



<u>Decision Ref:</u>	2022-0213
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide calculations Delayed or inadequate communication Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Maladministration Arrears handling (non- Mortgage Arrears Resolution Process) Fees & charges applied (mortgage)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns an interest only mortgage loan account which the Complainants hold with the Provider.

The Complainants' Case

The Complainants submitted their complaint through a representative. They entered into an interest only mortgage loan agreement on their home in **December 2006** with the Provider, borrowing €130,000 for a period of 10 years. They submit that they engaged with the Provider in **January 2016** as they were aware that they would not be in a position to repay the lump sum payment of €130,000 when it became due on **14 January 2017**.

The Complainants state that since **January 2016** the Provider has *“refused to either approve or decline, or even officially respond, to numerous proposals and offers put to them”* by the Complainants. The Complainants assert that the actions of the Provider were in breach of the **Code of Conduct on Mortgage Arrears (CCMA)**.

The Complainants say that they made an approach in order to try to agree a sustainable long-term arrangement in a way anticipated by the Code of Conduct on Mortgage Arrears. Over the years that followed, the Provider refused to consider the Complainants' long-term arrangement simply agreeing to 3 months' interest only extensions of time. The Complainants say that the Provider refused to either approve or decline any other proposal, thereby causing them distress for years, with no resolution even in sight.

The Complainants submit that they maintained their payments and did not miss any payment on the mortgage. The Complainants state that when the interest only arrangement expired in **February 2018** the Provider stopped returning telephone calls or responding to letters from the Complainants. The Complainants state that the monthly interest only direct debit continued to be paid and that this continued with *"no authority from [the Complainants]"*.

The Complainants state that because the Provider *"intended to leave the country"* it did not care about its customers' needs. The Complainants state that they received notification from the Provider that their loan would be sold to a third party on **19 October 2018**. The Complainants state that they made a complaint to the Provider and that in its response to the complaint, the Provider wrongly referred them to the UK Financial Ombudsman Service.

The Provider's Case

The Provider states that the Complainants re-mortgaged their property with the Provider in **December 2006** on an interest only basis, and the borrowing was due to be repaid in **November 2016**. It says that this mortgage transferred to a new owner in **November 2018** as part of the Provider's Republic of Ireland portfolio of mortgages. The Provider states that the first time it was contacted by the Complainants about not being able to repay the capital element of the loan, was in **December 2016**. The Provider states that in **February 2017** it granted a three-month term extension on the mortgage and in **September 2017** it granted a six-month term extension.

In relation to the **CCMA** the Provider states that the Complainants maintained their interest payments throughout the mortgage term and did not fall into arrears at any point and so they were at no point classed as being in arrears. The Provider states that when contacted by the Complainants in **December 2016** they were sent a 'Budget Planner' by the Provider and asked to provide three-months' bank statements and wage slips so that income and expenditure could be assessed. The Provider states that upon receipt of these documents the Budget Planner noted a monthly surplus of **€516.33** (five hundred and sixteen Euro and thirty-three Cent) after the mortgage payment.

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The Provider states that there is no record of the Complainants ever stating that they were in financial difficulty or that they expected to fall into financial difficulty and needed assistance under the **CCMA**.

The Provider states it received two proposals from the Complainants in relation to repayment of the capital balance. The first in **December 2016** was for the Provider to accept payment of €30,000 (thirty thousand Euro) and to write off the remaining €100,000. The second proposal made in **October 2017** was for the Provider to accept payment of €50,000 (fifty thousand Euro) and to write off the remaining €80,000. The Provider states that it rejected these proposals as it would *“never agree to write off over half of a customer’s mortgage balance”*.

The Provider denies that it ever referred the Complainants to the UK Ombudsman and states that in its Final Responses, it referred them to the Financial Services and Pensions Ombudsman, as required.

In relation to its obligations under Provision 11.6 of the **Consumer Protection Code 2012 (CPC)** to maintain retain records for six years from the date on which it ceased to provide a product or service to a consumer, the Provider states that upon transfer of its mortgage portfolio in **November 2018** to a new owner, it transferred all records to that new owner and it has limited access to documentation. The Provider states that it only has access to systems which are currently still in use by the Provider and so *“information stored on the system reserved solely for Irish mortgages is no longer accessible to the [Provider]”*.

The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration insofar as it:

1. Failed to treat the Complainants as a pre-arrears case under the **CCMA** from **January 2016**
2. Refused to either approve or decline or even officially respond to numerous proposals and offers put to it by the Complainants from **January 2016**
3. Continued to present the monthly interest only direct debit, with no arrangement in place with the Complainants
4. Failed to advise the Complainants whether they were being overcharged on their mortgage account
5. Left the Complainants in a circumstance with no resolution in place or even knowledge of who owned their loan

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6. Advised the Complainants to take their complaint to the UK Ombudsman and proffered below par communications and customer services to them.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **2 June 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The documentary evidence available to assist this investigation is severely lacking in many areas, because the Provider states that it no longer has access to much of the documentation relating to the events from 2016/2017 onwards, which have given rise to this complaint. This record keeping is disappointing.

The Provider states that the mortgage is governed the terms and conditions contained within its '**Mortgage Conditions 2006 (Ireland)**' and this is not disputed. The Provider refers to two such terms within its response – 8.2b and 11.1 which it states it relies upon, to show that it was the Complainants' responsibility to repay the mortgage payments and to repay the capital element. The Provider states that 8.2b sets out:

"It is the Complainants' responsibility to ensure that a suitable repayment vehicle is in place for an interest only mortgage and the capital balance is payable at the end of the term"

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The document provided by the Provider as the '**Mortgage Conditions 2006 (Ireland)**' within its response to this complaint sets out at 8.2b:

"8.2 We will calculate Monthly Payments with a view to ensuring that:

(a) In a repayment mortgage the sum of the Monthly Repayments will repay the Whole Debt by the end of the Repayment Period;

(b) For a non-repayment mortgage the sum of the Monthly Repayments will pay all interest, insurance and other costs during the Repayment Period with the Advance being repaid to us by you at the end of the Repayment Period from some other source"

The Provider then refers to condition 11.1 of the 2006 conditions saying that:

'The Mortgage Offer is a legally binding document and it is the Complainants' responsibility to maintain the mortgage payments.'

The Provider further refers to condition 3.4 which is correctly quoted as follows:

"3.4 If we realise the Mortgage and the net proceeds are insufficient to pay off the Whole Debt you will immediately pay us the deficiency with interest at the Current Rate until Payment.'

I note that a document titled '**Notice of Important Information**' is included within the documentary evidence, which includes the following information relevant to this borrowing:

	Important Information as at 15 January 2007	
1	<i>Amount of credit advanced</i>	<i>€130,000.00</i>
2	<i>Period of Agreement</i>	<i>10 Years</i>
3	<i>Number of Repayment Instalments</i>	<i>119</i>

I note that a form titled '**Interest Only Mortgage – Confirmation of Repayment Strategy**' dated as being received on **2 July 2014** by the Provider is also included within the documentation. This document is completed in pen by the Complainants. The document requests:

"Please complete this form to confirm the repayment strategy you intend to use to repay the outstanding mortgage balance at the end of the term. Please provide us with as much information as possible."

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It then includes a number of options listed under the heading **“Repayment strategy in place to repay outstanding mortgage balance:”** and the Complainants have selected one option: **“Investment (stocks and shares)”**.

In the **“Projected Value:”** box, the Complainants have written €130,000 and in the **“Key details of repayment strategy: (e.g. the date you expect your money to be available to repay your mortgage)”** box, the Complainants have written **“Jan 2017”**. Both Complainants signed by way of confirmation of these details, on **24 June 2014**.

More than 3 years later, I note that a letter was sent by the Complainants’ representative to the Provider on **12 October 2017** in relation to repayment proposals for the Complainants’ mortgage. That letter refers to previous correspondence between the parties, but no such documentation has been submitted by either party, to assist this investigation.

I consider the following details from this letter from October 2017, are relevant to this complaint:

“As discussed in our last conversation we agreed that resolving the [Complainants’] circumstances in any form of extended or restructured repayment arrangement is not feasible based on their age. A suggestion was made by you that the loan could be restructured into a monthly capital and interest repayment with the children making the repayments, however we agreed that this is still not feasible as the loan would need to be extended in [the Complainants’] name and they are already in their seventies.

However I did agree to discuss the possibility of discussing with my clients’ other 2 children about potentially contributing to a lump-sum to increase the full and final settlement offer. As such, I can confirm that the 2 other children are willing and able to raise an additional €10,000 each by way of a personal loan with their own financial institutions, to add to the 3rd child’s initial offer of €30k as per the initial proposal.

...

This increases the offer to [the Provider] to €50,000 as full and final settlement for the debt outstanding.

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As per my initial proposal on behalf of the [Complainants] I believe that [the Provider] should give serious consideration to accepting this offer for the following reasons:

- 1. The amount being offered is the maximum affordable that can be raised by way of a lump sum by the family of the borrowers.*
- 2. A restructure or other forbearance arrangement is not feasible and should not be under consideration as a sustainable option based on the age of the borrowers*
- 3. [Provider] will not have made a loss on this lending with this offer based on the interest paid over the life of the loan.*
- 4. If it is [Provider]'s intention to securitise and sell on the loan, it is highly unlikely that the amount received from a potential buyer of the book of non-performing loans would match the 38% offer on the table presently.*
- 5. The manner in which the funds were lent, with no consideration for the repayment of a lump-sum by pensioners at its maturity, was severely lax and short sighted and was destined to put these borrowers into financial difficulty.*

...

The circumstances outlined above combined with the practice in how the funds were lent in the first place, should be more than sufficient to convince [the Provider] that accepting this offer and bringing the matter to a swift resolution is the best option for all parties concerned.

The alternative is to pursue a pensioner couple through the courts for repossession of a family home which houses 3 generations of the same family, on land that has been in the family for hundreds of years.

Should this case end up before a judge, I find it very unlikely that a judgment would be pursued when such a fair settlement offer has been made by the borrowers based on their circumstances, and considering the funds were lend (sic) in such a questionable manner. I would think it safe to assume the reputational cost for [Provider] would far outweigh any small loss being made on the life of this facility, a loss which will have already have been provisioned for in [the Provider]'s books.

....”

I am conscious that no response to this letter is included within the documentation provided in evidence. It is notable however, that the terms of this letter on behalf of th Complainants, specifically suggest that a restructure of the facility:

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“is not feasible and should not be under consideration as a sustainable option based on the age of the borrowers”

I am conscious that such a statement from the Complainants’ representative in late 2017, calls into question the information contained on the FSPO Complaint Form suggesting that an attempt had been made to engage with the Provider:

“to try and agree a sustainable long-term arrangement as per both the spirit of the code and per [Provider’s] obligations under the code”

There are two letters included within the documentation from the Provider to the Complainants in relation to term extensions and I consider the following extracts to be relevant:

Letter dated 17 February 2017

“I refer to the above mortgage account.

Following a review of the term expiry this month [Provider] agrees to extend the current term, initially by 3 months, pending a proposal for repayment of the loan.

...

Please sign and return the enclosed term amendment form as your confirmation to the above.

Please note that no fee will be charged for this amendment.”

[No signed ‘term amendment form’ referred to above, appears to have been included within the documentary evidence made available by the parties.]

Letter dated 22 September 2017

“I refer to the above mortgage account.

I confirm that the current term, has been extended by 6 months to end in February 2018. On this basis the monthly payment will remain unchanged at €119.34”

The Complainants state that the Provider failed to properly treat them as pre-arrears customers under the **CCMA**. In contrast, the Provider states that it did not do so because the Complainants were never in arrears, and they were not pre-arrears customers. The **CCMA** defines 'pre-arrears' as:

Pre-arrears: A **pre-arrears** case arises where either:

- a) the **borrower** contacts the lender to inform it that he/she is in danger of going into financial difficulties and/or is concerned about going into mortgage **arrears**;
- or
- b) the lender establishes that the **borrower** is in danger of going into financial difficulties which may impact on the **borrower's** ability to meet his/her mortgage repayments.

The Complainants state that they first contacted the Provider in **January 2016** to inform them that they would not be in a position to pay the capital balance when it fell due in **November 2016**. The Provider states that the first record of contact from the Complainants in relation to being unable to pay was in **December 2016** but the Provider has accepted that it does not have access to most of the historic documentation. In the circumstances, the Provider has submitted no evidence to rebut the Complainants' contention that they first made contact in **January 2016**. Neither however, has the Complainants' representative furnished any evidence of any such contact. Indeed, in the correspondence sent with the Complaint Form submitted to this Office in November 2018, a letter is included dated **January 2017** (rather than January 2016) which purports to introduce the Complainants' representative to the Provider advising, amongst other things, as follows:-

"As discussed in our recent phone calls I have been appointed as a third party financial advisor to act on behalf of [Complainants] with regard to their outstanding mortgage account [number] with [Provider]."

This suggests to me that the Complainants' representative is in fact incorrect in suggesting that contact was initially made with the Provider in January 2016, as the evidence suggests otherwise. In those circumstances, I am satisfied to accept the Provider's contention that the first contact indicating a difficulty with regard to the lump-sum payment due, was in or about December 2016. In my opinion, this is borne out by the Complainants' representative's own letter dated **6 January 2017**, which refers to discussions "*in our recent phone calls*".

I note that the contents of the second page of this letter dated **6 January 2017** purport to “begin the process of agreeing a mutually acceptable and fair repayment arrangement”, and ultimately the letter puts forward “the lump-sum offer to [Provider] in full and final settlement of this debt is €30,000.” I note that this offer was put following the author’s analysis of certain topics under the headings “Loan Application”, “Repayment Arrangement Proposal”, “Voluntary Trade Down” and “Full and Final Settlement”.

He indicated in that regard that

“I believe as it is not feasible to consider a monthly repayment arrangement and that a voluntary trade down would be inappropriate for the reasons noted above, I believe it is in the interest of both parties to consider a lump-sum repayment as a full and final settlement of the debt. This will bring the matter to a quick close, and I believe based on the circumstances, represented the best outcome for both parties.”

Although the Complainants’ representative’s letter to the Provider at that time, referred to his attempts “to compile all of the necessary information that should be required in order to assess [the Complainants]’ proposal and to verify their circumstances” including a completed and signed Standard Financial Statement, current account bank statements, proof of income, proof of savings, property valuation and proof of site purchase from proceeds of the loan, it is not entirely clear from the terms of the letter as to whether the Complainants’ representative shared a copy of each of those documents with the Provider, when sending the communication in question.

I note that subsequently, on **17 February 2017**, the Provider wrote to the Complainants advising in accordance with the details quoted above that a 3-month term extension had been agreed, pending a proposal for the repayment of the loan, and advising that the current balance at that time was approximately €130,258.98, with an interest rate applying of 1.1%.

The Complainants state that the Provider failed to either approve or refuse the payment proposals made or even to officially respond. In my opinion however, this is not borne out by the limited copy communications available. I take the view that the Provider’s failure to preserve its records of the parties’ interactions, certainly hinders the investigation of this complaint. What is clear however, is that soon after the lump-sum payment of €130,000 fell due by the Complainants to the Provider, their representative made contact and sought to negotiate the write down of the balance. The Complainants have complained that the Provider continued to claim the monthly direct debit interest only payments, without an arrangement in place with the Complainants. The Provider has stated in its reply that it authorised extensions of the repayment period to assist the Complainants and

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it says that that condition 3.4, quoted below, of the mortgage terms and conditions permitted it to continue taking interest only payments. I do not accept that such an arrangement is anticipated by clause .4, which states that:

“ If we realise the Mortgage and the net proceeds are insufficient to pay off the Whole Debt you will immediately pay us the deficiency with interest at the Current Rate until Payment.’

Whilst there is a dearth of contemporaneous evidence available regarding the specific arrangements which were put into place, as a result of which the Complainants continued to make interest-only repayments, I am satisfied that this ongoing arrangement was in the best interests of the Complainants, rather than the Provider moving to enforce its security, when they failed to pay the lump-sum due. I am also conscious that if the Complainants had so wished, they could have simply made arrangements to prevent the taking of any direct debits from their account by the Provider, if this particular arrangement had not been agreed, or if it was unacceptable to them.

The Complainants also assert that they were wrongfully referred to the Financial Ombudsman for the UK as opposed to this Office. The Provider denies this and refers to the final response letter which made reference to this Office. I am satisfied that the Provider’s final response document complied with its obligations under the CPC in referring the Complainants to this Office, upon conclusion of its investigation into the initial complaint.

The Complainants state that they were not given information as to who owns their loan. The Provider states that it notified the Complainants in a letter in **July 2018** that their loan would be transferred to a new owner and the Complainants accept that such a letter was received. In light of this, I am satisfied that there was a suitable notification and I do not consider it appropriate to uphold this aspect of the complaint.

Having considered the Complainants’ grievances, I am satisfied on balance that they were treated in a reasonable manner by the Provider, at a time when it became clear that they would be unable to meet their obligation to the Provider to make the lump-sum payment of €130,000 which fell due to be paid to the Provider, notwithstanding that, some 3 years earlier, they had made clear their intention to meet that payment from the proceeds of their investments.

Whilst I note that the Complainants' representative made efforts to negotiate a write-down of the overall debt so that the Complainants might make a lump-sum payment (with the assistance of their children) of €50,000, instead of €130,000, I am satisfied that it was a matter entirely for the commercial discretion of the Provider as to whether or not to accept any such proposal.

Ultimately, I note that the loan was sold to a new owner in November 2018, with the appropriate notice having been sent to the Complainants some 4 months earlier. In those circumstances, it remains a matter for the Complainants to engage directly with the new owner of the loan, if they have not already done so.

Whilst it is disappointing that the Provider's records are so utterly unsatisfactory, I do not accept, in the absence of more adequate evidence from the Complainants, that it is appropriate to uphold the complaint that the Provider maladministered the loan or treated the Complainants unfairly.

I accept that the Complainants found themselves in a stressful situation because of their inability to pay the debt in question, but I am not satisfied on the limited evidence made available by the parties, that it is appropriate to uphold this complaint.

Conclusion

My Decision, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act**, 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 June 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.