some arrangement.

@ [Employee of Provider]

Sorry for emailing you, but could you refer this one to the team looking after expired loans please?
..."

Another employee of the Provider sent an email to the Provider's Arrears Mortgage Unit on **27 September 2017**, enquiring as follows;

"Is this one of your cases."

The Provider's Arrears Mortgage Unit responded on **29 September 2017** as follows;

"No its not, no sfs has been sent in or offer issued on account, its not with us

The customer will need to complete sfs if full balance is unable to be cleared in full, it will fall into a collections queue & they will begin contacting customer re the balance.

/Cont'd...

No TE has been approved on account & repayment amounts cannot be guaranteed until SFS completed for affordability”

I have considered a further audio recording of a telephone call between the First Complainant and an employee of the Provider which occurred on an unspecified date and included the following exchanges;

“ ...

Provider: ... so originally I sent out the letter basically asking for the, for it to be confirmed to you that it was going to be the 60 month extension on the interest only OK?

First Complainant: OK yeah.

*Provider: ...
But, I do just want to apologise on my behalf but basically I sent it off to our Mortgage Services Department now I did advise you that I wasn't too sure whether they were going to be able to do it but I, but I forwarded it on to the correct department ... so basically there was a bit of liaising back and forth between departments. Now I don't need to go into too much detail because it was just general conversation between getting it done and what needs to be done on the account OK? But just after I was speaking to my colleague earlier I did get an email through and basically it says that we cannot send out a letter confirming that the 60 months extension has been applied to the mortgage. Now the reason ... So it says there is no restructure which has been sent in or offer issued on the account so it's not with the restructure team so basically you will need to complete a restructure if the full balance cannot be cleared...*

First Complainant: What's that mean now?

Provider: So basically we cannot send it out...we cannot confirm the repayment amount ... until a restructure has been put in place

First Complainant: So when I got the call they said I'm automatically on it now ... Is that still the way it is or what?

Provider: Yeah it is still in that at the moment.

First Complainant: Will it be changed?

/Cont'd...

Provider: ... what I am going to do is send off another email now and I'm going to say look does the customer need to get a restructure or is this just going to continue on like this for the 60 months for the customer until its paid

First Complainant: OK.

Provider: Now ... two seconds ... the balance outstanding at the moment is ... what did we say last time in or around €221,000?

First Complainant: Yeah

Provider: Yeah, so 60, I just want to check what the repayments are ... so if you keep going at the repayments that you are on now at the moment, it won't clear, it won't clear that arrears in the 60 months no, so...

*First Complainant: ...
See I thought, when I rang up initially about this last week or three weeks ago I was told from now on as of today everything ... nothing will change if you continue the way it is now for the next 60 months ... Nothing was mentioned about any of that initially when they rang me last week.*

*Provider: ...
I was just speaking to our restructure team and what they have advised is that you are going to need to get a restructure put in place which is basically an arrangement so we can get this mortgage paid off.*

First Complainant: Well this is completely different to what was recently said back to me weeks ago.

Provider: It is ... Yeah no as I've said you're not you're not going to clear your mortgage in 60 months ... you're going to need a restructure because you're not going to clear the mortgage.

*First Complainant: ...
Does nobody understand the ... Why was I told all that on the phone before? ... Why is this not sorted initially when I was on the phone going back 2 weeks ago, who's responsible for all this having me telling me one thing and then nothing got to do with me ... Now a restructuring, I got told that this was automatic thing come into place ... Then I was told initially I was told that this is in place you were on an interest only loan and that's why we've given you 60 months, 60 extra months to ... At the present rate, the rate you are paying at the moment.*

Provider: Yeah.

First Complainant: Which is the tracker rate.

Provider: [First Complainant] what I'm going to do, I'm going to place you on hold for a moment I'm going to call through to our Collections team and I'm going to see if they can give me advice on whether we can keep it at the same or whether they are going to have to actually go through the restructure with you ok?

...

Provider: ...the Bank wouldn't extend the term of the mortgage just as in, just because... I'm not trying to be smart here it wouldn't just extend it for no reason, the only sort of real solution we can come to today is to do a financial assessment certainly if you don't think you can clear the €220,000.

...

First Complainant: I can't meet the repayment of 220, then what, what agreement would you be looking for?

Provider: Well it would be based on the financial assessment, so...

First Complainants: ...my husband and I are both pensioners ... So I don't have to be a mathematician to be able to count them figures up

Provider: Yes...well if that's the case then you may have to sell the property

First Complainant: I have to sell the property?

Provider: Yes, certainly if you don't think that you can service the repayments.

First Complainant: ...I was told that wouldn't be a problem, I did ask all these questions and there would be nothing for the next 60 months at the present rate it's at the moment which is interest only and a tracker loan.

Provider: To be perfectly honest with you I'm not sure why someone gave you that information, it's just not correct, the term of the mortgage has ended...

...

First Complainant: OK that's very nice to hear I was getting out to find out where is my letter and now you are telling me this is a whole new different ball game altogether

Provider: Well yes.

First Complainant: ...I spoke at length to a few of your colleagues and nobody has mentioned anything like what you said its all been...

/Cont'd...

Provider: ...If the term of the mortgage had expired, the onus would be on you to contact the Bank to see what your plan is to clear the balloon payment ... I don't know why people weren't, perfectly honest with you I don't know why people are telling you that information, I just don't ... the term of the mortgage expired in July Oh sorry 28th [September] it looks like there sorry ... so to be perfectly honest with you if you can't repay that balloon repayment or you don't have a plan in place, I mean do you even have any idea of what the valuation of the property may be?

First Complainant: ...I'm not even taking that road at the minute because I just feel sick in the stomach telling me that the house has to be sold, I mean that's... I was on to get a letter stating that my payments were going to continue as they have done for the past 10 years, never one late or even delayed payment and then you're getting on saying the house has to be sold maybe to meet the mortgage ... I understand that we have an outstanding mortgage on it but I didn't think that this sort of drastic measure was going to be applied upon me.

*Provider: ...
...I know exactly where you are coming from but what's underpinning all this is that the Bank just won't extend term of the mortgage without there being an assessment ..."*

..."

I have considered the audio recording of a further telephone call between the employees of the Provider which included the following exchanges;

"...

Provider Employee 2: Yeah she needs to do a financial assessment, yeah you can put her on there.

Provider Employee 1: ...Now being honest with you she is OK but she did get a bit of a run around, so she might be a little bit upset when she is first put through but she is generally OK.

Provider Employee 2: Grand yeah OK."

/Cont'd...

The Provider issued the Complainants a letter dated **29 September 2017**, detailing as follows;

“...

In order for us to fully understand your financial situation and consider the most suitable option which may be available to you, an appointment with a Specialist in your local branch is required and completion of a Standard Financial Statement (SFS).

We are enclosing the form, the Mortgage Arrears Resolution Guide and an explanatory note with this letter so that you can prepare for the appointment and see what information we require before we can assist you. When attending your appointment, please bring your completed SFS, together with 3 most recent months main bank account statements and proof of relevant income as applicable (e.g. 2 recent payslips, copy P60, Social Welfare receipts). If you are self employed, you also need to supply 6 months recent business bank account statements and either a letter from your Accountant confirming current year earnings OR a copy of the most recent tax balancing statement.

It is very important that all sections of the SFS are completed accurately and that full details of the financial position of all parties to the Mortgage are disclosed, along with the supporting documentation where requested. Failure to do this could result in a solution not being available for you or one which is not appropriate for your needs. You may also wish to seek independent advice e.g. from MABS or an alternative Third Party advisor at any point in this process.

If you have not already done so, please call us as soon as possible on [phone number] to make an appointment with your local [Provider] branch.

Once we have received the fully completed SFS from the branch we will assess your case and be in contact with you within 10 days.

It is important that you continue to pay as much as you can in the meantime and if you have any questions please contact us on [phone number] between 9am and 8pm Monday to Friday or on Saturday between 9am and 1pm.”

The Provider details that it “was unable to locate any calls between the Complainants and the Bank on the dates of 2 October 2017 and 12 December 2017.” This is most disappointing.

/Cont’d...

The Provider issued the Complainants a letter dated **10 October 2017**, which details as follows;

"I refer to your recent conversation with our [Provider service] Agent on the 2nd October 2017 in relation to your complaint.

[The Provider] place great emphasis on customer service and we are concerned if any aspect of our service does not meet the standard as expected by our customers. I appreciate you taking the time to bring this matter to my attention and would like to take this opportunity to outline the situation to you.

I note from your conversation that you are dissatisfied with the daily interest accrual on your mortgage account. I understand that you feel you should not be held liable for these charges as you were awaiting a response in relation to the extension of your mortgage.

Please be advised that when a term of a mortgage expires we cannot determine the repayment period on the mortgage account until an up to date Standard Financial Statement (SFS) has been submitted by the borrowers. I note from your account that a letter was issued to you on the 29th October 2017 advising that in order for the Bank to consider the most suitable repayment option for you an appointment would need to be set up with a Specialist in your local Branch.

I also note from your complaint that you were misadvised that a term extension of 60 months has been applied to your mortgage. I regret that I cannot locate the call where this misinformation was provided to you. If you could please furnish me with more information regarding when this phone call took place, such as date of the call and agent you were speaking with I would be happy to look into this matter further for you.

With regards the daily interest accrual on your mortgage account. Please be advised that customers are obliged to pay daily interest on their mortgage up until the balance of the mortgage has been paid off in full. Upon review of your account I note that a lump sum payment of €161,669.56 was applied to account number [account number] on the 3rd October 2017. Please be advised that you are receiving the interest benefits of this lump sum payment and your current daily interest accrual is €1.28 per day.

..."

I note from the **mortgage loan statement** that the Complainants made a redemption payment of €161,669.56 to the account on **3 October 2017**.

/Cont'd...

The Provider sent the Complainants a letter dated **19 October 2017** detailing as follows;

“Thank you for your recent request for the amount you need to pay to clear your mortgage. Here are the details.

<i>Loan Number</i>	<i>Amount €</i>	<i>Daily Accrual</i>	<i>Inclusive of fixed rate exit fee€</i>
<i>[Account number]</i>	<i>58,380.15</i>	<i>1.28</i>	<i>0.00</i>

...”

I note from the **mortgage loan statement** that the Complainants made a further redemption payment of €40,000 to the account on **23 October 2017**.

The Provider wrote to the Complainants again on **31 October 2017**, as follows;

“We refer to your above mortgage account and can confirm that the term of your mortgage has expired, however the account remains active due to the remaining balance of €220,182.13. As the term has expired the remaining balance is now due and owing and we would be grateful if you could forward a cheque for the above amount in order for us to close the loan. Please note the outstanding amount continues to bear interest at the mortgage interest rate.

...”

The Provider’s letter indicates that the outstanding mortgage balance on **31 October 2017** was €220,182.13. However, the **mortgage loan statement** shows that the mortgage balance outstanding on **31 October 2017** was €18,242.77. While this error is disappointing, it does not appear that this matter is disputed between the parties.

I note from the **mortgage loan statement** that the Complainants made a further redemption payment of €18,225.94 to the account on **2 November 2017**. The mortgage loan account was redeemed in full on **20 November 2017**.

The evidence shows that the First Complainant was given incorrect information by the Provider’s agents during the telephone calls on **20 September 2017** and **26 September 2017**. The Provider’s agents informed the First Complainant that a 60-month term extension had been applied to the mortgage loan and that it would remain on interest only and on the tracker interest rate during that 60-month period.

/Cont’d...

The Provider's agent, apologised for the error, during a subsequent telephone call. I note that the Provider's agent clarified that the term of the mortgage had expired and there was an outstanding balance of €220,000. The Provider's agent advised the First Complainant that if the Complainants were unable to pay the mortgage balance the Complainants may have to restructure the mortgage loan or potentially sell the property.

It is clear that incorrect information had initially been verbally given to the First Complainant during the telephone calls in **September 2017**, which is most disappointing. This was subsequently clarified with the Complainants.

I note that the Provider has indicated that in *"recognition of this uncertainty regarding the extension of the mortgage term, the Bank is willing to offer the Complainants the sum of €500.00 as a gesture of goodwill and in resolution of this aspect of the Complainants' complaint only"*. I understand that the offer of the €500.00 compensation remains open to the Complainants to accept.

I accept that the Complainants at all times remained obliged to comply with the terms and conditions of the original **Mortgage Loan Offer Letter**, which was signed and accepted by them, that is, to make the repayments on the mortgage loan over the 10-year loan term. However, having considered this complaint and the evidence furnished, I note that there were significant inconsistencies, inaccuracies and shortcomings in the information provided to the Complainants when the mortgage term expired in **September 2017**.

It appears that a 60-month term extension was applied to the Complainants' mortgage loan account when the mortgage term expired in **September 2017** owing to some system requirement of the Provider. Internal correspondence between employees of the Provider on **20 September 2017** detailed that *"when the term expires on all IO loans, the system automatically adds on 60 months."*

I note that this incorrect classification on the Provider's system led to incorrect information being given by the Provider to the Complainants as outlined above. It is very disappointing that the Provider would allow such incorrect information to be given to the Complainants. I accept that mistakes can occur. However, this mistake was wholly of the Provider's making and to me appears to originate from the inaccurate recording of a 60-month term extension of the mortgage term on the Provider's system. I find this to be a significant shortcoming on the part of the Provider which led to considerable inconvenience for the Complainants.

The lack of clarity from the Provider in the above telephone calls with the First Complainant is concerning.

/Cont'd...

I am very disappointed that the Provider did not accurately represent the position with respect to the expiry of the mortgage term to the Complainants which created significant confusion on the Complainants' part in **September 2017**.

The **General Principles in Chapter 2 of the Consumer Protection Code 2012 (the "CPC 2012")**, which were in effect from **01 January 2012**, outline as follows;

"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

...

(2) acts with due skill, care and diligence in the best interests of its customers"

I am of the view that the Provider did not act in accordance with **Provision 2 of Chapter 2** of the **CPC 2012**. The Provider did not act with due skill, care and diligence in ensuring that it accurately represented the position to the Complainants as to whether or not a term extension had been applied to the mortgage account in **2017**. It is important that all information furnished by the Provider to the Complainants is clear and accurate. In that regard I believe a more joined up approach between the various sections of the Provider and better staff training is merited to improve the quality of information furnished by it.

It is important for the Complainants to understand that they did not have a contractual or other entitlement to a tracker interest rate on their mortgage loan account, and accordingly, there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on the mortgage account in **2007**, or at any other time, even if they had contacted the Provider and requested that a tracker interest rate be applied to the mortgage loan account. The evidence shows that the choice to take out the mortgage loan on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants.

It appears that the Provider applied a tracker interest rate of ECB + 0.80% to the mortgage loan account on the expiry of the fixed interest rate period in **September 2010** at its own commercial discretion.

I note that the Provider has offered a sum of €500.00 to the Complainants. However, I am of the view that the failures on the part of the Provider in relation to inconsistencies and inaccuracies in the information given to the First Complainant over the telephone in **September 2017** and the inconvenience caused to the Complainants merit a larger sum of compensation. For this reason, I partially uphold this complaint.

/Cont'd...

To mark the Provider's shortcomings, I direct that the Provider pay to the Complainants a sum of €2,000 compensation. For the avoidance of doubt this sum is inclusive of the sum of €500 already offered to the Complainants.

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)(a) and (g)**.

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 (inclusive of the sum of €500 already offered to the Complainants), 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**

6 May 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,

/Cont'd...

**(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.

