



<u>Decision Ref:</u>	2022-0081
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Application of interest rate
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the suggested maladministration of the Complainants' mortgage account by way of the changing of rates without their consent, and the suggested failure of the Provider to communicate these changes to the Complainants.

The Complainants' Case

The Complainants hold a joint mortgage account with the Provider since **2003**.

In making this complaint, the Complainants said that they understood that they “pay 4.5% APR on what was a variable rate”.

The Complainants say that in **2018**, they realised that the Provider was referring to their mortgage in correspondence as a Loan to Value ('LTV') mortgage. They queried this with the Provider, and were informed that the mortgage was changed to an LTV variable rate mortgage, due to the Complainants' failure to return a form in **2015**.

The first Complainant says that:

“This happened sometime without my consent and I did not receive communication informing me of this.”

The Complainants learned that an LTV rate depends on the amount that you have borrowed in relation to the value of your home. The Complainants state that the Provider assessed the Complainants' property value at €150,000 (one hundred and fifty-thousand Euro), based on the amount borrowed in **2003**. The Complainants say that their actual property value at the time of making this complaint in 2019, was €185,000 (one hundred and eighty-five thousand Euro). The Complainants state that they asked the Provider why they were still paying interest at 4.5% in those circumstances, and they did not receive an answer.

The Complainants want to have their account reverted to a variable rate. Additionally, they are seeking:

"...the difference in interest between the 4.5% I was paying and what I should have been paying if the LTV value was applied, this interest rate would have been 3.8% or less."

In an email to this office of **21 January 2021**, the first Complainant submitted:

"In recent times [Provider] asked me for my digital consent to process my information..."

"My point is, [Provider] clearly requires consent or they wouldn't have been so precise. So their justification that they alleged that me not returning an alleged letter amounted to consent incorrect at least."

The Provider's Case

The Provider says that the Complainants drew down a home loan for €150,000 (one hundred and fifty thousand Euro) in **2003**, at a three-year fixed rate.

The Provider says that on **10 February 2010**, a five-year fixed interest rate of 5.75% was applied to the loan, and was due to expire on **10 February 2015**.

The Provider says that on **9 January 2015**, the Provider issued a letter to the Complainants to remind them that the current rate option of their mortgage, would expire on **10 February 2015**. This letter stated that if no written instruction regarding the options was received by **10 February 2015**, the interest rate applied to the mortgage would be the LTV Variable Rate. This correspondence enclosed an options form that outlined a number of interest rates available to the Complainants.

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The Provider states that it did not receive any communication from the Complainants at this time regarding the interest rate on their mortgage account. It says that:

“In line with the Terms and Conditions of the mortgage account, the LTV Variable rate of 4.50% was applied to the mortgage account on 10 February 2015.”

The Provider relied on Condition 5, and particularly 5.4, of the **General Mortgage Loan Approval Conditions**, which applied to the Complainants’ mortgage.

The Provider submits that it confirmed the rate change by way of letter to the Complainants on **10 February 2015**.

The Provider notes that three options had been provided to the Complainants in the options form of **9 January 2015**. In default of the Complainant’s response, the LTV option was applied to their account as the mortgage conditions permitted this course of action. The two remaining options were for fixed rates and, as a penalty may be applied if the Complainants were to break from a fixed rate, the Provider says it would never apply this to an account in the absence of express instructions.

The Provider submits that it had no record of either the letter of **9 January 2015** or **10 February 2015** being returned in the post as ‘undelivered’. It argued that *“the Complainants received the letters and chose not to avail of an interest rate”*.

The Provider states that on **11 February 2020**, following contact from the Complainants, the Provider issued an options letter with an enclosed options form. The Provider did not receive a response from the Complainants, and therefore the interest rate on the mortgage remained at the variable rate of 4.5%.

In relation to the LTV variable rate applicable to the Complainants’ account, the Provider says that the purchase price of the Complainants’ property in **2003** was €180,000. This valuation was based on the auctioneer’s report of **24 September 2003**. As the Complainants’ loan was €150,000, the LTV was calculated at 83%.

The Provider states that the LTV variable rate of 4.5% was, at that time, the only LTV variable rate on offer from the Provider. This applied to all LTV accounts. Consequently, the Provider did not have a variable rate of *“3.8% or less”* to offer to the Complainants, as they have suggested.

The Provider noted that in **September 2015**, the Provider offered a range of Managed Variable Rates of interest to the Complainants. The Provider says that the letter issued to them outlined that MVR mortgages offered a lower interest rate to customers, whose loans represented a smaller percentage of the property. It says, by way of example, that where the outstanding loan amount was 50% of the value of the property, the interest rate would be lower than where the outstanding amount represented 90% of the value of the property.

The Provider says that to avail of the offer, customers were required to send a completed application form to it, accompanied by a current valuation. The Provider says that it has no record of the Complainants applying for an MVR.

The Provider says that in **2020**, there was a decrease of the LTV variable rate. On **10 September 2020**, the Provider wrote to the Complainants to inform them that the applicable variable rate on their mortgage account, would decrease from 4.5% to 3.95%, due to a recent change in interest rates.

The Provider offered a goodwill gesture of €250 (two hundred and fifty Euro) to the Complainants on **6 October 2020**, due to *“a shortcoming”* during a telephone call with the first Complainant of **8 November 2018**.

The Provider submits that it has reviewed its calls with the first Complainant of **8 November 2018** and **18 January 2019**, and *“feels that they were not clear and concise”*. As a result, it increased its offer to resolve the complaint, in full and final settlement, to €1,000, at the time of its formal response to this investigation in February 2021.

Finally, the Provider said, in its response to this complaint, that the new digital consent process it introduced in the previous months was not relevant to the fixed rate expiry process of **2015**.

The Complaint for Adjudication

The complaint is that the Provider incorrectly amended the Complainants' mortgage to an LTV variable rate in **February 2015** without obtaining the Complainants' consent and did not adequately inform them of the change once implemented. The Complainants also say that the Provider applied the wrong value to the Complainants' property which has resulted in them receiving an incorrect and unfavourable interest rate on their mortgage.

The Complainants want the Provider to *“apply the difference in interest between the 4.5”* to an interest rate of 3.8% or less and fully backdated to **2015**.

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 **4 February 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Evidence

- The **General Mortgage Loan Approval Conditions** that govern the Complainants' mortgage state as follows:

"5. CONDITIONS RELATING TO FIXED RATE LOANS

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.

...

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

- The letter of **9 January 2015** from the Provider to the Complainants states:

"I am writing to remind you that the current rate option on your mortgage account will end on 10 Feb 2015.

Please find attached the current options available to you.

...

*If we do not receive a written instruction from you in relation to the above on or before the 10 Feb 2015, the interest rate on your mortgage will be the LTV Variable Rate**."*

The options form provided with the above letter states the following:

*"**In calculating your loan to value ("LTV") ratio, we use the current loan balance and the most recent valuation on file for this mortgage."*

- The Provider's letter of **10 February 2015** to the Complainants, states as follows:

"I wish to advise you that in accordance with the terms of your loan, the rate of interest has been amended to a LTV Variable Rate currently 4.500%."

Analysis

I note that Clause 5.4 of the **General Mortgage Loan Approval Conditions**, which governs the Complainants' mortgage, provides that both the Complainants and the Provider had the option of converting the interest rate to a variable rate, at the end of a fixed rate period. In **January 2015**, I note that the 5 year fixed interest rate of 5.75% which had been in place since 10 February 2010, was due to expire.

The evidence shows that a month in advance of this expiration, the Provider sent a letter to the Complainants to remind them of their options. In that regard, the Complainants were offered a choice between two fixed rate interest rates, and an LTV variable rate. The Complainants did not respond to the Provider and the fixed rate period expired in **February 2015**.

In accordance with Clause 5.4, I accept that the Provider was not obliged to seek the Complainants' consent to convert the interest rate to the LTV variable rate, as it had a contractual entitlement to do so, at the end of the fixed rate. I accept that the LTV variable rate was the default rate if the Complainants did not instruct the Provider to apply one of the two fixed rate options which were available.

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I accept the Provider's contention that it would be inappropriate for the Provider to apply a fixed rate of interest to a customer's borrowing, because in the event that a customer then sought to exit the fixed rate period, before its expiry, this would carry a financial impact. In those circumstances, I accept that in the absence of instructions from the Complainants, it was appropriate for the Provider to apply the appropriate loan to value variable rate and indeed I note that in doing so, the Complainants' interest rate fell from a rate of 5.75% to 4.5%.

I note indeed that the Complainants were informed of this change to their mortgage interest rate by way of letter dated **10 February 2015**.

In relation to the appropriate interest rate to be applied on the LTV rate, I note that the Provider informed the Complainants in the options form of **9 January 2015**, that the valuation would be based on the most recent valuation on file for the property. This valuation was €180,000 (one hundred and eighty-thousand Euro). I note further that the precise value figure of the property was not significant in this regard, as the Provider was only offering an LTV rate of 4.5%, to all of its customers at that time.

It is unfortunate that the subsequent MVR option offered to the Complainants in **September 2015**, did not elicit any response from them at that time, to seek to reduce the interest rate applying.

Having regard to the above, I do not believe that the evidence supports the Complainants' allegations that the Provider has failed in its duties towards them. In my opinion, there is no evidence available of any wrongdoing on the part of the Provider regarding the rate of interest applied to the Complainants' mortgage account and for that reason, I do not consider it appropriate to uphold the complaint.

I note however that the Provider submits that having reviewed its calls with the first Complainant of **8 November 2018** and **18 January 2019**, it "*feels that they were not clear and concise*". As a result, it increased its offer to resolve the complaint, in full and final settlement, to €1,000, at the time of its formal response to this investigation in February 2021.

Although the Complainants are annoyed because it is difficult to understand the meaning of the explanation that "*they were not clear and concise*" in my opinion, given the absence of any wrongdoing by the Provider in this matter, this is a generous position for the Provider to adopt.

It will be a matter for the Complainants to make direct contact with the Provider if they wish to accept that generous offer and, in that event, the Complainants should make contact expeditiously, as the Provider cannot be expected to hold that offer open indefinitely.

Conclusion

My Decision, pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

7 March 2022

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

ensures compliance with the Data Protection Regulation and the Data Protection