



<b><u>Decision Ref:</u></b>	2022-0094
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to implement payment terms Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

The complaint concerns the Complainants' joint mortgage loan account and the Provider's suggested maladministration and inadequate complaint handling.

#### **The Complainants' Case**

The Complainants submit that in **November 2004**, they took out a 20-year interest only mortgage loan with the Provider. The Complainants submit that due to financial constraints the mortgage loan account ran into arrears of approximately **€9,000** and in **February 2014** the First Complainant contacted the Provider's arrears team with the intention of coming to an arrangement to pay off the arrears on the account.

The Complainants submit that at this time, they wanted to start paying €250 per month towards the loan account and the Provider confirmed to them, after they submitted their Standard Financial Statement (SFS), that it was fine to only pay €150 per month towards the loan account.

The Complainants submit that this arrangement was initially put into place for three months by the Provider, and that when the three-month period had elapsed the Provider mistakenly changed the repayments on the mortgage loan account to capital and interest. The First Complainant submits that she contacted the Provider on several occasions to explain that it had made an error in relation to this matter, before the matter was ultimately rectified.

The Provider wrote to the Complainants on **14 July 2014** stating that the mortgage loan account was “interest only” for the lifetime of the mortgage. The First Complainant submits that “*additional arrears (which didn't exist) started to build up*” and that “*Eleven months later I had still not had my mortgage arrears corrected*” and the arrears on the mortgage loan account was wrongfully showing as circa €46,000.

The First Complainant submits that she wrote to the Provider in **February 2015** to try to resolve the matter and on **19 February 2015** she received a telephone call from a representative of the Provider who informed her during this telephone call, that the arrears balance had been corrected and was showing as totalling €9,118 .82 (and not circa €46,000 as it had previously incorrectly stated) and that the Provider had capitalised the arrears. The First Complainant submits that she asked the representative if he was sure about this information, to which she submits, he replied "yes" he was sure.

The First Complainant submits that on **23 February 2015**, they received a letter of apology from the Provider for the error pertaining to the arrears total on the loan account. The First Complainant states that this letter did not mention the telephone call on 19 February 2015.

The letter dated 23 February 2015 noted that from 16 February 2015 "*your monthly repayment will be €365 .25*" and it also set out the following in relation to the mortgage loan account in question:

Outstanding Balance	€533,138.86
Current Interest Rate	0.90%
Remaining Term (months)	118
New Repayments Amount	€365.25

The letter dated 23 February 2015, also stated the date of the end of term of the mortgage loan account, as **1 November 2024**.

The First Complainant states that this letter from the Provider dated 23 February 2015, did not make it clear to them that the arrears had not in fact been capitalised, nor did it inform them that they were required to contact the Provider again, in order to enter into a new arrangement in relation to the mortgage loan account in question.

She submits that on **11 May 2015**, they received a letter from a firm of solicitors which was acting on behalf of the Provider, and that this letter informed them that the Provider was demanding the full repayment of the loan account, totaling **€533,555.61**. She submits that on **15 May 2015**, upon receiving the solicitor's letter, she wrote a formal complaint letter to the Provider and its solicitor informing them that she had previously been informed by the Provider that:

*“the arrears were capitalized... so going forward I had a clean slate”*

This letter dated 15 May 2015 informed the Provider that *"it is with utter shock and consternation, that I received the attached letter from [the Provider's solicitor] demanding payment of the full mortgage owing or [it] will appoint a receiver"*.

The First Complainant further stated within this letter, that having contacted the Provider again, she was informed that the arrears on the account were never in fact capitalised. The First Complainant states in this letter of complaint that she has no problem entering into a payment plan to pay down the arrears on the account *"as this is all I wanted to do in the first place"*. The letter ended with the First Complainant requesting that the Provider resolve the issue as a "matter of urgency".

The Complainants submit that they never received a response from the Provider to this complaint letter, and that on **28 May 2015**, they received an email from the Provider's solicitor which informed them that they were awaiting instructions from the Provider and that they would revert to them. She submits that they did not revert to them and states that the next correspondence which they received from the Provider was on **19 December 2016**, which informed them that ownership of the mortgage loan account had been transferred to a third-party entity referred to below as "the new owner".

The First Complainant submits that they received another letter from the Provider in March 2017 to inform them that the mortgage loan account had been overcharged and that it was refunding them **€3,804**, due to this error.

The First Complainant submits that at no time from when she wrote to the Provider on 15 May 2015, did she receive any information from it, in relation to the arrears on the account.

The First Complainant submits that the arrears on the mortgage loan account have since been paid in full. She says that they received a letter dated **14 March 2018** requesting full payment of the mortgage loan account or a Receiver would be appointed by the new owner. She submits that she contacted the new owner and was informed that because the Complainants had received a letter from the Provider's solicitor requesting a full demand of the loan amount, the new owner understood that the balance was in arrears. The First Complainant submits that despite the Provider informing the new owner that the mortgage loan account was *"interest only"* and that the arrears, which totaled €9,118.82, been paid in full, the new owner refused to discharge the Receiver. She contends that if the Provider had correctly administered the mortgage loan account, the account would not have been sold, in early 2017.

The Complainants submit that the mortgage loan account was sold to the new owner as a non-performing loan, which they submit was not the case, as they did not miss a repayment from 2014 onwards and that, at the time of the sale, arrears had been paid in full.

On **24 February 2020**, the Provider proposed a settlement offer of €5,000 to the Complainants, in full and final settlement of the dispute. The Complainants elected to decline this offer.

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### **The Provider's Case**

The Provider acknowledges that in **June 2014**, it incorrectly removed the “*interest only*” facility from the Complainants’ mortgage account. The Provider says that the loan drew down in **2004** on 5 years of interest only, in accordance with the terms and conditions of the loan offer but the interest only facility was not correctly expired as it should have been in **2009**. As a result, the interest only repayment arrangement continued until **June 2014**, when the Alternative Repayment Arrangement on the account expired. At that point, the repayments reverted back to capital and interest repayments. The Provider says that when this error was discovered, it decided that

*“it was in the best interest to leave the account on Interest Only, given the time period that had passed since the 5 years should have expired and the Complainants’ view that the account should have been an Interest Only mortgage, for the full term.”*

The Provider says that the Complainants had also demonstrated how they intended to repay the loan at the end of the term, and it was also a condition of the loan offer that:

*“In addition to the 4 properties to be taken as security, and an assignment over a bond with initial investment premium of 120,000 Euros to be pledged as make weight.”*

The Provider states that as soon as its investigation into the issue was completed, there was no delay in carrying out the arrears adjustment on the mortgage loan account. It has acknowledged that arrears letters should have issued to the Complainants updating them of the arrears position on their account, at least every three months. The Provider accepts that no arrears letters issued to the Complainants between **7 April 2015** and **8 September 2016**.

The Provider states that it very much regrets the above shortcomings and it has offered a sincere apology to the Complainants and has made a formal offer of **€5,000** to resolve the matter. This offer was rejected by the Complainants. When responding to the formal investigation by this Office, the Provider revised its offer to the Complainants to a sum of **€10,000**, which the Provider believes to be a fair and reasonable redress in the circumstances.

### **The Complaint for Adjudication**

The first complaint is that the Provider failed to correctly administer the Complainants’ mortgage **loan account** which resulted in the mortgage loan account being sold to a new owner and a Receiver being appointed in relation to the account.

The second complaint is that the Provider failed to communicate with the Complainants in relation to the mortgage loan account and the complaint, in a timely manner.

The Complainants want the Provider to write off the residual debt of the mortgage loan account and they also seek monetary compensation, as a resolution to the complaint.

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## **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 **27 January 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 limited comments from the parties, the final determination of this office is set out below.

In this complaint, I note that the Provider sold the mortgage loan account in question to a new owner in 2017. The conduct of the Provider, which is the subject of this complaint, is in relation to the administration of the Complainants' mortgage account, before it sold the loan to a new owner.

A copy of the mortgage letter of offer dated **22 July 2004** has been provided. It demonstrates that a mortgage loan for €520,000, was offered to the Complainants, repayable over 20 years, at a tracker interest rate of 2.85%. The offer further provides that:

*"interest only repayments will be collected for this mortgage for the first 60 months, after that the mortgage will revert to capital and interest."*

I note that the letter of offer is signed by both Complainants and dated **11 August 2004**.

The Provider explains that, under the terms and conditions of the loan offer, the interest only facility should have expired in **2009**. However, the Provider goes on to explain that the interest only repayments continued on the account, until the expiry of the 2014 alternative repayment arrangement.

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The Provider to explains that when this "error" was discovered, the Provider decided to leave the account on an interest only arrangement for the remainder of the term of the mortgage, in light of the fact that it had allowed the interest only repayments to continue beyond 2009, and given the fact that the Complainants were of the belief that the account should have been an "interest only" mortgage for the full term.

It is not disputed, and the Provider has demonstrated that by **January 2014**, the account was in arrears by an amount of **€9,172.18**. Prior to this there had been a number of alternative repayment arrangements that had been put in place on the account. It appears that at the end of each of those arrangements, the mortgage account reverted to interest only repayments.

In relation to the arrears that had accrued by February 2014, the Provider wrote to the Complainants by letter dated **20 February 2014** stating, among other things, that following a review of their financial circumstances as set out in their Standard Financial Statements, the Provider was agreeing to a three-month alternative repayment arrangement in the form of reduced monthly payments in the amount of **€625** per month, between 1 March 2014 and 1 May 2014.

The letter also provided that when the arrangement would end, the normal monthly repayments would increase, and the current interest rate applied to the mortgage would not be affected by the repayment arrangement. The letter also stated that unless the arrears were cleared "*by also adding them to your mortgage balance under a capitalisation option*" they would remain on the account as outstanding at the current level.

I note that on **16 May 2014**, when this repayment arrangement had come to an end, the Provider incorrectly reverted the mortgage to capital and interest repayments and it wrote by letter dated 16 May 2014 to the Complainants, to inform them that the new monthly repayment from 1 June 2014 would be **€4,391.36**.

Consequently, between 1 June 2014 and 10 February 2015, the account incorrectly began accruing arrears which ultimately led to an arrears balance showing on the account of **€46,144.94**.

The Provider has explained that the reason the account changed from interest only repayments to capital and interest repayments was that when the 2014 repayment arrangement was put in place, it was incorrectly entered as a "reduced payment" and not a "step up repayment" which caused the account to change from interest only repayments to capital and interest repayments.

On **14 July 2014**, the Provider had written to the Complainants stating that it was reminding them that they had an interest only mortgage.

Following this, the First Complainant telephoned the Provider and also wrote by letter dated **30 July 2014** to advise that the mortgage was a 20 year "interest only" mortgage and that the capital would be paid off with equity from other properties owned, when the mortgage term expired in 2024.

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On **7 August 2014**, the arrears support unit of the Provider wrote to the Complainants stating that the account had been "interest only" for the first 60 months "*after which it transfers to capital and interest (C&I) repayments as per the agreed contract*". The letter went on to say that there were arrears of €17,588.56 outstanding on the account.

Recordings of telephone calls have been supplied in evidence. These calls demonstrate that the First Complainant had been in contact with the Provider from July 2014 with regard to the fact that the mortgage had wrongly reverted to capital and interest repayments and that the arrears were wrongfully accruing in that regard. This is also supported by correspondence sent by the Complainants to the Provider.

The Provider acknowledges that there was a mistake made in relation to this account regarding the change in repayments from interest only repayments, to capital and interest repayments because this should have happened in 2009. The Provider also acknowledges that when this issue was discovered in May 2014, that it took longer than it would have liked, to rectify matters for the Complainants. The Provider submits that it has taken these matters into consideration in its offer of redress to the Complainants.

The Provider also acknowledges that the Complainants initially raised a complaint regarding the interest only roll off, on 17 July 2014. The Provider submits that a resolution letter was issued on 7 August 2014 and as the Complainants were not happy with the outcome of their complaint, the Provider continued to engage with the Complainants outside of the complaint process. The Provider acknowledges and accepts that the account was not reverted back to interest only until February 2015. The Provider acknowledges that it took longer than it should have, to resolve the matter.

In relation to the error in reverting the mortgage to capital and interest payments in 2014 and the accrual of significant arrears on the account as a result, I note that the Provider does not dispute that this error occurred and that there was a delay in rectifying the error. This fact is manifestly evident from the documentation and the audio recordings. The Provider makes the point that the account was managed at that time, under the Code of Conduct for Mortgage Arrears (though this does not apply to additional properties).

Notwithstanding that, the Code of Conduct for Mortgage Arrears provides:

*This Code acknowledges that it is in the interests of both the lender and the borrower to address financial difficulties as speedily and as effectively as circumstances allow.*

*A lender must apply Provisions 10.7 to 10.12 of the Central Bank of Ireland's Consumer Protection Code 2012 to deal with complaints submitted by borrowers in relation to the following: a) the lender's treatment of the borrower's case under this Code, or b) the lender's compliance with the requirements of this Code. The analysis of such complaints from borrowers, as required by Provision 10.12 of the Consumer Protection Code 2012, must be escalated to the lender's ASU, compliance/risk function and senior management.*

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To that end therefore, Provisions 10.7 to 10.12 of the Consumer Protection Code 2012 provide for obligations of a financial service provider under the heading “*COMPLAINTS RESOLUTION*”.

I note that the error in relation to the application of capital and interest payments started in **June 2014** and a complaint was promptly made in that respect, in **July 2014**. The Complainants expressed dissatisfaction with the resolution of the complaint in **August 2014**, and also that the error was not rectified until **February 2015**.

The error, in itself, was a significant error which resulted in the recording of accruals of large arrears. The delay in rectifying it was, in my opinion, inordinate and unreasonable and I believe that the Provider has a case to answer in that regard, given its unreasonable conduct, which I take the view falls within the meaning of **Section 60(2)(b)** of the *Financial Services and Pensions Ombudsman Act 2017*, as amended.

In relation to the treatment of the arrears from February 2015 onwards, in my opinion the Complainants were largely treated appropriately and in line with the Provider’s regulatory obligations, although some arrears notifications did not issue to them.

In **June 2016**, the Provider wrote to the Complainants to inform them that following a review of the mortgage account, because the property over which the mortgage was charged was a "buy to let" property, the mortgage would thereafter be subject to the requirements of the Consumer Protection Code 2012 from 1 July 2016. Prior to that, the Provider stated it had been treating and/or managing the mortgage under the Code of Conduct for Business Lending to Small and Medium Enterprises and CCMA. The Provider asserts that this did not have any adverse consequences or disadvantage for the Complainants, and I accept that there is no evidence to suggest any adverse treatment of the Complainants in this regard.

There were arrears on the account in excess of €9,000 and the arrears balance on the account remained. On **8 September 2016**, the Complainants received a letter from agents of the Provider seeking that the arrears amount be repaid and informing the Complainants that they should make contact to agree an acceptable repayment program. The letter went on to explain that if no contact was made and if the account remained in arrears, the Provider may consider legal action and it reserved the right to appoint a Receiver to recover the sums due. A letter in similar terms was sent again in **December 2016**.

However, the telephone calls also record that the First Complainant was erroneously advised that the arrears on the mortgage would be capitalised and that the arrears balance would be set at zero. The Provider in its response to this office has expressly acknowledged that this information was incorrect and that, in fact, what the First Complainant should have been advised, was that the arrears had been adjusted to reflect that the account was back to interest only repayments, and that the arrears were back at the position that had existed, prior to the account reverting to capital and interest repayments in May 2014.

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That said, by letter dated **23 February 2015**, the Provider wrote to the Complainants acknowledging that the account had been wrongfully placed onto capital and interest repayments and that arrears had been incorrectly recorded on the account. The letter stated, among other things, that this level of service was unacceptable and that the mortgage account had now been reverted back to interest only repayments, until the end of its term. The letter went on to state that the arrears balance on the account had also been adjusted to reflect the true arrears balance and that the Provider had notified the Irish Credit Bureau so that it could update its records accordingly.

It is clear from the documentation submitted that from February 2015 onwards, the mortgage account reverted to interest only payments. The arrears balance that had accrued was corrected and as of **18 February 2015**, the account showed a lower arrears balance of **€9,118.72**.

The First Complainant states that this letter from the Provider dated 23 February 2015, did not make it clear to them that the arrears had not been capitalised, nor did it inform them that they were required to contact the Provider again, in order to enter into a new arrangement with this in relation to the mortgage loan account in question.

I am of the view, that in light of the fact that the Provider had mistakenly represented to the First Complainant that the arrears on the mortgage would be capitalised and that the arrears balance would be set at zero, the letter of 23 February 2015 did not adequately make clear to the Complainants that the arrears had not been capitalised; I also accept the Complainants' contention that the Provider did not adequately inform them that they should contact it again, in order to address the ongoing arrears on the account. I am of the view in that regard that inadequate information was given by the Provider to the Complainants, as a result of which, owing to the telephone call which has taken place, I am satisfied that considerable misunderstanding then ensued. The Complainants maintain that if the error regarding the arrears had not occurred, the account would never have been sold to a new owner. The Complainants may or may not be correct in this regard but, ultimately, the new owner is bound by the terms and conditions of the mortgage agreement entered into between the Provider and the Complainants in 2004, and there is no suggestion of any significant loss to the Complainants as a result of this sale, other than perhaps some limited form of inconvenience.

As a matter of contract, I take the view that it was for the Complainants themselves to ensure that their contractual monthly payments were made to the Provider as had been agreed. I note that from 2009 onwards, the "interest only" arrangement continued but it seems that notwithstanding this arrangement, the Complainants nevertheless fell into arrears which stood at more than €9,000 in January 2014. Whilst I understand that the Complainants were no doubt confused by the content of the telephone call during which they were advised that the arrears had been capitalised, nevertheless, there was no confirmation in writing of any such capitalisation of arrears and when the error regarding the "capital and interest" repayments was resolved in **February 2015**, the Complainants could have sought an up to date statement of account if they did not have adequate up to date information, with a view to ensuring that they clearly understood the status and balance on the account.

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In those circumstances, whilst I am mindful of the Provider's errors in relation to this matter, I take the view that the Provider's offer of **€10,000** by way of compensation to the Complainants was a reasonable proposal in the circumstances, in order to resolve the situation which had arisen. I note that the Provider's offer in that regard was made to the Complainants at the time when the Provider sent its formal response, to the investigation of this Office.

As the Provider was entitled to treat the unpaid items as arrears, when the Complainants did not meet their contractual arrangement, I am satisfied that the Provider's errors regarding the administration of the account must be viewed in that context.

Accordingly, on the basis that this offer of €10,000 remains open to the Complainants to accept, I do not consider it necessary or appropriate to uphold this complaint. Rather, it will be a matter for the Complainants to communicate directly with the Provider if they wish to accept the Provider's offer of redress.

Finally, I note that on 1 February 2017, the Provider wrote to the Complainants to inform them that a sum of €3,748.15 had been incorrectly charged to the mortgage account and that this was going to be refunded to the account with an additional "*compensation amount*" of €55.54. It is disappointing that this was yet another error on the Provider's part, though I note that this corrective refund was made to the account, before the sale of the outstanding loan to the new owner in 2017, and before the complaint which was made to this Office.

### **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)**

14 March 2022

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## PUBLICATION

### Complaints about the conduct of financial service providers

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.

### Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.