



<u>Decision Ref:</u>	2018-0143
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Application of interest rate
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainant's mortgage loan (account number ending in '2957) held with the Provider.

The complaint is that the Provider unreasonably refused to apply a home loan interest rate to the Complainant's mortgage loan account.

The Complainant's Case

The Complainant submits that he took out the mortgage loan in the sum of €350,000 with the Provider in 2006. The Complainant submits that he paid the fixed rate interest and capital for four years, reducing the balance on the mortgage loan to €339,000. The Complainant submits that he was subsequently diagnosed with an illness and requested to pay interest only on the mortgage loan.

The Complainant submits that he supplied all utility bills to the Provider as requested, in order to prove that he was residing in the property. The Complainant submits that while the Provider accepted that he was residing in the property, it refused to change the interest rate on the mortgage loan. The Complainant states that *"I also think that over the years I have been robbed and paid thousands too much"*.

The Complainant is seeking for his interest rate to be reduced.

The Provider's Case

The Provider submits that the Complainant applied for Mortgage facilities pertaining to two properties as he wished to purchase an investment property and redeem his existing mortgage facilities with another Bank. The Provider submits that it issued Letters of Loan Offers for both Residential Investment Loans (account numbers ending in '2957 and '3050) on 19 September 2005. On the two facilities relating to each property there was a cross charge on the other property. The Provider states that *"These facilities were applied for, assessed (taking into account Rental Income) and approved as Residential Investment Loans. Had the rental income not been included the Loans may not have been approved"*.

The Provider submits that the Loan Offer outlined the Terms and Conditions under which it was prepared to issue the facility. The Provider states that it *"is satisfied the Letter of Offer did not contain any detail that would have caused the Complainant to believe he would be given the opportunity to avail of a lower rate should he decide to live in the property at a later date"*.

The Provider submits that in 2007 the Complainant requested the repayments be amended from Capital and Interest to Interest Only repayments. The Provider submits that the Complainant subsequently moved into the property and in 2011 advised that it was his Private Dwelling Home and requested the interest rate be amended to Home Loan rates. The Provider states that *"Where a borrower requests the Bank to amend the status of a Residential Investment Property Mortgage Loan to a Residential Home Loan, it is procedure of the Bank to amend the status of the Mortgage to reflect that the property securing the Mortgage is now the borrowers family home thereby providing the borrower with protection under the Code of Conduct on Mortgage Arrears. The borrower may also be entitled to claim Mortgage Interest Relief subject to Revenue requirements. However the Bank is not in the position to amend the Terms and Conditions or the Interest Rate applicable to the existing Mortgage Loan"*.

The Provider states, *"The Mortgage file was amended as per Bank policy, it did not constitute a new loan offer or change the Terms and Conditions of the original offer and therefore the rate applicable to the Complainant's Mortgage are the rates of a Residential Investment Property as per the Complainant's Loan offer"*.

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.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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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 23 October 2018, 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, the final determination of this office is set out below.

The issue to be determined is whether the Provider unreasonably refused to apply a Home Loan interest rate to the Complainant's mortgage loan account.

The Complainant submits that on several occasions he sought for the Provider to reduce the high interest rate on his mortgage loan to no avail. The Complainant submits that he supplied all utility bills to the Provider as requested, in order to prove that he was residing in the property. The Complainant submits that while the Provider accepted that he was residing in the property, it refused to change the interest rate on the mortgage loan. The Complainant states that "*I also think that over the years I have been robbed and paid thousands too much*".

The Provider submits that the Letter of Approval issued to the Complainant on 19 September 2005 clearly states that the mortgage type is a Residential Investment Loan. The Provider submits that in signing the Letter of Acceptance, the Complainant confirmed the following:

1. *I/We the undersigned accept the within offer on the terms and conditions set out in*
 - i *Letter of Approval*
 - ii *the General Mortgage Loan Approval conditions*
 - iii *the [Provider] Mortgage Conditions*
 - ...
4. *My/our Solicitor has fully explained the said terms and conditions to me/us."*

The Provider submits that the facility was approved and issued as a Residential Investment Property, and as such, residential investment rates were correctly applied. The Provider submits that once a loan is issued it is not in a position to change the terms and conditions.

The Provider submits that the Letter of Acceptance was signed by the Complainant, in the presence of his Solicitor on 20 September 2005. The Provider states that "*The Loan offer*

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clearly outlined the Terms and Conditions under which the Bank were prepared to issue the facility which was a Residential Investment Loan at a 1 Year Fixed New Business Rate of 2.55%. The Bank is satisfied that the Letter of Approval did not contain any detail that would have caused the Complainant to believe that he would be given the opportunity to avail of a lower rate should he decide to live in the property at a later date”.

The Provider has submitted a copy of the Letter of Approval dated 19 September 2005, which I note sets out, among other things, the following:

Loan Type:	Further Advance Residential Investment Loan 1 Year Fixed New Business Rate
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Purchase Price/Estimated Value:	EUR 1,000,000.00
Loan Amount:	EUR 350,000.00
Interest Rate:	2.55%
Term:	25 year(s)
Monthly Instalment:	EUR 1, 578.98
Property Insurance Amount:	EUR 500,000.00
Indemnity Bond Premium:	EUR 0.00

The Provider submits that on 31 August 2011 it received correspondence from the Complainant advising that the property was his family home. I note that the Complainant’s letter states the following:

“Despite numerous attempts to switch my residential mortgage loan to a regular home loan I cannot understand why this is an investment loan in the first place as this has always been my home. For a couple of years I have been trying to get it changed to a normal home loan without any success” Please do this for me as soon as possible as it effects my mortgage interest relief.”

The Provider submits that it wrote to the Complainant on 31 August 2011 confirming the documentation required in order to note the property as his Private Dwelling Home. The Provider submits that this letter confirmed that there would be no change to the terms and conditions of the account. I note that this letter set the following, in bold:

“Please be advised that there will be no change to the current terms and conditions or interest rate applicable to your above mortgage account.”

The Provider submits that there is no record on file to indicate the Complainant had previously requested it noted that the property was his Private Dwelling Home. The Provider submits that on receipt of the required documentation it wrote to the Complainant on 27 September 2011 advising that the property was noted as his family home, set out the importance of ensuring the correct life cover was in place and confirmed that there would be no change to the terms and conditions of the account. I note that this letter sets out, among other things, the following:

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“Further to recent correspondence I am happy to advise that [the Provider] is prepared to accept that the property at [named property] is in fact your family home. Please note that you may be entitled to claim Mortgage Interest relief if this property is now your family home and you comply with Revenue requirements.

[The Provider has] put a Mortgage Arrears Resolution Process in place to help home loan customers in mortgage arrears or those who are at risk of going into arrears. This process forms part of our obligations under the Code of Conduct on Mortgage Arrears.

...

Please be advised that there will be no change to the current terms and conditions or interest rate applicable to your above mortgage account.”

I note that the Complainant wrote to the Provider on 8 February 2012 setting out the following:

“I write to you in relation to the above mortgage.

- 1. It has come to my attention that this is not a home loan mortgage despite the fact that I am residing here for the last 4 years.*
- 2. I note that no TRS has been applied to this mortgage.*
- 3. I also note that the rate charged has not declined despite various reductions from the ECB.*

I would be grateful if you would respond to these 3 issues outlined at your earliest opportunity.”

The Complainant submits that he never received a response to all of the queries raised in his letter of 8 February 2012.

I note that the Provider, in response to the Complainant’s letter dated 8 February 2012 set out the following:

“I refer to previous correspondence and your letter dated the 8th February 2012 and note the contents therein.

As set out in our letter of the 27th September 2011 a copy of which I attach, while [the Provider has] accepted that the property above is your family home, there will be no change to your mortgage account.

Please note that you may be entitled to claim Mortgage interest relief if this property is now your family home and you comply with revenue requirements. Our

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Mortgage Services Dept will revert under separate cover in relation to your query on the interest rate applicable to your mortgage account."

The Provider has not submitted any evidence that it reverted to the Complainant in relation to his query on the interest rate applicable to his mortgage loan account. The Provider should have furnished the Complainant with a response to his query that *"the rate charged has not declined despite various reductions from the ECB"*, and it is disappointing that it has not provided any evidence that it did so.

The Provider submits that the mortgage loan interest rate is variable. I note that the European Standardised Information Sheet, attached to the Letter of Approval dated 19 September 2005 set out, among other things, the following:

*"The interest rate is 2.55 percent.
This rate is fixed for 1 year(s).*

At the end of the fixed rate period you may exercise an option to contract for another fixed period (if available) or to move to a variable rate. In the event of the rate becoming variable, THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."

Condition 1.10 of the General Mortgage Loan Approval Conditions sets out:

"Whenever the Directors of [the Provider] in their absolute discretion consider it desirable the interest rate payable under this advance may be varied."

Provision 4.13 of the Provider's Mortgage Conditions 2002 provides:

"[The Provider] may from time to time increase or reduce the Appropriate Rate (and may do so where the Appropriate Rate includes a differential by increasing or reducing either or both of the relevant Basic Rate and the differential)..."

I accept that the setting of the variable interest rate is a matter which falls within the Provider's commercial discretion. The Complainant's mortgage loan is governed by the terms and conditions of the mortgage loan agreement entered into by the parties. As the Complainant's mortgage loan is a variable interest rate and not directly linked to the European Central Bank (ECB), I must accept that it is a matter for the Provider to determine within the terms and conditions of the mortgage loan agreement, and it is not the role of this office to interfere in the contractual relationship between the parties or the commercial discretion of a financial service provider.

Having carefully considered all of the evidence before me, I cannot find any wrongdoing on the part of the Provider in refusing to apply a Home Loan interest rate to the Complainant's mortgage loan drawn down as a Residential Investment Property. I must accept the Provider's submission that the facility was approved and issued as a Residential Investment Property, and as such, Residential Investment rates were correctly applied. The Complainant signed the Acceptance of Loan Offer on 20 September 2005 in the presence of his solicitor.

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While I note that in August 2011 the Complainant notified the Provider that the property, the subject of the mortgage loan was his Private Dwelling Home, there was no obligation on the part of the Provider to amend the interest rate on the mortgage loan to reflect this. When the Provider became aware that the property was the Complainant's Private Dwelling Home, it correctly noted the status of the property on its system to reflect that the property was no longer a Residential Investment Property, and the Complainant was then entitled to the protections afforded by the Code of Conduct on Mortgage Arrears and its associated Mortgage Arrears Resolution Process.

While I consider that the Provider has acted in accordance with the contractual terms and conditions of the mortgage loan agreement with regard the interest rate applied, as set out above, it is disappointing that the Provider failed to evidence that it responded to all of the Complainant's queries raised in his letter of 8 February 2012. To mark the Provider's failure in this regard, I direct the Provider to make a compensatory payment of €150.00 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.

Consequently, it is my Legally Binding Decision that this complaint is partially upheld.

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)(g)**.
- Pursuant to **Section 60(4) 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 €150.00, 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

16 November 2018

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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.

