



<u>Decision Ref:</u>	2022-0127
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants previously held four buy to let mortgage loans with a bank (the “**Provider**”) prior to them being sold to a third-party company (“**Company A**”).

The Complainants’ Case

The complaint concerns four buy to let mortgage accounts. The Complainants submit that they signed a form of acceptance for each of the loan offers with the Provider in **2007**. These loans were an interest only facility, for three years. The Complainants state that *"the loan was agreed, with the absolute understanding as it needed to be, that the interest only period would be rolled over at each 3 year review for as long it took within the agreed term, but that the loan would be paid off well before the 25 years."*

The Complainants state that in **2010** the Provider contacted them regarding their loans. They submit that the Provider gave them two options; one to convert to principal and interest and the other to remain on interest only but to re-negotiate the terms and conditions of their loans. The Complainants maintain that there was no action to take *"but to prepare our presentation regarding the agreement made with [Provider] - that being our loans were to remain on interest only for the full term."*

The Complainants submit that they did not endorse this as it would have gone against the agreement with the Provider which would have changed their loans to a variable rate

mortgage. The Complainants state that following the initial review in **2010/2011** there were no further reviews on any of their loans. The Complainants submit that their loans were changed to non-performing without any "*review, conversion or amendment.*"

The Complainants assert that their loans would have been less attractive to Company A if they had an interest only tracker rate for the remainder of the loan. The Complainants state that their loans were converted to principal and interest in **2011**.

Following a complaint by the Complainants the Provider refunded the principal taken and reverted the loans to an interest only which continued to **2015**. The Complainants submit that during this time the Provider did not communicate with them whatsoever and the payments were made without any arrears and the loans were fully performing. The Complainants maintain that their loans were "*in contract, no arrears, never any missed payments, no restricting, no review-nothing.*" They submit that the Provider re-categorised their loans from performing to non-performing on the basis of their own fully admitted error in **2011**.

The Complainants seek to have their dispute upheld that their loans were fully performing and they argue that the re-categorisation /subsequent sale has resulted in "*serious stress to us financially and personally.*"

The Provider's Case

The Provider, in its letter dated **4 June 2019**, submits that it was required, by regulations, to reduce the percentage of loans which were classified as Non-Performing ("**NPLs**") and to deleverage non-core mortgages. The Provider submits that the sale of loans to Company A was undertaken in order to meet those regulatory requirements. The Provider states that the definition of NPL is complex, but for regulatory purposes it generally describes a loan that has been in arrears, or has been restructured.

The Provider states that the Complainants' mortgage accounts were classed as NPLs according to regulatory definitions.

The Provider, in its letter dated **26 June 2019**, states that the Complainants' four mortgages were on interest only at the time they were transferred to Company A on **19 June 2015**.

The Provider, in its letter dated **8 August 2019**, states that:

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“because the [Provider] wished to - exercise its rights under Condition A and because it was unsuccessful in this regard, the mortgage accounts in question fell under the NPL categorisation according to regulatory definitions and as a result were included in the mortgage transfer to [Company A].”

Some two years later, the Provider departed from its previous position in its letter dated **28 May 2021**, and said as follows:

“With regards to the NPL status of the Complainants' Mortgage loans, the Bank can confirm that the Complainants' Mortgage loans were not assessed as NPLs prior to the transfer to [Company A] in June 2015, or at any other time prior to the transfer. Unfortunately, the [Provider] provided the Complainants with incorrect information in its Final Response Letters dated 4 June 2019 and 8 August ... regarding this matter. The [Provider] sincerely apologises for any inconvenience caused as a result. The [Provider] issued correspondence to the Complainants on 30 April 2021 ... advising of this error and confirming that the [Provider's] transfer of loans to [Company A] in 2015, consisted solely of commercial loans regardless of arrears status.”

The Provider says that according to its terms and conditions, it is entitled to sell the Complainants' mortgage whether it is performing or non-performing. In **May 2021**, at the time of responding to the complaint investigation by this Office, the Provider offered compensation of €3,000 for the incorrect information given to the Complainants, when it issued its Final Response Letter in June 2019.

The Complaint for Adjudication

The complaint is that the Provider wrongfully categorised the Complainants' loans as non-performing loans on a date prior to sale of those loans to the third party in **June 2015**, without the Complainants' knowledge or consent or without the Provider giving them "any good reason."

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 **15 March 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that in July 2007 the Provider made Letters of Loan Offer available to the Complainants for facilities of **€120,000, €265,000, €500,000 and €500,000** respectively, the first two borrowings being offered in the name of the First Complainant alone, and the other borrowings totalling €1 million being offered in joint names to the Complainants. I note that all four of the Loan Offer Letters made clear that the loan type was a "**Tracker Rate Interest Only Residential Investment Property Loan**" at a rate of 4.8%.

I note that Provision 1.15 of the Provider's **General Mortgage Loan Approval Conditions**, which applies to all four of the Complainants mortgage loans, says as follows, at page 1:

"[Provider] may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions."

Provision 6.7 of the Provider's **Mortgage Conditions**, which applies to all four of the Complainants mortgage loans, says as follows, at page 13:

"6.7 [Provider] may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person ... "

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The Provider relies on its **Special Conditions**, attaching to all four of the Complainants' mortgage loans and refers to Page 2 of the Letters of Approval, which stated:

"A. [The Provider] will accept monthly repayments, as set out in the Letter of Approval, representing repayment of interest only (as may be varied from time to time and including insurance premiums where applicable) for the first three years from the date of cheque issue or for such other period as [The Provider] may decide. [The Provider] reserves the right to review the deferral of the repayment of principal at any time during the term of the loan, including the first three years of the term and may require the Applicant to cease the interest only repayment and require the repayment of principal and interest and the Applicant will immediately arrange to pay the revised monthly repayment comprising the repayment of principal and interest calculated over the remaining term so that the principal and interest will be discharged within the existing term of the loan."

I note that the Complainants signed each of the **Acceptance of Loan Offers** on **13 December 2007**, which applied to each of the four of the Complainants' mortgage loans, declaring that:

"I/We the undersigned accept the within offer on the terms and conditions set out in
I. The letter of Approval.

II. The General Mortgage Loan Approval Conditions.

III. The [Provider] Mortgage Conditions.

Copies of the above which I/we have received, and agree to mortgage the property to [Provider] as security for the mortgage loan.....My/Our solicitor has fully explained the terms and conditions to me/us."

I note that the Complainants had the benefit of legal advice in accepting these terms and conditions and I am satisfied that the **Acceptance of Loan Offer** letters, each of which applied to each respective mortgage (and which were signed by the Complainants on **13 December 2007**) informed the Complainants of the necessary and appropriate terms and conditions applying to the mortgage loans.

The Provider submits that Condition A of the **Special Conditions** outlines its

"right to accept interest only repayments on the Complainants' Mortgage loan for an initial period of three years, with the [Provider] reserving the right to revert to principal and interest repayments, or allow the account to remain on interest only repayments following a review at any time during the term of the loan, to include any time before or after the initial three years. To clarify, the above Condition provides for the [Provider] to switch the Complainants' mortgage repayments to principal and interest at any time, at their discretion."

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I note that the Provider says that it reviewed all four of the Complainants' mortgage loans around **November 2010** in line with Condition A of its **Special Conditions**. I note that on **20 November 2010**, the Complainants informed the Provider that they would not be able to meet these repayments and said as follows:

" ... the loan was agreed, with the absolute understanding as it needed to be, that the interest only period would be rolled over at each 3 year review for as long it took within the agreed term, but that the loan would be paid off well before the 25 years ... I have been able to keep up my end of the agreement to date and will continue to service the loans as per our agreement - however any changes on your side are simply not possible for me ... In times past when a review was due you simply asked me if I wanted to continue the interest only period - let's just take that as a given ... I have no ability to make capital and interest payments."

Thereafter, I note that the Provider informed the Complainants by letter dated **2 December 2010** that from **1 March 2011** they would have to make full capital and interest payments on two of the loans and said as follows:

"Please note that under the terms and conditions of your letter of approval ... your mortgage accounts are due to switch to principle (sic) and interest on the dates shown below:

<i>XX3969</i>	<i>Date to switch</i>	<i>1/03/2011</i>
<i>XX3913</i>	<i>Date to switch</i>	<i>1/03/2011</i>
<i>XX0390</i>	<i>Date to switch</i>	<i>1/03/2013</i>
<i>XX3922</i>	<i>Date to switch</i>	<i>1/03/2013</i>

In the event that you wish to remain on interest only you should be aware that this will be a re-negotiation of their contract and the terms and conditions therein and will result in your mortgage product and rate changing. Please find enclosed the current option available for your mortgage accounts switching in March 2011."

I note that on Loan accounts XX3969 and XX3913 the Provider wrote to the Complainants on **2 March 2011** to inform them that these two loan accounts would move to a "*principal and interest*" basis. I note that the Provider submits that in fact, it did not exercise its discretion and in the event, all four mortgage loans remained "interest only".

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The Provider says however that in the case of two of the mortgage loans (XX3969 and XX3913), the Complainants paid the interest and capital sum in **March 2011** with the excess then having to be refunded to them by the Provider in **April 2011**. I note that the Provider submits that no further reviews were undertaken after **November 2010** and that ownership of all four of the Complainants' Mortgage loans were transferred to Company A on **19 June 2015** with interest only repayments remaining in place. The Provider, in its letter to this Office dated **28 May 2021** has confirmed that *“the Complainants' Mortgage loans have not been subject to Alternative Repayment Arrangements at any time during the terms of the loans.”*

The Provider also submits as follows:

“... the Complainants' Mortgage loans were included in a portfolio of commercial loans which the Bank transferred to [Company A] in June 2015, based on a commercial decision made at the [Provider's] discretion. This portfolio included commercial loans i.e. loans secured on commercial premises and/or investment properties. To clarify, the Complainants' Mortgage loans [...] were not transferred to [Company A] on an individual basis, but were included in an overall sale transaction consisting of a portfolio of commercial loans. Therefore, once the transfer transaction had been agreed between the [Provider] and [Company A], there was no option for the Complainants' Mortgage loans to remain with the [Provider]. In order to prevent the transfer, the Complainants could redeem their loans in full prior to the Transfer Date.”

I note that the Provider also submits that the sale to Company A *“consisted of a portfolio of commercial loans, in an effort to reduce the [Provider's] stock of commercial lending non-core assets. The repayment history, arrears status and/or restructure history of the loans included in the portfolio was not taken into consideration, and had no impact on the [Provider's] decision in this regard. Therefore, regardless of the repayment history on the Complainants' Mortgage loans [...] since drawdown, the loans were included in the portfolio of loans transferred to [Company A] in June 2015, based solely on their loan type, i.e. commercial mortgage loans, secured on investment properties. The nature of the [Provider's] transfer of its commercial portfolio to [Company A] in June 2015 was widely reported in the media at the time, as a sale of commercial non-core assets.”*

I note that the evidence submitted by the Provider of media coverage does not specify that the loans transfer regarding Company A included buy-to-let properties. The Provider's internal email dated **15 May 2019** says as follows:

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“the mortgage deed has a condition in it which allows us to sell a mortgage regardless of whether it is performing or not and therefore we do not need to give a reason for the same other than for operational reasons...the actual reason it was sold was to fulfil our obligations under the restructuring agreement with Europe whereby we agree to deleverage non-core mortgages.”

In my opinion, it is not unreasonable to assume that non-core mortgages might include buy-to-let mortgages though no evidence of this has been submitted. The Complainants say:

“our loans were neither non-performing nor commercial....At no time prior to this letter was there any mention of our loans being commercial. All of our properties are tenanted and registered with the RTB. The properties pay the Local Property Tax for residential properties. None of the properties are commercial and do not have any trade or pay commercial rates. Our loans are single unit family homes. “

I note the Complainant’s submission that the Provider *“withdrew principal and interest from our bank account number [...] in March 2011 relating to our account numbers [...]. Following on from this they realised their fundamental error and refunded the principal back into our account on 17th April 2011 and sent in an amendment notice at the same time. The notice is extremely clear, endorsing the interest only nature of the agreement and confirming the accounts to be interest only for the remainder of the term.”*

It is clear to me that the actions of the Provider around **November 2010** to **March 2011** have been interpreted very differently by the Provider and the Complainants. The Provider says it reviewed the Complainants’ four mortgage loans as it is contractually entitled to do and ultimately left them as interest only loans. The Complainants say the Provider made an error in moving these loans to capital and interest payments and then returned them to interest only payments and that this resulted in these loans becoming NPLs directly resulting in their sale to Company A in **June 2019**. I note that the Provider, in its letter dated **26 June 2019**, refers to the conversion to Principal & Interest repayments, as an error.

Owing to the time limits for complaints to this Office, the Provider’s actions between **November 2010** and **March 2011** fall outside the scope of this complaint investigation. It must be noted, in any event, that whether or not the Provider categorised these mortgage loans as NPLS, it was entitled to sell them in accordance with Provision 1.15 of the Provider’s **General Mortgage Loan Approval Conditions**, which applies to all four of the Complainants’ mortgage loans, and says that the Provider *“may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions.”* This is a condition of the borrowings which the Complainants accepted in late 2007, having had the benefit of legal advice.

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The Provider's **Mortgage Conditions**, which applies to all four of the Complainants mortgage loans, says that the Provider *"may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person."* I note that there is no evidence of what kind of loans were earmarked for sale to Company A but in any event, the Provider could, according to its terms and conditions, sell any type of loan, performing or non-performing. I note that the Provider says that commercial loans were included in the transfer of loans to Company A and that buy-to-let mortgages are commercial in nature. I note the Provider's submission by letter dated **23 June 2021**, that *"the Complainants' Mortgage loans are not secured on business premises but on residential investment properties. The [Provider] classifies loans secured on commercial premises and/or investment properties as commercial loans as the mortgaged premises generate income for the account holder."* I accept this. The Complainants' borrowings were for the commercial purpose of servicing the purchase of a number of residential investment properties and I do not disagree that such loans can be categorised as commercial in nature.

It is also worth noting that the sale of a portfolio of mortgage loans such as the one which occurred between Provider and Company A are commercially sensitive and the terms of any such agreements are outside the scope of this investigation.

The Complainants were informed of the sale of the four mortgage loans, by letter dated **13 April 2015** which stated:

"We write to notify you that [Provider] has contracted to sell all of its rights, title, interest and benefits (including all present and future amounts owing to it) in respect of your Facility and your facility letter(s), guarantee(s), security and all rights relating to your Facility (the "Facility Documents") to [Company A] (the "Purchaser") ("the Transfer"). [Provider] will write to you in due course to confirm the date on which the Transfer will take effect ("the Transfer Date").

From the Transfer Date, all amounts owing in respect of your Facility will be owed to the Purchaser, the Facility Documents will be with the Purchaser and the Purchaser will take on all obligations (if any) arising under the Facility after the Transfer Date to you as a customer.....what action do I need to take? If you are making payments in the normal way, you do not need to do anything at this time."

I note that the Complainants' four mortgage loans *"were transferred to [Company A] on 19 June 2015 in accordance with the terms and condition of the accounts."*

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I am satisfied that in the transfer of the loans, there was no breach of Provisions 2.1 and 2.2 of the **CPC** occurred, requiring the Provider to act professionally, honestly, fairly and with due skill and diligence. I am also satisfied that no breach of Provisions 4.1 and 4.2 of the **CPC** occurred in relation to the transfer of the mortgages to Company A insofar as the Provider relied on its terms and conditions and outlined from the outset, that such a sale was possible as well as furnishing all relevant terms and conditions at the outset of the loan application, such that it provided all information in an accurate, up to date way and on a timely basis. I also note that the Provider informed the Complainants of the sale of the four mortgage loans to Company A on **13 April 2015** which was two months in advance of the sale, and I am satisfied that such notice was given in a timely manner.

The Provider acknowledges that it incorrectly informed the Complainants in **Final Response Letters** of **4 June 2019** and **8 August 2019**, that its decision to allow the Complainants' Mortgage loans to remain on interest only in **March 2011** was made in error and that it assessed the Complainants' Mortgage loans as Non-Performing Loans (NPLs) during its review in **November 2010** and that this is why they were sold to Company A.

I note that the Provider's letter of **4 June 2019** says as follows:

"[The Provider] was required by regulators to reduce the percentage of loans which are classified as Non-Performing Loans ("NPLs") ... The definition of NPL is complex, but for regulatory purposes it generally describes a loan that has been in arrears, or has been restructured. Your Mortgage accounts were classed as NPLs according to regulatory definition."

This error was corrected by the Provider about 2 years later on **30 April 2021**, when it issued correspondence to the Complainants outlining its error with regard to its previous **Final Response Letters** and confirming that the Complainants' Mortgage loans had not been categorised as NPLs by the Provider. In that context, it is disappointing to note the Provider's delay in responding to the Summary of Complaint issued by this Office, to commence the formal investigation of this complaint. The nature of the Provider's error and its occurrence within the Final Response Letter is most unfortunate and impacted greatly upon the Complainants' understanding of events. However, despite this miscommunication, I am satisfied as previously outlined, that the Provider was contractually entitled to sell the loans despite their status.

Notwithstanding that error and the misinformation, it is clear from the parties' contractual relationship that the Provider was entitled at all times and at any time, to arrange for the sale of the loan facilities to another entity and that it did so on clear notice to the Complainants, as it was entitled to do.

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It is also worth noting that the terms and conditions of the Complainants' borrowings did not change as a result of the transfer of ownership to Company A and it will be a matter for the Complainants to continue to service those borrowings on an interest only basis or by making additional payments towards the principal amount outstanding which will otherwise fall due for repayment in late 2032.

I am conscious in that regard that the Provider's offer of a compensatory payment to the Complainants of **€3,000** for the error contained in its final response letter is an appropriate figure and, in those circumstances, I do not consider it necessary or appropriate to make any further direction to the parties in order to resolve this complaint. Rather, it will be a matter for the Complainants to make direct contact with the Provider should they wish to accept this compensatory measure which remains open to them for acceptance. In that event, they should make contact with the Provider expeditiously as it cannot be expected to hold that offer of compensation open indefinitely.

Accordingly, noting that the Complainants can be appropriately redressed for the Provider's error in its Final Response Letter, I do not consider it appropriate to uphold this complaint.

Conclusion

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

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



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

11 April 2022

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—

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- (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.