



<u>Decision Ref:</u>	2022-0175
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Mis-selling
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the sale of a lifetime mortgage loan to the Complainant and her late husband by the Provider, a broker, in **October 2006**.

The Provider (the “**First Broker**”) was an appointed intermediary of a named Second Broker (the “**Second Broker**”). The Second Broker in turn was an appointed intermediary of a named Mortgage Lender (the “**Mortgage Lender**”). The Mortgage Lender ultimately extended the lifetime mortgage loan to the Complainant and her late husband in 2006.

Sadly, the Complainant’s husband passed away in **January 2015**. Consequently, the Complainant now maintains this complaint in her sole name. Insofar as the Complainant is referred to below, the actions of the Complainant, and her position referred to below, are also taken to include the actions and position of her late husband.

This complaint concerns only the above-named Respondent Provider (the First Broker). The parties are aware that separate complaints have been made against the Second Broker and the Mortgage Lender and that the documents and evidence available from all three complaint investigations by this Office, have been shared amongst all parties.

The lifetime mortgage loan that is the subject of this complaint is secured on the Complainant’s dwelling house and this facilitated a drawdown of **€270,000** in 2006. The mortgage has a fixed interest rate of 6.74% and an APR of 6.95%. (the “**Loan**”)

The complaint is that in or around **October 2006**, the Provider mis-sold the Loan to the Complainant because:

- the Provider did not explain the nature and implications of the Loan; and
- the Loan was unsuitable to the Complainant's requirements as it was a lifetime product on which the Complainant could not make repayments.

An assessment of the jurisdiction of this Office to investigate this complaint was carried out, and this Office concluded by way of Final Jurisdictional Determination on 27 May 2021, that this complaint was made within the applicable statutory time limits.

The Complainant's Case

First Meeting

The Complainant submits that she and her son, first met with the Provider in or around **October 2006**, at the Provider's office. The purpose of this meeting was to secure funding to assist their son in reaching a financial settlement with his ex-wife. The Complainant explains that she and her late husband had previously approached their Bank with a view to securing such funding but they had not been successful due to their advanced age. The Complainant states that the Provider's representative, "Mr X", suggested an equity release product, but that:

".. he went on to say that he did not know much about [the equity release product] but would find out and get back to [the Complainant]"

The Complainant submits that the Provider did not supply her with any further information or advice about the lifetime loan during the course of this meeting.

Second Meeting

The Complainant states that a number of days later, in or around **12 October 2006**, the Provider's representative, Mr X visited her home, and dropped off application forms for two different mortgage lenders, which she and her husband completed themselves. The Complainant contends that:

"[n]o details or product information was supplied when [Mr X] dropped the forms off. In fact he came to the house with a measuring tape in hand (full explanation of which was never provided) and then left without providing an explanation apart from the instructions to drop both forms back to his office. We never met [Mr X] again and the contracts were sent to a Solicitor in [location] to sign off on purely for drawdown of the cheque.

How can [Mr X] now say that we were advised by him as per his communication dated 18th December when he outlined clearly to our solicitors on the letter dated 2nd August 2012 that he did not advise us and it was up to [the Mortgage Lender].

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This is the truth about what really happened over this period. We stand wholeheartedly behind our stance that had we known the full extent of the repercussions we would never ever have signed for this loan.'

Loan Application Process

The Complainant states that she and her husband returned both application forms to the Provider, and that subsequently the loan documentation was sent to her solicitor, but at no point did the Provider, the Second Broker or the Mortgage Lender offer them any advice regarding the Loan.

In a submission dated 19 December 2012, the Complainant states, in relation to the Provider, that she:

"...never received any advice whatsoever regarding the product as at the time [the Provider] know nothing about the product and all they simply done was provided an application form which was to be sent back to [the Provider]"

The Mortgage Lender subsequently issued a loan offer letter to the Complainant's solicitor, which was signed by the Complainant and her late husband on **1 November 2006**. The Complainant contends that, at the time when she and her late husband entered into the lifetime loan agreement, it was her belief that this was a loan that they "*could pay off in a 5 year period*". The Complainant contends that:

"[w]e would never have proceeded with [t]his application had we known that it was a lifetime product and that we would be left in a situation of not even owning the very property we live in."

The Complainant submits that in or around **March/April 2007**, she called the Mortgage Lender to enquire about paying off a portion of the Loan, but the Mortgage Lender informed her that she had taken out a lifetime loan. She further states that twice a year she receives statements showing "*huge interest*". The Complainant contends that:

"this product was not suitable due to the in ability [sic] to make payments off it and the fact it is lifetime product"

The Complainant contends that she would not have proceeded with the Loan if the Provider (or the Second Broker, or the Mortgage Lender) had explained the nature and implications of the Loan to her.

The Complainant also states that the Provider did not furnish her or her late husband with a copy of its terms of business in **2006**, when the Provider arranged the Loan. The Complainant states that she received a copy of the terms of business on **26 March 2014**.

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The Provider's Case

The Provider rejects the Complainant's submission that the Loan was mis-sold.

First Meeting

The Provider states that the Provider's representative, Mr X, first met with the Complainant and her son in **October 2006**. The Provider states that the Complainant explained that she wished to secure funding of **€450,000** to assist her son with a matrimonial matter, and that she was seeking information regarding a loan facility involving the release of equity on the family home. The Provider states that there were limited options available to the Complainant and her late husband, to secure funding because of their age.

The Provider submits that Mr X advised the Complainant that he was unfamiliar with this type of loan product, and that he would contact the Second Broker for more information and to seek application forms. The Provider submits that Mr X made a telephone call to the Second Broker while the Complainant (and the Complainants' son) were present, and at the Complainant's request. The Provider contends that Mr X spoke with the Second Broker's representative, Ms. B., who answered Mr X's queries about the product the Complainant was enquiring about, and that Mr X:

"...passed on what [Ms B.] said, explaining that the product would release equity in the family home, that they would be able to remain in their home until the second spouse died, and that any equity remaining at that point would be distributed in the usual way or if there was none, the bank would absorb the loss... [Mr X] was told by [Ms B.] that there were two providers offering the product sought by the Complainant and her son...."

The Provider submits that Mr X outlined to the Complainant and her son that he could not advise as to the extent of the borrowing that could be obtained, as this would be based on a property valuation, and on the contents of the application forms which would be submitted to the two mortgage lenders which supplied these loan products.

Second Meeting

The Provider's initial position as outlined in a letter to this Office dated **18 December 2012**, was that Mr X met the Complainant and her late husband on a second occasion to complete the application form and:

"...at that stage [Mr X] again advised you of the conditions attached to such a loan which included advice on the fact the loan would be registered as a mortgage on your property during your lifetime and would not have to be discharged in full until each of you died and that no payments would be made by you during your lifetime.

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[Mr X] also appraised you of the fact that interest would accrue on the loan during your lifetime and that the principle [sic] and interest would not be payable until both of you had died. At all times, you were satisfied with the information given to you and you never raised any complaint or concern about the loan or the conditions attached to it."

However, in a subsequent submission to this Office dated **12 June 2018**, the Provider states:

"[t]welve years on, [Mr X] simply cannot recall with certainty whether or not he was there while the Complainant and her husband completed the initial application forms seeking a quotation...[Mr X] agreed to deliver the application forms to the Complainant and her husband at their home, for their convenience....[t]he Complainant appears to be adamant that they completed the initial application forms at home and [the Provider] accepts that this could well be the case. Again, these were simply initial application forms upon which a quote could potentially be issued by the provider, and so the precise circumstances surrounding their completion were not so exceptional or significant that the Respondent would commit them to memory."

Third Meeting

The Provider states that Mr X visited the Complainant's home on **25 October 2006**. The Provider states that Mr X called *"to deliver a part of a form that had been omitted on the first occasion"*.

Loan Application Process

The Provider states that it submitted two completed application forms to two different mortgage lenders (one of which was the named Mortgage Lender), and a valuation of the Complainant's property to the Second Broker. The Provider submits that it transpired that the Complainant was ineligible for one of the mortgage loans. The Provider states that the named Mortgage Lender was willing to advance €270,000, rather than the €450,000 sought, which *"evidences the extremely limited options available to [the Complainant and her husband]"*.

In a submission dated 9 October 2014, the Provider contends that the Complainant and her husband were issued with a quotation for the Loan dated **10 October 2006**, by the Second Broker, which put them *"...on notice of the nature and risks associated with the mortgage..."*

The Provider states that the Mortgage Lender subsequently issued a loan offer letter to the Complainant and her late husband, but that the Complainant notified the Provider that the loan offer letter listed the wrong solicitor. The Provider submits that it notified the Second Broker of the Complainant's new solicitor and that the Mortgage Lender reissued the loan offer letter and the quotation directly to their solicitor **on 27 October 2006**.

The Provider contends that its role was limited to seeking out information for the Complainant and her husband about the lifetime Loan and that it was the responsibility of the Complainant's solicitor to advise the Complainant in relation to the Loan. The Provider states in this regard:

"[i]n support of the [Provider's] contention that his role was limited to seeking out information for the Complainant and her husband and facilitating their application or quotes, it should be noted that the [Provider] had not seen the final version of the loan documentation (dated 27 October 2006) until a copy was provided in the course of this investigation. Furthermore, it is telling that the [Complainant] did not approach the [Provider] when she had queries about the terms of their loan, but her solicitor. This evidences the fact that she did not consider the [Provider's] role in this matter to have been to advise and inform them about the mortgage loan, she was quite correct in this regard; the [Mortgage Lender] loan documentation specifically required a solicitor to advise and inform them about the conditions of the loan and to certify such advice accordingly".

The Provider also refers to the contents of a letter from the Complainant's solicitor to the Complainant and her husband dated **26 August 2008**, which states:

"I recall that when you signed the mortgage documents for this loan that it was your intention to give the money to your son...(which you did) and that he was hoping to pay back the loan and any penalties, costs etc. without undue delay. No written agreement however was entered into by yourself and [your son] and I note that we discussed this at the time and that you also enquired about this in November 2006"

The Provider while referring to the fact that the Complainant's solicitor also acted for the Complainant's son, states that:

"it is surprising that there is no record of the Complainant and her husband having been advised to take independent legal advice, separate to their son...to ensure that they were acting of their own free will".

The Provider further submits that *"it is a matter for the FSPO to determine whether or not the solicitor's certificate confirming that they had explained the nature and contents of the loan offer letter...was accurate on its face".*

The Provider states that it received commission of €2,160 for arranging the lifetime Loan. The Provider has also stated that it *"may not have given Terms of Business to the Complainant and her late husband"*, in **October 2006** but that there was no obligation to do so at that point in time, as the **Consumer Protection Code 2006** was not yet in force (it came into force fully on 1 July 2007).

The Complaint for Adjudication

The complaint is that in or around **October 2006**, the Provider mis-sold the lifetime mortgage loan to the Complainant because:

- the Provider did not explain the nature and implications of the Loan to the Complainant; and
- the Loan was unsuitable to the Complainant's requirements as it was a lifetime product, which the Complainant could not make repayments on.

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 Complainant was 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.

The Complainant also agreed that all documentation and evidence received in the context of the Complainant's separate complaints against the Second Broker and the Mortgage Lender should be made available on this complaint file for the purposes of the investigation and adjudication of this complaint. All such documentation on this complaint file has also been exchanged amongst the parties.

A Preliminary Decision was issued to the parties on **2 November 2021**, 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 issue of my Preliminary Decision, the Complainant and the Provider made submissions to this Office. Following the consideration of these additional submissions from the parties, the final determination of this office is set out below.

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 supplied, whilst disclosing certain conflicts of fact, aren't such as would require the holding of an Oral Hearing to resolve such conflicts. This is because I do not consider that the conflicts in the evidence that I have identified are determinative of or material to the outcome of the investigation.

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In this respect I refer to the decision of *O'Brien v. FSO (Unreported High Court 28/2/14)*, in which the Court outlined that *"the question whether an oral hearing should be held in any particular case is generally likely to depend on the materiality of any conflict of evidence to the decision that [the FSO] has to make"*.

I have also had regard to the documentary evidence available, and in particular, the Loan documentation signed by the Complainant, which I consider to be sufficient to resolve the matters at issue. I note that in the decision of *Molloy v. FSO (Unreported, High Court, 15th April, 2011)* MacMenamin J upheld the FSO's decision not to hold an oral hearing in the basis that the *"documentary evidence was sufficient to resolve the matters at issue"*.

I also consider it doubtful that the Complainant or the Provider would be in a position to accurately recall the contents of the discussions concerning the purchase of the lifetime loan which occurred some 15 years ago, in or around **October 2006**, for the purposes of offering oral evidence. I am mindful in this regard of the decision of Hedigan J. in *Caffrey v Financial Services Ombudsman [2011] IEHC 285*, in which the Court refused to overturn the FSO's decision not to hold an oral hearing stating that

"It is doubtful that the parties would have been in a position to give an accurate and detailed description as to the content of a short telephone conversation that occurred five years previously"

The Complainant states in her post Preliminary Decision submissions that she sought an Oral Hearing at all junctures, and that as recently as in September 2021, she had indicated that she was happy to attend an Oral Hearing. While the Complainant indicated in September 2020 (and not September 2021) that she wanted her complaint to *"be brought to an oral hearing with all three of the providers"*, the Complainant subsequently did not request an Oral Hearing, in circumstances where this Office requested the parties, in February 2021, to explain why oral evidence would be desirable, in the event that the parties wished for an Oral Hearing. Nor did the Complainant indicate that she was requesting an Oral Hearing in her response to a follow up letter from this Office issued to the Complainant in March 2021, which advised that

"[a]s we have not received any comments from [the Complainant] ..., we will take it that [the Complainant] agree[s] with the position outlined in [this Office's] letter dated 23 February 2021, that it is not necessary to hold an Oral Hearing, and the matter will proceed accordingly."

It is acknowledged that the FSPO has a broad discretion as to whether or not to hold Oral Hearing. I refer in particular to the High Court decision of *Caffrey v Financial Services Ombudsman [2011] IEHC 285*. Notwithstanding that the Complainant now, following the Preliminary Decision, requests an Oral Hearing, having considered the matter at length, I am satisfied that an Oral Hearing would not lend anything of significant materiality to the investigation of this complaint, for the reasons outlined above. I am satisfied accordingly that the holding of an Oral Hearing is not required for the adjudication of this complaint.

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Timeline

At the outset, I consider it useful to set out a timeline of key events relating to the sale of the lifetime mortgage loan to the Complainant and her late husband.

Date	Event
October 2006	First meeting between the Complainant, the Complainant's son and the Provider, regarding the lifetime Loan at the Provider's office
12 October 2006	Second meeting between the Complainant, her late husband and the Provider, at the Complainant's home. Application form for lifetime Loan signed by the Complainant and her late husband
13 October 2006	Application form sent from the Provider to the Second Broker
16 October 2006	Application form sent from the Second Broker to the Mortgage Lender
16 October 2006	Quotation for lifetime mortgage loan is sent by email from the Mortgage Lender to the Second Broker, who forwards it to the Provider
Unknown date in October 2006	Information brochure on the lifetime mortgage Loan product is supplied to the Complainant
25 October 2006	Third meeting between the Complainant, her late husband and the Provider, at the Complainant's home. The Provider delivers part of the application form that was previously omitted.
25 October 2006	Loan offer letter issued by the Mortgage Lender, but addressed to the wrong solicitor
27 October 2006	Corrected loan offer letter issued by the Mortgage Lender to the Complainant's solicitor
1 November 2006	The Complainant and her late husband sign Loan offer letter in presence of their solicitor

Documentation

I also consider it useful to set out the contents of certain relevant documentation and correspondence.

1. The Application Form

The **application form** described the loan as a "*Lifetime Mortgage*". The Complainant indicated on the application form that she required €450,000 for "*family financial support*". The application form contained a section called '*Declarations, Authorisations and Consents*' which:

- at paragraph 7 stated "*I declare that I have read the Consumer Credit Act Notices, which are set out in this form*" and

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- at paragraph 8 stated “*I declare that I have read the Lifetime Mortgage information brochure and undertake to ask my solicitor any questions I still have*”

[*Emphasis Added*]

The Complainant and her late husband signed the application form on page 3 directly below the Declarations, Authorisations and Consents section.

The application form also contains a section titled ‘**Consumer Credit Act Notices**’, directly below the Complainant’s and her late husband’s signatures on page 3, which includes the following information:

“...Redemption

The rate of interest applicable to this loan will be fixed for the life of the Applicant(s) from the date of drawdown. In the event of early repayment of the loan in whole or in part for any reason [the Mortgage Lender]. may charge a redemption fee to cover any costs incurred by [the Mortgage Lender]. in amending or terminating any interest rate hedging contract entered into by or on behalf of [the Mortgage Lender]. in order to provide the Application with the certainty of a fixed rate of interest for the life of the Applicant. The redemption fee is calculated using the following formula

Redemption fee = PV(f) – PV(f1)

Where:

*PV(f) = Present Value of remaining flows under the original interest rate hedge; and
PV(f1) = Present value of remaining flows based off current market rates...”*

The Complainant and her husband also signed the application form on page 4, below the Consumer Credit Act Notices. The Complainant and her husband dated their signatures on both page 3 and 4 of the application form, **12 October 2006**.

The Notes/History document submitted to this Office by the Provider and also by the Second Broker which appears to represent a record both Brokers’ IT system entries, relating to the Complainant, states that the Provider posted the application form to the Second Broker on **13 October 2006**.

However, while the Complainant and her husband dated their signature on page 3 of the form as **12 October 2006**, it appears that the Complainant and her husband may have, in fact, signed this section of the application form on **25 October 2006**. The Mortgage Lender’s IT systems records, contains an entry dated **25 October 2006** which states that it “*only noticed that the section Declaration Authorisations & Consents wasn’t signed. [The Second Broker’s representative] will get them out a copy to sign*”. The Provider’s and the Second Broker’s Notes/History document, contains an entry dated **25 October 2006**, which states “[Mr X] called to [the Complainant] to get page 3 signed. Posted doc to [the Second Broker’s representative]”.

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2. The Brochures

The documentation on file includes a **lifetime mortgage brochure** issued by the Mortgage Lender. The Complainant has acknowledged that she received this brochure, although it is not clear on what date. The brochure described the product as an equity release plan which:

"..enables you and senior citizens like you to use the considerable value built up in your home to obtain a tax free lump sum to enhance your lifestyle in your retirement years.....It is similar to an 'ordinary' mortgage with one key difference – there is no requirement to make a monthly repayment."

and stated that

"[i]n order to complete the process and receive your tax-free lump sum you must have independent legal advice"

It appears that the brochure was accompanied by a **product information brochure** which described the lifetime loan product as having *"no monthly repayments to be made...interest simply accumulates for life"*.

The product information brochure outlined the two types of lifetime mortgage loans offered by the Mortgage Lender: (1) a Lifetime Mortgage with an interest rate fixed for life; or (2) a Lifetime Mortgage with a variable interest rate, subject to an interest rate ceiling. The Lifetime Mortgage with a variable interest rate was described as more suitable for those who want to have the option of repaying the loan after 5 years.

I note that the product information brochure contained the following information in relation to lifetime mortgage loans:

When are Lifetime Mortgages Repayable?

"No repayment occurs until one of the following events happens:

- You leave your home for a period of 12 months (consecutive) or more...or*
- You die (in the case of a couple, the last survivor dies).*

When one of the above happens, your Lifetime Mortgage must be repaid. This can be repaid by any means but it will normally entail selling the property. Where the property is sold, the Lifetime Mortgage is repaid and the remainder of the sales proceeds will revert to your estate.

The complete Terms and Conditions will be detailed in the legal documentation which your solicitor will explain to you.

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Can I repay or partially repay my Lifetime Mortgage early?

Lifetime Mortgages are designed to run from the duration of the life/lives of the Applicant(s) and would normally only become repayable on the occurrence of one of the two events as outlined above. However, you can make early repayments but additional costs may be incurred. If you are quite sure that you will want to pay the loan off early, then you should be aware that the Lifetime Mortgage (2) can be repaid after 5 years without any additional cost. With the Lifetime Mortgage (1), because the interest rate is fixed for your expected life, if you decide to repay the loan in the absence of one of the above events happening, then an additional cost may apply.

This is something you should think about at this stage. Lifetime Mortgages are designed as a long terms loan. Further information is given under the section 'Consumer Credit Act Notices'.

3. The Quotations

The documentation submitted to this Office by the parties also includes two **quotations** addressed to the Complainant and her late husband dated **10 October 2006** and **16 October 2006** respectively.

Both quotations contained the following information on page one:

***"Lifetime Mortgage – Illustrative Quotation – Fixed Rate of Interest
SUBJECT TO CONTRACT/CONTRACT DENIED....***

Estimated Property Value: €1,500,000
Mortgage Amount: €270,000

		Amount Borrowed on Jan 1. Year 1	€270,000	
		Amount owed at end	Interest Rate	6,74%
		Of each calendar year	APR	6,95%
	Year 1	€288,771		
	Year 2	€308,847		
	Year 3	€330,318		
	Year 4	€353,282		
	Year 5	€377,843		
	Year 6	€404,111		
	Year 7	€432,205		
	Year 8	€462,253		
	Year 9	€494,389		

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	Year 10	€528,760			
	Year 11	€565,520			
	Year 12	€604,836			
	Year 13	€646,885			
	Year 14	€691,857			
	Year 15	€739,956			
	Year 16	€791,399			
	Year 17	€846,418			
	Year 18	€905,262			
	Year 19	€968,198			
	Year 20	€1,035,508			

Please note that the term above shown is a 20 year term used for illustration purposes. In this example the rate is fixed for the life or lives of the customers so interest will continue to accrue at the same fixed rate until the last survivor dies and the Mortgage is repaid.

The quotations also contain sections titled “***When is a Lifetime Mortgage repayable?***” and “***Can I repay or partially repay my Lifetime Mortgage early?***”. I note that these sections explain that a lifetime mortgage loan becomes repayable when the last survivor dies in the case of a couple, or if the couple leaves their home for 12 months or more, and that additional costs may apply if the mortgage is repaid early.

The issue of whether or not the quotations were in fact supplied to the Complainant and her late husband by the Provider, the Second Broker or the Mortgage Lender is discussed in greater detail below under the “Analysis” heading.

4. The Loan Offer Letter

There are two **loan offer letters** on file, one of which is dated **25 October 2006**, and the other dated **27 October 2006**, 2 days later.

The Mortgage Lender sent a letter to the Complainant and her husband dated **25 October 2006**, enclosing the loan offer letter and advising that a mortgage pack had been forwarded to their solicitor.

According to an entry dated **27 October 2006** in the Provider’s Notes/History document, the Complainant informed the Provider that she had changed solicitor, and the Provider then relayed this information to the Second Broker.

The Mortgage Lender then issued a **loan offer letter** dated **27 October 2006**, to the Complainant’s new solicitor, who I note was also acting for the Complainant’s son in relation to his separation from his wife.

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I note that both versions of the **loan offer letter** (i.e. the letter dated **25 October 2006** and the letter dated **27 October 2006**) state on page one:

"IMPORTANT INFORMATION AS AT OCTOBER 25, 2006	
1. Amount of credit advanced	€270,000
2. Period of Agreement	the date of the death of the last surviving borrower *** (estimated to be 24 years)
3. Number of Repayment Instalments	One (See "Repayment")
4. Amount of each Instalment	Total Amount Repayable (See "Repayment")
5. Total Amount Repayable	€1,354,913****
6. Cost of this credit (5 minus 1)	€1,084,913****
7. APR*	6.95%
8. Amount of mortgage protection premium (see general condition (2))	Not Applicable
9. Effect on amount of instalment of 1% increase in first year in interest rate**	Not Applicable

* Annual Percentage Rate of Charge
** This is the amount by which the instalment repayment will increase in the event of a 1% increase at the start of the first year in the interest rate on which the above calculations are based
***The term of this loan is not for a period certain and so must be estimated for the purposes of complying with the Consumer Credit Act 1995. The estimate used is derived from actuarial tables. See Repayment.
**** This figure is estimated. After **5 years** the total amount repayable would be **€377,843**, after **10 years** the total amount repayable would be **€528,760** and after **15 years** the total amount repayable would be **€739,956.**"

On page 2, the loan offer letter describes the term of the Loan as "*Lifetime Mortgage*" and sets out that the Loan has a fixed interest rate of 6.74% and an APR of 6.95%.

The loan offer letter dated **27 October 2006**, was signed by the Complainant and her husband on **1 November 2006**.

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I note in that regard that the solicitor certified that the Complainant's and her late husband's signatures were

"witnessed by me a Solicitor having explained the nature and contents hereof to the Applicant."

[Emphasis Added]

Analysis

The essence of this complaint of mis-selling is the Complainant's contention that the Provider did not advise her of the implications of the Loan. The Complainant has stated that

"[w]e were at no time made aware that this was a life long loan, that there was extraordinary expense attached to paying off this loan and that we could lose our family home. None of these risks were explained in full as we never had a consultation about it.."

The Complainant submits she would never have proceeded with the Loan if she was aware of the implications of the Loan, and she says that the Loan was unsuitable for her needs.

Legislation

It is helpful to refer to particular pieces of the legislation and/or codes to which the Provider was subject, when it arranged the lifetime loan in or around October 2006.

At that time the Provider had obligations pursuant to the **Consumer Credit Act 1995** ("**CCA**") with respect to the sale of lifetime mortgage loans. **Section 116 of the CCA** sets out that the Provider was required to be authorised by the Central Bank, and to hold an appointment in writing from each entity for which it was an intermediary. The **CCA** also specified that a mortgage agent (such as the Provider) must ensure that certain warnings were included on information documents, applications and certain other types of documents associated with the loan.

The **Consumer Protection Code 2006** (the "**CPC 2006**"), which was published in **August 2006**, did not come fully into effect until **1 July 2007**. This means that the regulatory requirements of the **CPC 2006**, including:

- the requirement set out in chapter 4, paragraph 16 that regulated entities must advise a consumer of the consequences of lifetime mortgage loan; and
- the requirement set out in Chapter 2 that regulated entities must know the consumer and consider the suitability of any product offered to a consumer

did not apply to the sale of the Loan that is the subject of this complaint, which occurred in or around **October 2006**. In fact the Mortgage Lender itself did not need to be regulated and, therefore was not subject to **CPC 2006** until **2008**.

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However, regardless of whether or not the conduct complained of was contrary to law or regulation, I must also consider whether the Provider acted wrongfully within the meaning of **section 60(2) of the Financial Services and Pensions Ombudsman Act 2017** (the “**FSPO Act 2017**”).

Sales Meetings

The Complainant and her son first met with the Provider in or around **October 2006**, in circumstances where the Complainant was seeking to raise money to assist her son in relation to a matrimonial matter.

There are conflicting accounts from both parties, as to precisely what was discussed during the course of these meetings, many years ago.

The Complainant states that when she first met the Provider’s representative, Mr X, he informed her that he knew very little about the product, but that he would find out more information on the product and revert to her. The Complainant rejects the Provider’s contention that Mr X called the Second Broker during that first meeting, and that Mr X then passed on information to her that he received from the Second Broker about the loan product. The Complainant submits that this call did not occur, that no such information was given to her, and that she was not aware of the involvement of the Second Broker until **2012**.

The Provider, however, contends that Mr X did supply the Complainant with information regarding the features of the lifetime Loan during the course of the first meeting with the Complainant and her son. The Provider states that Mr X, having phoned Ms B. of the Second Broker:

“...passed on what [Ms B.] said, explaining that the product would release equity in the family home, that they would be able to remain in their home until the second spouse died, and that any equity remaining at that point would be distributed in the usual way or if there was none, the bank would absorb the loss...”

The Provider relies to a significant degree, in its submission dated **12 June 2018**, on the fact that it was not responsible for advising the Complainant in relation to the Loan, in circumstances where the Complainant’s solicitor signed a declaration in the loan offer letter dated **27 October 2006**, certifying that she explained the nature and contents of the loan agreement to the Complainant and her late husband.

The Provider maintains that its role was limited to seeking out information for the Complainant about the Loan and facilitating the Complainant’s and her husband’s application for quotes, but that its role was not to advise the Complainant in relation to the Loan as:

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“...the Solicitor was required, in the proper performance of their duties, to have explained the terms of the loan to the Complainant and her husband. This role was not to be performed by any other party. this duty fell squarely into the remit of the solicitor. No intermediary was entitled or qualified to advise a consumer in relation to this product”

However, certain observations can be made about this proposition. In the first instance, it does not follow that because the Complainant was required to seek legal advice in respect of the lifetime Loan, that the Provider was precluded from offering any advice to the Complainant in respect of the Loan. There was nothing within the loan documentation or otherwise that would have prevented the Provider from also advising the Complainant in respect of the Loan. Indeed, it is common practice for an individual entering into a loan agreement to seek financial and suitability advice from a broker and/or financial advisor whilst also ultimately seeking legal advice from a solicitor.

In the second instance, this proposition came only after the Provider had initially sought, in its Final Response Letter, to rely on the contention that it had given advice to the Complainant in respect of the Loan. The Provider stated in its Final Response Letter dated 18 December 2012 (when referring to its second meeting with the Complainant) that

*“I again advised you of the conditions attached to such a loan which included **advice** on the fact that the loan would be registered as a mortgage on your property during your lifetime and would not have to be discharged in full until each of you died and that no payments would be made by you during your lifetime...”*

[my Emphasis]

There is considerable inconsistency on the Provider’s part in relying, initially, on the contention that the advice had been given, only then to suggest that it had not been given, and to claim that it was not the Provider’s role to advise the Complainant, but rather that its role was limited to “seeking out information”. This description of the Provider’s role as limited to seeking out information would also appear to be inconsistent with the Provider’s own Terms of Business, (albeit that a copy of the Provider’s Terms of Business was not furnished to the Complainant in 2006). The Provider’s 2006 Terms of Business state that:

*“the range of services that [the Provider] provides are intended to give investment and **mortgage advice based on the products offered by the product producers** from whom a written letter of appointment is held...we are authorised to provide investment and **mortgage advice on a broad basis**”*

[my Emphasis]

Regardless of whether or not the Provider offered advice or supplied information to the Complainant regarding the Loan, the Provider itself has acknowledged that its representative was not familiar with the lifetime loan product when he first met with the Complainant.

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The Provider has stated, in that regard, that:

“the Complainant and her son approached [the Provider] with a specific type of product in mind, in view of the lack of other options available to the Complainant and her husband to raise money to fund their son’s settlement. The [Provider] was upfront about the fact that he was unfamiliar with such products and he simply sought out information on same for them and assisted them with obtaining a quotation”.

It is also clear that, in the absence of any notes or records of that first meeting, it is not possible based on the evidence before me, to conclude whether or not the Provider did relay information to the Complainant about the Loan, after calling the Second Broker.

However, in my view I must accept that the Provider’s representative was not in a position to supply adequate information (or advice) to the Complainant during the course of the first meeting, regardless of whether or not he called the Second Broker, in light of his admitted unfamiliarity with the lifetime loan product, and because at that point in time the Provider’s representative had not received or had the opportunity to familiarise himself with the application forms, the quotation or any of the lifetime loan product literature.

The Provider’s own description of the information relayed to the Complainant during the course of the first meeting, indicates that the Provider gave, at most, a brief overview of the Loan’s features. For example, it does not appear that important information such as the applicable interest rate or the cost of the Loan was discussed during that meeting.

In relation to the second occasion when the Complainant met the Provider, the Complainant states that Mr X called to her home to drop off application forms without offering her any explanation of the lifetime loan product.

Initially the Provider maintained that its representative met with the Complainant for the second time in or around **12 October 2006**, to complete the application forms, at which point it said that its representative *“again advised [the Complainant and her husband] of the conditions attached to such a loan...”* However, the Provider subsequently stated that its representative could not recall with certainty whether or not he was there while the Complainant and her husband completed the initial application form.

In circumstances where the Provider does not have a clear recollection of the second meeting with the Complainant and her husband, and in light of the disappointing absence of any records of that meeting, I consider it to be appropriate to accept the evidence of the Complainant that the Provider simply dropped the forms to her house, and that she and her husband completed the application forms themselves, without receiving any further advice or information from the Provider in respect of the Loan.

The Provider called to the Complainant’s home again on **25 October 2006**, to get the Complainant’s signature on a section of the application form. It does not appear that the Loan was discussed in any detail at that meeting.

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I acknowledge that the Provider did not have any regulatory obligations pursuant to the **CPC 2006** to advise the Complainant and her husband as to the consequences or suitability of the Loan. However, I consider that it would have been reasonable for the Provider in arranging a lifetime loan and in receiving a commission for so doing, to endeavour to supply the Complainant and her husband with important information on the loan product it was arranging, and to assist them, insofar as possible in applying for the Loan.

The promulgation of the CPC 2006 simply incorporated principles of best practice, which had evolved at that time. Such principles and practices did not simply appear overnight on 1 July 2007. Regulated financial service providers who were offering services to their clients, did not have carte blanche to engage in poor practice, prior to that date.

The Provider's representative was not familiar with the lifetime loan product on the first occasion he met the Complainant, nor did the Provider and the Complainant discuss basic and important information such as the applicable interest rate or the cost of the loan. In these circumstances, it would have been prudent for the Provider's representative to have arranged to discuss the Loan with the Complainant and her husband again, once he had had the opportunity to review and familiarise himself with the contents of the application forms and the quotation supplied by the Second Broker.

Accordingly, I take the view that it was unreasonable for the Provider to fail to give the Complainant and her husband further information in respect of the Loan, on the two successive occasions when he called to their home in or around **12 October 2006** and on **25 October 2006**.

This is particularly the case because the Provider's representative was in receipt of both applications forms, and a quotation dated **16 October 2006**, after his first meeting with the Complainant, which supplied him with more detailed information on the lifetime loan. As discussed in greater detail below, the Provider did not however it seems, furnish the Complainant and her husband with a copy of the quotation dated **16 October 2006**.

On review of these documents (and in particular on review of the quotation), the Provider's representative should have been in a position to draw the Complainant's attention to important information about the features and implications of the Loan which the Provider was arranging, including information about the cost of the Loan, the applicable interest rate, as well as information on early repayments and redemptions fees. This information would have permitted the Complainant and her husband to make a more informed decision at that point in time as to whether or not they wished to proceed with the loan application process.

With regard to the suitability of the Loan, the Provider submits that there were few options available to the Complainant and her husband to secure funding due to their age. The Complainant in her post Preliminary Decision submission, states that:

"it is not entirely true to say that we we had no other options there were other options and those options came to fruition in early 2007..." and that "there were other monies available, at the time the misold loan was acquired."

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In contrast, the Provider states in its post Preliminary Decision submission that the Complainant attempted to pay some money off the loan in March or April 2007 and that:

"[i]n circumstances where the Complainants were seeking a single lump sum in 2006, it is not sustainable to maintain a position that a later alleged attempt to make part repayment is evidence of further options having been available to the Complainants at the time the monies were sought."

The Complainant does not explain what "other options" were available to her and her late husband in **early 2007**, or what "other monies" was available to her and her late husband in or around **October 2006** when they applied for the Loan. Whatever the nature of the "other options" available in 2007, this Office has not been supplied with any evidence indicating that these options were available to the Complainant in or around **October 2006**, when the Complainant and her late husband entered into the Loan that is the subject of this complaint. Nor has this Office been supplied with evidence that "other monies" were available to the Complainant and her late husband in or around **October 2006**.

Furthermore, the Complainant, herself has acknowledged in her earlier submissions to this Office, that she approached the Provider in circumstances where they had been unable to secure a loan with their own bank due to their age, and that they had seen an equity release product advertised on the TV and were seeking further information on it. Consequently, I accept the Provider's submission that there were few options available to the Complainant and her husband to secure funding due to their age.

In relation to the suitability of the lifetime loan with a fixed interest rate (which is the product the Complainant and her late husband ultimately proceeded with), as opposed to a lifetime loan with a variable interest rate (the other lifetime loan product discussed in the information brochures which is described as more suitable for individuals who wish to make repayments after 5 years), it is unclear based on the evidence before me whether the Complainant and her husband qualified for the latter product. Nor is there any evidence before me to suggest that the Provider considered or discussed the suitability of one type of lifetime loan product, as distinct from the other, with the Complainant.

The Complainant states in her post Preliminary Decision submission, that she and her late husband were not advised of the difference between the two types of lifetime loan, but that if she had been advised as

"...to the true nature of the actual product we were sold (version 1) we would simply never have proceeded" and that "I was misled by Mr X version 1 not version 2 as we thought as it was the intention to be able to pay the loan off by end of 2007"

The thrust of the Complainant's submissions is that she would not have proceeded with the Loan if she had known that this was a lifetime product, and that she wished to pay off the loan by the end of 2007.

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As both types of lifetime loans (fixed interest and variable interest rate) were lifetime products, rather than products designed to be repaid within 1-2 years, it does not appear necessary at this remove, to consider the suitability of one version of the product against the other. The Complainant, in essence, has submitted that all lifetime loans were unsuitable to their needs.

Loan Application Process

As referenced above, the documentation on file includes two quotations addressed to the Complainant and her late husband, dated **10 October 2006**, and **16 October 2006**, which were issued by the Mortgage Lender during the loan application process. The quotation dated 10 October 2006, appears to predate the submission of the completed application form to the Mortgage Lender. It is unclear how this arose, but I do not believe that the date of this quotation is material to the conduct of the Provider complained of.

What is notable is that it now seems clear that neither quotation was supplied to the Complainant and her late husband.

The Provider contends that the Second Broker supplied the Complainant with the first quotation on **10 October 2006**, the contents of which put the Complainant and her husband "*on notice of the nature and risks associated with the mortgage entered in to*".

The Provider also states in its submissions to this Office that the Mortgage Lender furnished an initial quotation on **16 October 2006**, following which it issued a loan offer letter which listed the wrong solicitor. The Provider states that the Mortgage Lender corrected the name of the Complainant's solicitor, and "*reissued the quotation and letter of offer on 27 October 2006 directly to the Complainant and her husband via the solicitor*". The Provider further submits that it:

"...did not receive a copy of the reissued documentation and notes the existence of same from the solicitor's file, which has been furnished to him in the course of this investigation".

The evidence available suggests that the first quotation dated **10 October 2006**, was not supplied by the Second Broker to the Complainant. The Second Broker has stated in its Final Response Letter that it did not have any contact with the Complainant in relation to the product. Similarly, the Complainant has stated in her submissions to this Office that she was not in contact with any other intermediary other than the Provider regarding the Loan.

In any event, the quotation dated **10 October 2006**, was superseded by the quotation dated **16 October 2006**.

The documentation on file does not support the Provider's position that the Mortgage Lender supplied a copy of the quotation dated **16 October 2006**, directly to the Complainant on **27 October 2006** (or on any other date).

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The Mortgage Lender's letter to the Complainant's solicitor dated **27 October 2006**, does not refer to an enclosed quotation, nor does the Complainant's solicitor's file include a copy of the quotation.

Instead, the documentation on file supports the Mortgage Lender's account that it "provided a Lifetime Mortgage Quotation to [the Second Broker] for onward transmission to [the Complainant and her husband]". In an email from the Mortgage Lender to the Second Broker dated **16 October 2006**, the Mortgage Lender states:

*"..as discussed please **find attached the Fixed Lifetime Mortgage Quotation** showing the maximum available to them...I have also attached a house property index table this reflects the current house price showing house appreciation....Should your clients wish to proceed I will need their permission to contact the valuer..."*

[my Emphasis]

It is clear that the Second Broker forwarded this email to the Provider on **16 October 2006**, as per the copy email on file. The Second Broker did not include any instructions or text in this email, but simply forwarded the Mortgage Lender's email to the Provider. However, it does not appear that the Provider, having received the quotation (which included a house property index table) from the Second Broker, took any steps to supply this document to the Complainant and her husband, despite the clear implication of the Mortgage Lender's email being that the quotation should be supplied to the Complainant and her husband.

I do not consider it reasonable that the Provider failed to supply the Complainant and her husband with a quotation which contained important information regarding the Loan, and which was addressed to the Complainant and her husband. The provision of the quotation dated **16 October 2006**, to the Complainant and her husband would have given them a valuable opportunity to reflect on the cost and implications of the Loan, before entering into the loan agreement. The quotation contains a helpful illustration of the cost of the Loan over a 20-year period, which in my view would have assisted the Complainant and her husband in understanding the rate at which the amount owed, would increase year on year. Consequently, I regard the failure of the Provider to supply this document to the Complainant and her husband as a significant oversight on the part of the Provider.

I also note that the Provider initially maintained in its submission to this Office dated **25 March 2014**, that its practice was to supply a copy of its Terms of Business to all its clients. However, in its submission dated **12 June 2018**, the Provider accepted that it may not have supplied a copy of its Terms of Business to the Complainant but stated that it had no obligation to do so when it arranged the Loan, as at that time the **CPC 2006** was not yet in force. It is clear therefore, that there have been inconsistencies in the Provider's account of the documents that have, and have not, been supplied to the Complainant, and its account of its involvement in this matter appears unreliable.

Ultimately, the Complainant and her husband proceeded with the Loan and they met with their solicitor on **1 November 2006** to sign the loan offer letter. The Provider has made submissions querying whether the Complainant's solicitor was in a position to offer

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independent legal advice in circumstances where the Complainant's solicitor also acted for the Complainant's son. However, the role of this Office is to investigate and adjudicate upon complaints made against regulated financial service providers and pension providers. Any concerns relating to the adequacy or independence of legal advice supplied by a solicitor is not a matter for this Office but is rather a matter for the Legal Service Regulatory Authority, and it is not appropriate for this Office to offer comment on such an issue.

Information Made Available to the Complainant

I consider it necessary and appropriate to also examine whether or not the Complainant was made aware of the consequences of the Loan, outside of the Complainant's dealings with the Provider.

The Complainant contends that neither the Provider, the Second Broker nor the Mortgage Lender offered her any advice in relation to the Loan, and that it was her belief when she signed the loan agreement that this was a loan she could repay within a 5 year period.

There are conflicting accounts from the Provider and the Complainant as the extent to which the Complainant was made aware of the nature and features of the lifetime Loan. The documentary evidence before me, assists in that regard.

Both parties accept that the Provider supplied the Complainant and her husband with an application form in or around **12 October 2006**. The **application form** itself clearly indicated that the application was for the purposes of obtaining a "*Lifetime Mortgage*" and that the Loan was subject to a redemption fee in the event of early repayment.

While the application form itself did not contain an explanation of the term "*Lifetime Mortgage*", I note that in signing the application form, the Complainant and her husband attested to having read an **information brochure** and they gave their undertaking to ask their solicitor any questions they may still have.

It is unclear on what date the Complainant received the **information brochure** regarding the Loan. Neither the Provider nor the Second Broker has made any submissions regarding the brochures. The Mortgage Lender states that it:

*"...provided no documentation directly to [the Complainant and her husband] save for a Letter of Offer, dated 25 October 2006...[the Mortgage Lender] provided a Lifetime Mortgage Quotation to [the Second Broker] for onwards transmission to [the Complainant and her husband] on 16th October 2006, (see reference under Section headed Entries from IT System) and **also provided an information brochure on the product.**"*

[my Emphasis]

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It seems from the above statement that the Mortgage Lender supplied an information brochure to the Second Broker for onward transmission to the Complainant and her late husband. However, the Complainant has stated that she received the brochure from the Mortgage Lender. Irrespective of which entity supplied the brochure, and in the absence of any covering letter within the available evidence, to confirm how it was made available to her, I note that the Complainant has acknowledged that she received a brochure relating to the Lifetime Mortgage. The Complainant has stated in this regard:

"[the Mortgage Lender] simply provided a Glossy brochure, of happy retirements, and in that same brochure does nothing to walk vulnerable people such as ourselves through the process and the implications of losing our home, though the mis selling of their product..."

I don't accept this. I am satisfied that the brochure information was sufficiently clear and unambiguous in drawing the attention of the Complainant, to the fact that this was a lifetime product which would fall due for repayment on the death of the last surviving spouse, in the case of a couple, and that

"[the mortgage] can be repaid by any means but it will normally entail selling the property."

Insofar as the Complainant refers to the prospect of losing her home, it appears that the Complainant is referring to the fact that she is unable to afford to repay the Loan early due to the costs associated, and that as a result, her home may be sold after her death to cover the Loan, as anticipated by information quoted above, from the brochure.

In this regard, I am of the view that the **loan offer letter** dated **27 October 2006**, which was sent by the Mortgage Lender to the Complainant and her husband, via their solicitor, is of particular relevance when considering to what extent the Complainant and her husband were made aware of the implications of the Loan.

The loan offer letter clearly states on page one that the period of the agreement was *"the date of the death of the last surviving borrower *** (estimated to be 24 years)"*. Furthermore, the loan offer letter which made a facility of €270,000 available, stated that the Loan was subject to one repayment instalment and that the estimated total amount repayable is €1,354,913.

The estimated repayable amount of €1,354,913 is a significant sum which I am satisfied was not disguised or obscured in any way. On the contrary this information was supplied on page one of the loan offer letter in a box with a heading marked in bold as **"IMPORTANT INFORMATION"**.

The provision of such information in a prominent manner runs completely contrary to the Complainant's suggestion that *"we were at no time made aware that this was a life long loan, that there was extraordinary expense attached to paying off this loan and that we could lose our family home"*.

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Furthermore, the loan offer letter contains a section titled “*Repayment*” which outlines the circumstances when the Loan became repayable, including when “*the Applicant dies, or in the event of there being more than one Applicant on the death of the last surviving Applicant*”. The loan offer letter also outlines under the heading “*Consumer Notices*” that a redemption fee is chargeable in the event that the Loan is repaid early, and that

“Please Note: *In the event of early repayment of the loan in part the minimum amount repayable is €5,000 [FIVE THOUSAND EURO] and partial repayments are limited to a maximum of two such repayments in any calendar year”*

In these circumstances I am satisfied that the loan offer letter signed by the Complainant and her late husband, in the presence of their solicitor makes it clear that the Loan was designed to run for her and her husband’s lifetimes, as well as clearly outlining the applicable interest rate, the estimated cost to repay the Loan after 24 years, and the conditions applicable to early repayment of the Loan.

I therefore consider it reasonable to conclude that the Complainant and her late husband, having signed the loan offer letter, including the affirmation stating “*I/We the undersigned accept the within Offer of Advance on the terms and conditions set out above and overleaf and in [the Mortgage Lender’s] standard form of Mortgage*”, were aware or ought to have been aware of the loan offer contents. Certainly, the evidence available indicates to me that the Complainant and her late husband had adequate information with which to make an informed decision and in the absence of any other option for securing credit elsewhere it seems likely to me they opted to accept the drawdown of monies on the basis outlined, so that they could assist their son in funding his matrimonial settlement.

In my Preliminary Decision I stated that:

“Furthermore, the fact that the Complainant had the benefit of legal advice from a solicitor in the context of this loan agreement, is a matter of some significance. The Complainant’s solicitor certified that she explained the contents of the loan offer letter to the Complainant and her late husband, by signing the affirmation stating “[w]itnessed by me a Solicitor having explained the nature and contents hereof to the Applicant(s)”. This gave the Complainant and her late husband the opportunity, prior to committing to the loan agreement, to carefully consider whether there was any aspect of that documentation that was not understood by them or was unclear to them, and to seek clarification from their solicitor, if required.”

The Complainant states in her post Preliminary Decision submissions that she and her late husband did not in receive adequate legal advice in relation to the Loan, and that “*the Solicitor merely told us on the day that the loan we were about to draw down was an expensive product and should be paid off quickly, that said obviously the solicitor did not go through the contract with us in detail*”. However, as explained earlier in this Decision, the adequacy of the legal advice supplied by the Complainant’s solicitor in not a matter for this Office.

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I also note that the Complainant submits that the Loan was unsuitable for her because she could not make repayments on the Loan. I understand that the Complainant was unable to make repayments on the Loan due to the expense associated with such repayments.

The Complainant has stated in this regard that there was *“extraordinary expense attached to paying off this loan”*. However, it was the very absence of any scheduled repayments to be made, which was a feature of the Loan, and indeed the contents of the loan offer letter made it clear that it was possible for the Complainant to make early repayments on the Loan, but that these repayments would be subject to conditions, including the application of a redemption fee in the event of early repayment.

Consequently, while the manner in which the Provider arranged the Loan was not entirely satisfactory for the reasons outlined above, I have not found any evidence that the Provider’s actions or lack thereof had any meaningful bearing on the decision by the Complainant and her late husband to enter into the lifetime loan agreement, given their desire to access funds in order to assist their son financially, and given their very limited options at that time, in 2006.

On the basis of the evidence before me, it is clear that the Complainant and her late husband applied for the Loan, were supplied with documentation which clearly explained the implications of the Loan, and that the Complainant and her husband had the benefit of the advice of their solicitor available to them at the time when they proceeded to accept the terms and conditions of the borrowing.

The Complainant and her husband ultimately decided to proceed with the Loan, having had the benefit of this advice and information (albeit from sources other than the Provider).

Therefore, I must conclude that regardless of the deficiencies noted in the manner in which the Provider arranged or sold the Loan, I accept that the Complainant and her husband had sufficient information available to them to enable them to consider the suitability of the product and to make an informed decision to enter into the lifetime loan agreement.

Accordingly, the Loan will ultimately fall to be repaid in accordance with the terms of the Loan agreement, rather than written down to the original sum borrowed of €270,000 as requested by the Complainant.

As regards the deficiencies in the manner in which the Provider arranged the Loan, namely:

- the failure of the Provider to supply the Complainant with information it had acquired, on those occasions when the Provider’s representative called to the Complainant and her late husband’s home in 2006; and
- the failure of the Provider to supply the Complainant and her husband with a quotation dated 16 October 2006,

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I consider these failures by the Provider to constitute conduct which was unreasonable and unjust, within the meaning of **s.60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, and on that basis, I consider it appropriate to partially uphold this complaint.


In those circumstances, to mark my finding in that regard, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant in the sum of €3,000 (three thousand euro), in order to conclude.

While the Complainant states in her post Preliminary Decision submission, that the a greater compensation figure is warranted "*due to the stress that has been caused to me and my late husband*", this Office is satisfied that the compensation directed is adequate bearing in mind the nature of the inconvenience suffered by the Complainant, and in circumstances where this Office is satisfied that the Complainant and her husband were supplied with sufficient information to make an informed decision to proceed with the Loan (albeit from sources other than the Provider).

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)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**
- Pursuant to **Section 60(4)(d)** 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 Complainant in the sum of **€3,000** (three thousand euro), to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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.



MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)

27 May 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.