



Decision Ref: 2022-0176

Sector: Banking

Product / Service: Mortgage

Conduct(s) complained of: Mis-selling

Outcome: Rejected

**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 husband in **October 2006**.

The lifetime mortgage loan was sold to the Complainant and her late husband by a named Broker (the “**First Broker**”) which was an appointed intermediary of, a Second Broker, (the “**Provider**”). The Provider 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 husband.

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

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 conduct of the above-named Respondent Provider (the Second Broker). The parties are aware that separate complaints have been raised against the First 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 those parties.

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.

The Complainant's Case

The Complainant submits that she and her son, first met with the First Broker in or around **October 2006**, at the First Broker'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 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 First Broker'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 states that a number of days later, in or around **12 October 2006**, the First Broker'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 Mr X did not explain the loan, but instructed them to drop back the completed application forms to his office.

The Complainant states that she and her husband returned both application forms to the First Broker, and that 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**. However, the Complainant states that at no point did the First Broker, the Provider or the Mortgage Lender, offer them any advice regarding the Loan.

The Complainant states that she was not aware of the involvement of the Provider when the loan was sold in October 2006, and she subsequently discovered that "[the Provider] had an arrangement with [the First Broker] for some referral type of business" and that the Mortgage Lender processed the Loan application on foot of information received from the Provider, who in turn received the information from the First Broker. The Complainant queries

"[h]ow [the Provider] processed this application when they had never met us, had no record of advice given and yet still received a commission payment of €2,700"

The Complainant contends that, at the time she and her 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".

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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 inability 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 First Broker or the Mortgage Lender) had explained the nature and implications of the Loan to her, and that all the parties are "*passing the book*" and refusing to take responsibility for the sale of the Loan.

The Complainant states in relation to the Provider that

"[o]ur complaint centres on the fact that [the Provider] had no controls or professional standards in place to protect us from being mis-sold a product that they arranged and got paid handsomely for"

The Complainant further states that

"[the Provider] received a 20% Commission for processing an application form for some one who had received no advice whatsoever from [the First Broker] and we believe [the Provider] is as much at fault as [the First Broker]"

The Provider's Case

The Provider states that it did not advise the Complainant and her husband in respect of the Loan as "*to give advice in such situations is not our function*".

The Provider states that it

"[i]s a regulated product producer who has broker appointed to introduce business for onward transmission to various Financial Institutions..."

However, in a subsequent submission received by this office on **18 March 2014**, the Provider states that it had not acted in this matter, and that it was a different Broker (the "**Third Broker**"), (which operated out of the same office as the Provider) which acted as an intermediary between the First Broker and the Mortgage Lender and that:

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“[the First Broker] was an appointed intermediary of [the Third Broker]. Potential clients, in this case [the Complainant and her husband], in need of financial advice, contacted [the First Broker] and were fully and exclusively advised by [the First Broker] in relation to their requirements. [The First Broker] identified [the Mortgage Lender] as the appropriate mortgage for the [Complainant’s] needs. The First Broker then requested the assistance of [the Third Broker], who themselves were an appointed intermediary of [the Mortgage Lender] to place this business with [the Mortgage Lender]. In this regard [the Third Broker] were a facilitator and in no way a contracting party with [the Complainant and her husband]. These relationships, between [the First Broker] and [the Third Broker], and again between [the Third Broker] and [the Mortgage Lender], were fully authorised by the Financial Regulator.....”

The Provider also contends that

“[the Third Broker] did not sell, or mis-sell, any product to [the Complainant and her husband]. [The First Broker], an appointed intermediary of [the Third Broker], and fully authorised by the Financial Regulator, advised the Complainants at all times, identified the product they believed best suited the [Complainant and her husband’s] needs and sold that product to them...”

The Complaint for Adjudication

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.

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 First Broker and the Mortgage Lender should be made available on this complaint file, for the purposes of the investigation and

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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 made submissions to this Office. Following the consideration of these additional submissions, 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 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.

In this respect I have 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, when this Office requested the parties, in February 2021, in the context of the linked complaint, 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

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an Oral Hearing in her response to a follow up letter from this Office issued to the Complainant in March 2021 in the context of a linked complaint, 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.

Correct Respondent Provider

At the outset it is necessary to address whether it is the Provider (the Second Broker) or the separate Third Broker, which is the correct respondent provider to this complaint.

When this complaint was first received by this office's predecessor, (the "FSO") it was the Provider who responded to communications issued by the FSO. In a letter from the Provider to the FSO dated **15 November 2012**, the Provider confirmed its contact details. Similarly, it was the Provider who issued the final response letter to the Complainant on **20 December 2012**.

In **March 2014**, the FSO received a submission on the Third Broker's stationery stating that it was the Third Broker, rather than the Provider which had acted as intermediary between the First Broker and the Mortgage Lender.

In relation to the question as to which Broker (the Provider or the Third Broker) is the correct respondent provider to this complaint, I note the following:

- the Mortgage Lender's IT system entry dated 16 October 2006, states "*rec'd in completed application form from [the Provider]*";
- an email from the Mortgage Lender dated 16 October 2006 attaches a Quotation addressed to the Complainant and her husband, which states "*Agent/Broker: [the Provider]*";
- the documentation on file includes an undated Provider "with compliments" slip which refers to the Complainant and her husband and states "*-section of the declarations not signed*"
- in a letter dated 2 July 2012, from the Provider to the Complainant's Solicitor, it was outlined "*we were the broker that introduced the mortgage to [the Mortgage Lender]*";

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- a letter dated 17 July 2012, from the Mortgage Lender to the Complainant's Solicitor states that "*commission in the amount of €2,700 was paid to [the Provider] on 13th of February 2007*";
- a letter dated 2 August 2012 from the Provider to the Complainant's Solicitor enclosed documentation held on file, relating to the mortgage.

I also note that:

- the Mortgage Lender's statement dated 31 January 2007 sets out that commission of €2,700 for the Complainants' loan was paid by the Mortgage Lender to the Third Broker;
- the Third Broker's Bank statement indicates that that commission for the Complainants' loan was paid into the Third Broker's account on 6 March 2007;
- the Third Broker's name and address is included in an undated handwritten note on the face of a copy of the Complainant's signed Loan application form which was submitted by the Mortgage Lender to this office; and
- the documentary evidence includes a copy of an agency agreement dated 15 February 2006, in place between the First Broker and the Third Broker which provides for the payment of commission.

It appears to me from the evidence that in practice, the Provider and the Third Broker were at times treated, and indeed acting, as one and the same. When the FSO queried why the Provider's name appeared on documentation such as the quotation dated **16 October 2006** (in circumstances where the Provider maintains that it was the Third Broker which acted as an intermediary in respect of the Complainant's Loan) the Provider responded that it previously operated out of the same office as the Third Broker, and that "*as such the staff of [the Third Broker] had use of the computer equipment and e-mails of [the Provider]*".

It seems in that regard from the evidence that both entities operated under very similar names, and it appears that both brokers, one acting in person and the other being a corporate entity, operated through employees who appear to have been common to both.

It is disappointing to note that each Broker and its clients were at times treated as one and the same by the employees of each entity (and by the Mortgage Lender). The Provider and the Third Broker were clearly separate legal entities, and both should have ensured that the appropriate practices were put in place to maintain clear demarcation lines between the actions of one financial service provider, as distinct from the actions of the other. It was not appropriate for correspondence sent for the attention of the Third Broker's clients, to be issued by the Provider (or on the Provider's headed paper/emails), and vice versa.

This inappropriate degree of interchangeability in the operations of the Provider and the Third Broker, is likely to have caused much confusion to their respective clients. On balance and having considered the available evidence, I am not satisfied that the Provider has established that the Third Broker is the correct respondent Provider to this complaint.

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I am satisfied that the evidence indicates that it was more likely than not the Provider, who acted as an intermediary between the First Broker and the Mortgage Lender in the sale of the Complainant's Loan.

In particular I note that contemporaneous evidence such as the Mortgage Lender's IT system entry dated 16 October 2006, which states that it received the Complainant's Loan application form from the Provider, and the Quotation addressed to the Complainant dated 16 October 2006, which identifies the Provider as the "Agent/Broker".

Furthermore, the Provider originally identified himself as the correct respondent to the complaint in its initial correspondence with the FSO, before subsequently suggesting that the correct provider was in fact a different corporate entity, with a very similar name.

I also note that in **October 2006**, the authorisation and appointed intermediary status of each was as follows:

- The First Broker was a regulated mortgage intermediary. The First Broker was an appointed intermediary of the Provider and the Third Broker.
- The Provider and the Third Broker were regulated mortgage intermediaries.
 - the Third Broker was an appointed intermediary of the Mortgage Lender, whereas the Provider was not;
 - the Provider was an appointed intermediary of the Third Broker and vice versa.
- the Mortgage Lender was not regulated by the Central Bank of Ireland.

This means that

- (i) it was open to the First Broker to instruct (i.e. act as an intermediary for) either the Provider or the Third Broker, in respect of the Complainant's Loan request, but only the Third Broker should have instructed the Mortgage Lender.
- (ii) It was open to the First Broker to instruct the Provider, who in turn could instruct the Third Broker, which could then in turn instruct the Mortgage Lender, in respect of the Complainant's loan request.

Consequently, it is disappointing to note that with respect to the Complainant's Loan, the Provider appears to have acted as an intermediary for the Mortgage Lender in this instance, when in accordance with his appointed intermediary status, he should instead have instructed the Third Broker, in order to ultimately instruct the Mortgage Lender.

Legislation

It is helpful to refer to particular pieces of the legislation and/or codes applicable to the lifetime mortgage loans in or around **October 2006**, when the Loan was sold to the Complainant and her husband.

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At that time the **Consumer Credit Act 1995** (the “**1995 Act**”) set out certain obligations with respect to housing loans, such as the lifetime mortgage loan that is the subject of this complaint. **Section 116 of the 1995 Act** sets out that any person (other than a mortgage lender or credit institution) who arranges a housing loan must be authorised by the Central Bank as a mortgage intermediary. The **1995 Act** also specifies that a mortgage agent (which includes a mortgage intermediary such as the Provider) must ensure that certain warnings are included on information documents, applications and certain other types of documents associated with housing loans.

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**. 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**”).

Documentation

In analysing this complaint, it is useful to consider the documentation and information supplied to the Complainant and her husband during the Loan application process. I also consider it necessary and appropriate to 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 First Broker 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. 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
- 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]

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This Application Form was signed by the Complainant and her late husband, and as set out in the Notes/History document submitted to this office by the First and Second Broker which appears to record both Brokers' IT system entries relating to the Complainant, the First Broker sent the application form to the Provider who subsequently sent it to the Mortgage Lender.

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 gave their undertaking to ask their solicitor any questions they may still have. The Mortgage Lender has submitted to this Office, a lifetime mortgage brochure and a product information brochure, which 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.

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'.

It is unclear on what date the Complainant received the **information brochure** regarding the Loan. Neither the First Broker nor the Provider has made any submissions regarding the brochures.

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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 Provider] 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]

It seems from the above statement that the Mortgage Lender supplied an information brochure to the Provider for onward transmission to the Complainant and her late husband (via the First Broker). 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 life time 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.

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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**”, as follows:

“IMPORTANT INFORMATION AS AT OCTOBER 25, 2006	
1. Amount of credit advanced	€270,000
2. Period of Agreement	<i>the date of the death of the last surviving borrower *** (estimated to be 24 years)</i>
3. Number of Repayment Instalments	<i>One (See “Repayment”)</i>
4. Amount of each Instalment	<i>Total Amount Repayable (See “Repayment”)</i>
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))	<i>Not Applicable</i>
9. Effect on amount of instalment of 1% increase in first year in interest rate**	<i>Not Applicable</i>

** 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.**”*

In my opinion, 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”.

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, made it clear that the Loan was designed to run for her and her husband’s lifetime, 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 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 that they opted to accept the drawdown of monies on the basis outlined, so that they could assist their son in funding his matrimonial settlement.

The Complainant stated in her post Preliminary submissions that she did have other options available to her to secure funds (apart from the Loan which is the subject of this complaint) and to repay the Loan. However, the Complainant did not supply this Office with any evidence that alternative options for securing funds were available to her and her late husband when they entered into the Loan agreement 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 she and her husband 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 remain of the view that the evidence indicates that there were few options available to the Complainant and her husband to secure funding due to their age, and that it seems likely that they decided to enter into the Loan on the basis outlined, in order to assist their son.

In my Preliminary Decision I stated that:

“Furthermore, I am satisfied that 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 husband, by signing the affirmation

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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 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, any concerns relating to the adequacy of the 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.

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, I note that 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.

Finally, I note that 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. Neither the First Broker, the Provider nor the Mortgage Lender confirm having supplied the quotation dated **10 October 2006** to the Complainant. In any event, the quotation dated **10 October 2006**, was superseded by the quotation dated **16 October 2006**.

The First Broker has contended that the Mortgage Lender supplied a copy of the quotation dated **16 October 2006**, directly to the Complainant on **27 October 2006**. However, the documentation on file supports the Mortgage Lender’s account that it *“provided a Lifetime Mortgage Quotation to [the Provider] for onward transmission to [the Complainant and her husband]”*. In an email from the Mortgage Lender to the Provider dated **16 October 2006**, the Mortgage Lender states:

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*“..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 from the evidence available that the Provider forwarded this email to the First Broker on **16 October 2006**, as per the evidence of the copy email on file. However, it does not appear that the First Broker, having received the quotation, took any steps to supply this document to the Complainant and her late husband. While it is disappointing that the Complainant and her late husband did not receive a copy of the quotations, particularly as the quotations contains a helpful illustration of the cost of the Loan over a 20 year period, no fault for this can be attributed to the Provider.

Analysis

For the purpose of this complaint, I must consider the specific conduct and role of the Provider. Having regard to the documentation and evidence, I am satisfied that the Provider did not introduce or sell this Loan directly to the Complainant in **October 2006**, nor was it involved in advising the Complainant in relation to this Loan. All parties accept that only the First Broker had any direct contact with the Complainant and her late husband, during the sales process.

I accept the Provider’s explanation that the Complainant and her husband “*were fully and exclusively advised by [the First Broker] in relation to their requirements*”. It is clear that the Provider’s role was that of an intermediary between the First Broker and the Mortgage Lender and that it did not have any direct contact with the Complainant and her husband.

In circumstances where the Provider did not sell the Loan that is the subject of this complaint, I am satisfied that the Provider cannot be held responsible for the mis-selling which is suggested by the Complainant. It was not the role of the Provider to meet with the Complainant and her late husband to explain the lifetime mortgage loan, as suggested by the Complainant. Rather any such obligation, insofar as it existed, rested with the broker which introduced the lifetime mortgage loan to the Complainant and her late husband.

Furthermore, I am satisfied that the Mortgage Lender issued clear and unambiguous information explaining the lifetime mortgage loan to the Complainant and her late husband, both directly, by means of a loan agreement which the Provider issued to the Complainant’s solicitor, and indirectly by issuing documentation such as brochures through the brokers.

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 late 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.

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Consequently, I accept that the Complainant and her late husband had sufficient information available to them to enable them to consider the suitability of the product and to make an informed decision as to whether or not to enter into the lifetime loan agreement. The Complainant and her husband ultimately decided to proceed with the Loan, having had the benefit of this advice and information, and legal advice from their solicitor.

Accordingly, I note that the Loan will ultimately fall to be repaid, in accordance with the terms of the Loan agreement which the Complainant and her late husband accepted in 2006. It will not be written down to the original sum borrowed of €270,000, as requested by the Complainant.

However, as stated above I am also satisfied that there was an inappropriate degree of interchangeability in the operations of the Provider and those of the Third Broker, which was likely to have caused much confusion to their respective clients, including significant confusion and inconvenience to the Complainant and her late husband, when they sought to pursue this complaint.

Insofar as the complaint of mis-selling against the Provider is concerned, for the reasons outlined above, I do not consider it appropriate to uphold this complaint. In light however, of the poor operational practices in place in 2006, and the absence of clear demarcation lines between the actions of the Provider, as distinct from the actions of the Third Broker, which was a separate legal entity, I consider it appropriate to refer this matter to the Central Bank of Ireland, for such action as it may consider to be appropriate.

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)**

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.