



<b><u>Decision Ref:</u></b>	2018-0102
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Personal Loan
<b><u>Conduct(s) complained of:</u></b>	Application of interest rate Delayed or inadequate communication
<b><u>Outcome:</u></b>	Substantially upheld

### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

#### **Background**

This complaint concerns a term loan taken out by the Complainants with the Provider.

The complaint is that the Provider administered the Complainants' loan in an unreasonable manner.

#### **The Complainants' Case**

The Complainants submit that the Provider is seeking additional interest of €7,492.83 "*retrospectively dating back to 2008 (when interest rates went in decline)*". The Complainants submit that the Provider only requested this interest eight years later.

The Complainants submit that no resolution has been proposed or agreed, and the Provider is in breach of the Consumer Protection Code. The Complainants state that "*There is clearly a fault on [the] banks side [that it has] failed to acknowledge*".

The Complainants state that they are seeking for the Provider "*To acknowledge [it is] wrong [and] note that payment of increased interest payments retrospectively are not due*". The Complainants also state that they "*expect a formal apology [and] full explanation*".

#### **The Provider's Case**

The Provider submits that in early February 2016 it wrote to all customers, including the Complainants, with an active term loan account regardless of the natural expiry date of the

loan, to advise the account holder that for a range of reasons, the repayments they were making on the loan would not be sufficient to clear the loan balance by the original expiry date of the loan.

The Provider submits that in its correspondence issued in February 2016, it outlined a number of options available in relation to paying the shortfall, that is, increasing the amount of the current repayments, paying a lump sum into the account on the expiry of the Term Loan period or alternatively to continue making the monthly repayment instalments until the loan was cleared. The Provider states that it *“subsequently became aware that the letter issued in February 2016, contained an error in relation to the number of repayments that would be required between February 2016 and the Date of Expiry of the loan. While the number of payments to be made to the loan to the Date of Expiry was incorrect, I can assure you that the shortfall amount to clear the loan, having made the 120 payments, was correct”*.

The Provider submits that it issued a further letter to all customers, including the Complainants, to advise of the error in its letter sent in February 2016, to confirm that the shortfall amount quoted had been correct and would remain outstanding once the 120 payments had been made to the account. The Provider states that *“Again... the customer was offered a number of options to clear the shortfall balance. I sincerely regret any confusion these letters may have caused in confirming the status of your loan account”*.

The Provider submits that the Complainants' term loan account issued on 3 April 2008 in the amount of €27,650.00 at a variable interest rate of 8.60%. It submits that the Credit Agreement signed by the Complainants on 3 April 2008 included details of the amount of credit advanced, period of agreement and also the number of repayments. The Provider submits that Condition 5(d) of the Credit Agreement set out the following:

*“In the event of any variation in the interest rate applicable to the loan, we shall give notice of such variation to you by: (i) advertisement published in at least one national newspaper or (ii) a statement addressed to you. As a result of any change in the interest rate we may vary the amount of the instalments or the Period of Agreement or both.”*

The Provider also submits that Condition 5(a) of the General Terms and Conditions of the Credit Agreement states:

*“The rate of interest applicable to the Loan will be the Interest Rate specified in the Schedule, as varied from time to time at our absolute discretion”*.

The Provider submits that the changes in the interest rate applicable to the Complainants' term loan from inception are as follows:

- 28 April 2008 – from 8.60% to 9.6%
- 14 July 2008 – from 9.6% to 10.10%
- 1 April 2010 – from 10.10% to 11.40%

The Provider submits that in addition to advertisements in the national press, prior to each interest rate change, the annual statements issued on the Complainants' term loan account also included details of the increased interest rates. The Provider submits that its records indicate that statements were issued to the Complainants on 1 April 2009, 1 April 2010, 1 April 2011, 30 March 2012, 28 March 2013, 28 March 2014, 27 March 2015 and 24 March 2016. The Provider submits that during these interest rate changes the repayments on the term loan did not change over the duration of the loan resulting in the term of the loan being extended to allow for the interest rate changes that occurred during the term loan.

The Provider states that *"I regret that due to the prevailing increase in the Interest Rates applicable to the loan, this resulted in additional repayments being required to clear the Term Loan to date"*.

### **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 25 July 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.

Before turning to the issue at hand, I must address the following:

The Complainants, in a submission to this Office dated 1 September 2017, state that *"I have just been advised this morning that [the Provider has] advised of a potential breach of Data Protection relating to this complaint"*.

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The Provider states in its submission to this Office dated 12 September 2017 that “we sincerely apologise for this error and regret any concern this may have caused. The Data Breach has been reported by the Bank to the Data Protection Commissioners office and steps have been taken by the Bank to prevent a re-occurrence”.

In an email to the Complainants dated 1 September 2017, this Office advised “Data Protection breaches are a matter for the Data Protection Commissioner, and not [the Office of the Financial Services Ombudsman]”. The Complainants, in their email of response dated 1 September 2017 state that “Note your comments that [the Office of the Financial Services Ombudsman] do not have jurisdiction over data protection”.

I would point out that any complaint regarding breaches of data protection legislation is a matter for the Data Protection Commissioner, and will not, therefore, be addressed in this Decision.

The issue to be determined is whether the Provider’s conduct in administering the loan was reasonable.

The Complainants submit that the Provider is seeking additional interest of €7,492.83 “retrospectively dating back to 2008 (when interest rates went in decline)”. The Complainants submit that the Provider only requested this interest eight years later.

The Provider submits that it acted in accordance with the terms and conditions of the Credit Agreement in its administration of the loan. The Provider submits that the terms and conditions of the account were clearly outlined to the Complainants prior to drawdown.

The Provider has submitted a copy of the Credit Agreement dated 3 April 2008. I note that the amount of credit advanced was €27,650 at a variable interest rate of 8.60% for a term of 120 months and a monthly repayment of €344.30. Under the heading “IMPORTANT INFORMATION” its sets out the following:

<b>IMPORTANT INFORMAITON</b>	
<i>(as at 03 April 2008)</i>	
<i>(This notice is required to be set out on the front page of all credit agreements by the Consumer Credit Act 1995)</i>	
1. Amount of credit advanced:	€27650.00
2. Period of Agreement*:	120 Months from drawdown
3. Number of Repayment Instalments*:	00120
4. Amount of Each Instalment*:	€344.30
5. Total Amount Repayable*:	€41316.00
6. Cost of this credit (5 minus 1)*:	€13666.00
7. Annual percentage rate of charge (APR)*:	8.9% p.a.
NB: You may withdraw from this Agreement at any time within 10 days of receiving this Agreement or a copy of it.**	

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*\*Note: These may increase or decrease at our discretion see General Condition 5 and 7 overleaf.*

*\*\*Note: You may withdraw from this Agreement without penalty if you give written notice to this effect within a period of 10 days of receiving a copy of this Agreement. You may waive this right by signing the waiver of cooling off period below."*

Underneath the heading "SCHEDULE" in the Credit Agreement it sets out, among other things, the following:

<i>SCHEDULE</i>
<i>Borrower(s)</i>
<i>Name: ...</i>
<i>Address: ...</i>
<i>Term Loan Variable Rate*:</i> (Currently 8.600% p.a.) <i>Personal Rate</i>
<i>Date of Expiry: 120 months from drawdown</i> <i>(This may change – see General Condition 5(d) overleaf)</i>
<i>Special Conditions:</i>

The Provider submits that the Complainants accepted the terms and conditions of the Variable Rate Term Loan account by duly signing the Credit Agreement on 3 April 2008. I note that the Complainants signed the Credit Agreement in the "SIGNATURES" section, below the following confirmation:

*"I/We confirm that before signing this Agreement I/we had an opportunity to read and become acquainted with it, and I/we agree to be bound by its terms and conditions."*

I note that Condition 5 of the Credit Agreement sets out the following:

*"5 Interest and Repayment:*

*(a) The rate of interest applicable to the Loan will be the interest rate specified in the Schedule, as varied from time to time at our absolute discretion. You will repay the Loan with interest thereon at such rate by monthly periodic instalments in amounts which, over the Period of Agreement, will be sufficient to discharge in full the Loan together with such interest. You will commence payment of such instalments one month after first drawdown of the Loan.*

*...*

*(d) In the event of any variation in the interest rate applicable to the Loan, we shall give notice of such variation to you by:*

*(i) advertisement published in at least one national newspaper;*

*or*

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- (ii) *a statement addressed to you. As a result of any change in the interest rate we may vary the amount of the instalments or the Period of Agreement or both.*
- (e) *Where the Bank has agreed to accept a deferral of the monthly repayments of the Loan for the period represented by the difference between the period of this agreement and the number of repayment instalments referred to in the "Important Information" provided in the Credit Agreement, the repayments on the Loan will be deferred from the date of drawdown until expiry of the deferral period as so represented and thereafter the repayments will be calculated over the remaining term of the Loan. The monthly accrued interest will be added to the principal on the last working day of the month in which the first monthly repayment, due after expiry of the deferral, becomes payable and interest will accrue on the increased principal accordingly. The "Amount of Each Instalment" as set out in the "Important Information" has been recalculated so as to take account of the deferral."*

Condition 7 of the terms and conditions of the term loan provides:

*"7 Change in the APR:*

*The annual percentage rate of change, or APR, as defined in the Consumer Credit Act 1995, is designed to indicate the total cost of credit to the consumer on a percentage basis. It is measured on the basis of circumstances prevailing at the date of issue of a credit agreement. The APR in this Agreement may change if the interest rate changes during the currency of the Agreement or between the date of issue of this Agreement and the drawdown of the Loan or if the interval at which interest is debited to your account changes".*

The Provider submits that the Variable Interest Rate changed a total of three times during the Period of Agreement, as follows:

- 28 April 2008 – from 8.60% to 9.6%
- 14 July 2008 – from 9.6% to 10.10%
- 1 April 2010 – from 10.10% to 11.40%

The Provider submits that the interest rate changes were placed in at least one national newspaper in accordance with the terms and conditions of the loan agreement. The Provider has submitted a copy of the interest rate change advertisements it states were dated 27 November 2007, 28 April 2008, 14 July 2008 and 31 March 2010. The Provider also submits that it updated the information on its information services including telephone helplines and websites as soon as the change came into effect.

While there could be no obligation on a Provider to go to extreme lengths to give notice to a customer, or even to take steps to ensure that notice is received, I believe that it is not oppressive to require the Provider to notify individual customers of a rate increase, in clear terms, where the purpose of the notice would be obvious, either before it happens or as soon as practicable thereafter. In the age of modern technology and communications,

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where newspaper readership is on the decline, it is questionable (even in 2007) if it is reasonable to effectively impose upon a customer a duty to inspect newspapers daily, for 10 years, for news of a rate increase.

Furthermore, the newspaper advertisements (themselves small and containing some exceptionally small and difficult to read font) did not make clear which loans were affected and, in particular, did not clearly state the loan which it had styled "*Consumer Term Loan Variable Rate*" in its own documentation, was affected by the rate increase. There is also a lack of consistency in terminology within, and between, the relevant advertisements. I cannot see why the Provider, knowing that it was communicating with consumers, could not simply have used the terminology in its loan documentation in the newspaper advertisements or, if using an umbrella term in a heading, why it could not have also listed each of the loans affected by the rate increase.

For example, in the advertisement of 28 April, 2008, the loans affected by an increase of 1% are described in the heading as "*Variable Rate Personal Loans*" and in the body of the notice as "*Personal Variable Loans*".

The advertisement of 14 July 2008 is even more opaque. The loans affected by a .50% increase are described as "*Variable Rate Term Loans*"; while this may be closer to the terminology in the Loan, the advertisement goes on to explain that "*variable rate AA and AAA term loans*" are affected. Not only are the terms "AA" and "AAA" not defined, there is nothing in the loan documentation to suggest that it was such a loan.

The advertisement of 31 March 2010 is probably the most opaque. On the one hand, the Provider states that interest rates applicable to "*Variable Rate Personal Loans*" of over €9,000 will increase by 1.3% but it goes on to state under "*Variable Personal Loan Customer Notice*" that "*the interest rate applicable to all existing variable rate personal loans will increase by 2%*". Even if the Complainants had understood that they had a variable loan and even if they had understood that their "*Consumer Loan Variable Rate*" loan was affected by the rate increase, they would not have been clear on the applicable rate increase.

An increase in the interest rate of a variable loan is arguably the most significant event on the loan, from a borrower's perspective. In the case of the Complainants it resulted in a demand for €7,492.83 in additional payments on a loan of €27,650. It was incumbent upon the Provider to ensure that its newspaper advertisements were crystal clear so that customers who did read them would understand that they were affected and how they were affected.

The Provider submits that it notified customers who held variable term loans of interest rate changes by issuing annual term loan account statements. The Provider submits that its records show that account statements were issued on the following dates:

- 1 April 2009 (Due Date)
- 1 April 2010 (Due Date)
- 1 April 2011 (Due Date)

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- 30 March 2012 ((Due Date)
- 28 March 2013 (Due Date)
- 28 March 2014 (Due Date)
- 27 March 2015 (Due Date)
- 24 March 2016 (Due Date)
- 11 July 2016 (Request)
- 24 March 2017 (Due Date)

The Provider submits that these statements gave a twelve month summary of the reducing balance on the Variable Rate Term Loan account, the repayment amounts applied, the interest amounts deducted and any interest rate changes as they occurred. The Provider submits that the following message was included on all statements from 2011 onwards:

*“A variation in the no. of payments left may arise because of a change in interest rate, your repayment or any late repayments or arrears. At the current payments levels we estimate your payments to... reduce by or increase by X’ (X denoted the number of payments)”*

The Complainants state that the Provider has not to date *“been able to produce copies of any correspondence that [it has] alleged to have posted to our home & correspondence address. This is critical to our complaint. All that has been produced is a new copy of statement (not copies of originals). Have also requested copies of adverts in national papers. Nothing has been forthcoming. In order to substantiate [its] claim [it] must produce evidence that [it has] issued both these and not just say [it has]”*.

The Complainants submit that the statement that the Provider issued was not to them. The Complainants submit that it was addressed internally and then posted to them by registered post. The Complainants state that *“This does not constitute a copy of an original. It should also be borne in mind that the first communication after the inception of the loan was the shortfall letter. Nothing was received in the interim period from 2008 to 2016”*. The Complainants go on to state that *“If the letters which [the Provider] cannot supply me with were issued – where did they go?”*.

The Provider submits that it issued the Term Loan account statements to the Complainants’ address it holds on file, and there are no records to suggest that the statements were returned to it as undelivered.

The Provider, in its submission to this Office dated 28 August 2017 states that *“It is noted that these Statements are addressed to [a named representative in the Provider]. Please note that [the named representative] was required to order these Statements and as a result they appeared in her name”*. The Provider goes on to state that *“it is not possible to produce the original Term Loan Account Statements at this time therefore it was necessary to enclose copies as an alternative. However, our records show... that Statements were issued to the Complainants every 12 months”*. The Provider has submitted a *“STATEMENT HISTORY”* to demonstrate that statements were issued to the Complainants yearly from April 2009.



Provisions 11.5 and 11.6 of the Consumer Protection Code 2012 provide that:

*“11.5 A **regulated entity** must maintain up-to-date **records** containing at least the following:*

- a) a copy of all documents required for **consumer** identification and profile;*
- b) the **consumer’s** contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the **consumer**;*
- e) all correspondence with the **consumer** and details of any other information provided to the **consumer** in relation to the product or service;*
- f) all documents or applications completed or signed by the **consumer**;*
- g) copies of all original documents submitted by the **consumer** in support of an application for the provision of a service or product; and*
- h) all other relevant information and documentation concerning the **consumer**.*

*11.6 A **regulated entity** must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A **regulated entity** must retain all other **records** for six years from the date on which the **regulated entity** ceased to provide any product or service to the **consumer** concerned.”*

While I note the Provider submits that the yearly statements issued to the Complainants from 2011 included a statement advising “*A variation in the no. of payments left may arise because of a change in interest rate, your repayment or any late repayments or arrears. At the current payment levels we estimate your payments to... increase by X*”, it is disappointing that it did not submit a copy of these statements, and has failed to demonstrate that it complied with Provisions 11.5 and 11.6 of the Consumer Protection Code 2012 in this regard. The Provider has only submitted a copy of the account statement issued to the Complainants in July 2017 showing all payments to and from the loan account from 3 April 2008. Therefore, I have no evidence that the message above was in fact conveyed to the Complainants.

General Condition 5(d) states that “*in the event of any variation in the interest rate*”, the Provider “*shall give notice of such variation to you by...a statement addressed to you*”. This provision implies that the Provider would give notice of a rate increase just before, upon, or shortly after the occurrence of the event. While the annual statements the Provider claims it sent to the Complainants did refer to the rate increases in the list of transactions, on the Provider’s own evidence, some increases were notified a number of months after they occurred. In the circumstances, the references in the annual statements relevant to those increases would have amounted more to confirmation of a rate increase which had been in effect for several months.

General Condition 5(d) implies that a notice would follow a rate increase and, therefore, it is reasonable to assume that each individual rate increase would be specifically notified to a customer. The Provider relies upon annual statements as valid notification of rate increases. I do not accept that a generic annual statement, the purpose of which is undoubtedly to provide an annual summary on the account, comprises notification of a rate

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increase in the manner envisaged by General Condition 5(d). In addition, I do not accept that the use of one statement, whatever its nature, to give “bulk” notice of rate increases meets the requirements of General Condition 5(d).

In light of the above, I am satisfied that General Condition 5 expressly and/or impliedly required the Provider to do what the provision was clearly designed to achieve that is, where there was a rate increase, notify the Complainants quickly and clearly by one of the prescribed means. It is not at all clear that the Provider’s newspapers advertisements or annual statements were sufficient to discharge those obligations.

The Provider submits that as per the terms and conditions of the Credit Agreement it did not increase or decrease the monthly repayments in line with its interest rate changes, therefore, the Complainants’ monthly repayment amount remained unchanged while the variable interest rate increased over the term of the loan. The Provider submits that it reserves the right to either increase the number of repayments required to clear the loan, or alternatively, vary the repayment amount, or both.

The Provider submits that the Complainants’ Term Loan issued on 3 April 2008. The Provider submits that approximately 26 months prior to the anticipated final payment due date of 3 April 2018 it issued correspondence to the Complainants on 3 February 2016, advising the monthly repayment instalments between then and the date of expiry would not be sufficient to clear the Loan in full and a further payment (shortfall) of €7,492.83 would be due at that time. The Provider submits that this shortfall amount has arisen due to interest rate increases over the period of the loan which in turn had increased the amount repayable, and the monthly repayment on the loan did not increase in line with the rate increases.

The Provider submits that its letter of 3 February 2016 outlined the options available to the Complainants in relation to repayment of the shortfall. The Provider has submitted a copy of this correspondence, which states the following:

*“We are writing to you in connection with your variable Term Loan... taken out on 03/04/2008. The loan was taken out for 120 months, and therefore under the terms of the loan agreement is due to be repaid in full on 03/04/2018 (the “Date of Expiry”).*

*We would like to give you some advance notification that the current repayment schedule, which provides for 32 Repayment Instalments of €344.30 between now and the Date of Expiry, will not be sufficient to clear the loan in full. A further payment of €7492.83 will be required as at this time. This shortfall is as a result of the following:*

- *Increases to interest rates increased the amount repayable on your loan, however as per your terms and conditions your repayment did not increase to meet that rate change.*

*While the terms and conditions of your loan provide for the repayment of your loan to be made in full by the Date of Expiry, the conditions also provide for the term of*

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*your loan to be extended so that any shortfall arising in the circumstances mentioned above can be repaid. Therefore, you have three options in relation to repayment of the shortfall.*

**Option 1:** *We will continue to accept Monthly Repayment Instalments after the Date of Expiry, until such time as the loan is fully repaid unless we hear otherwise from you.*

**Option 2:** *Contact us and we can arrange to increase your repayments to ensure your loan is repaid by the original date of expiry.*

**Option 3:** *You can choose to repay all outstanding amounts, including interest, on your account at the date of expiry.*

*If you choose Option 1, we expect, based on current interest rates and the repayment of amounts due, then an additional 22 repayments(s) will be required. The final payment will be for the then outstanding balance and may not be a full Repayment Instalment.*

*Should you decide on Option 1 we will continue to collect these payments, unless you have repaid the loan in full by the date of expiry. If you want to discuss Option 2 and/or Option 3 and have any queries in relation to your account please do not hesitate to contact our Customer Service Team directly on... You can also call into your local Branch where one of our personal lending team will be happy to assist you."*

The Provider submits that further correspondence was issued to the Complainants on 6 May 2016 advising that due to an administration error the account specific details provided in the correspondence dated 3 February 2016 was inaccurate. The Provider submits that while the number of repayment instalments required between February 2016 and date of expiry were incorrect the amount of the shortfall and the terms and conditions remained. The Provider submits that this letter reiterated the options available to the Complainants and provided contact details should the Complainants wish to discuss same. The Provider has submitted a copy of its letter dated 6 May 2016.

The Complainants, in their letter to the Provider dated 22 February 2016, state *"it is clear to us that you have made an error and we will not be held accountable for such an incredible error made by your organisation"*. The Complainants submits that the Provider's representative, during a telephone conversation, acknowledged that the shortfall amount appeared to be excessive. The Complainants submit that the Provider's branch in a named location promised them a telephone call, however they never received same. The Complainants submit that despite the Provider's promise they never received a full explanation from it in relation to this matter. The Complainants, in their submission dated 31 August 2017, state that *"a full fact find with sequence of events promised by bank was never provided"*.

The Provider states, *"We acknowledge that the Advisor had agreed on a telephone call that she would organise a breakdown of interest rates and set up an appointment or breakdown of interest rates issued to the Complainants. The Bank apologises for this oversight. The Bank*

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*have offered to reduce the balance outstanding on the Complainants' Term Loan account by €2,000.00 as a gesture of goodwill in full and final settlement for the shortcomings in the service provided and this offer remains open to the Complainants".*

The Provider has submitted a recording of telephone conversations between the first Complainant and the Provider's representatives. I note during one telephone conversation the first Complainant requested details regarding the account "*before taking things further*". The Provider's representative confirmed that she would arrange a breakdown of the figures and get them sent out to the Complainants, and also that she would arrange for a named branch to contact the Complainants regarding the matter. It is most disappointing that the Provider did not follow through with this.

I consider that the terms and conditions make clear that the interest rate on the Complainants' loan is a variable interest rate. The interest rate in this agreement is set at the discretion of the Provider and is not linked to the ECB interest rate. I accept that, on the basis of paragraph 5(a) of the terms and conditions of the credit agreement, the Provider was entitled to vary the interest rates either upwards or downwards at its discretion. I note the only changes were increases in the interest rates.

I note that condition 5(d) of the terms and conditions of the credit agreement states that "*As a result of any change in the interest rate we may vary the amount of the instalments or the Period of Agreement or both*" (emphasis added). Condition 5(e) goes on to state that "*Where the Provider has agreed to accept a deferral of the monthly repayments of the Loan for the period represented by the difference between the period of this agreement and the number of repayment instalments referred to in the "Important Information" provided in the Credit Agreement..."*" (emphasis added). The terms and conditions of the credit agreement gave the Provider an option to vary the amount of the instalments or the period of agreement or both. It is most disappointing that the Provider did not contact the Complainants each time the interest rate increased to advise them that it was opting to vary the period of agreement and the implications of this. The Complainants could have then planned for the surplus remaining at the end date of expiry of the term loan.

Alternatively, given that the terms and conditions of the credit agreement provided for the option of varying the amount of the instalments, I am of the view that, where there was an increase in the variable interest rate, the Provider should have given the Complainants the option to decide whether they wished to vary the amount of instalments or the period of agreement or both. Particularly, in circumstances where condition 5(a) of the loan terms and conditions set out that "*The rate of interest applicable to the Loan will be the interest rate specified in the Schedule, as varied from time to time at our absolute discretion. You will repay the Loan with interest thereon at such rate by monthly periodic instalments in amounts which, over the Period of Agreement, will be sufficient to discharge in full the Loan together with such interest*" (emphasis added).

Provision 4.1 of the Consumer Protection Code 2012 states that:

*4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be*

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*brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.*

Whilst the Provider argues that it operated within the terms and conditions of the credit agreement, I am of the view that the Provider should have provided the Complainants with clearer information in relation to the interest rate increases and their options, including an option to increase their monthly payments to avoid a shortfall occurring on the date of expiry of the loan.

I note that the Provider's letter of the 3 February 2016 offered to extend the period of the loan, and the Provider has offered to *"cap the interest rate on the loan at its current rate of 11.40%"*. I note that the Provider has also *"offered to reduce the balance outstanding on the Complainants' Term Loan account by €2,000.00 as a gesture of goodwill in full and final settlement for the shortcomings in the service provided"*. I do not find the Provider's offer to cap the interest rate at 11.40% and reduce the balance outstanding on the Complainants' Term Loan account by €2,000.00 to be sufficient in all the circumstances.

I believe it was unreasonable and oppressive for the Provider not to increase repayments, or at least provide the Complainants with the option of increasing the payments on the Loan around the time that interest rates rose, particularly when two of those increases occurred before the first-year anniversary of the loan and where instalments were being paid by way of direct debit which the Provider had the power to increase, as a result of the *"Payment Instructions"* portion of the loan application. Had that happened, the Complainants would likely have come to understand at an early stage that the interest rate had increased and the serious implications of such increases.

It should also be noted that General Condition 5(a) is not entirely consistent with the Loan since it states that *"[y]ou will repay the Loan with interest thereon at such rate by monthly periodic instalments in amounts which over the Period of Agreement [not defined], will be sufficient to discharge in full the Loan together with such interest"* and, therefore at least in that portion of the condition, implies that the borrower would be required to repay the Loan by the expiry date.

In the circumstances, I believe that the conduct of the Provider was unreasonable. While I note that the Provider argues that the advertisements and statements could constitute notice of interest rate increases sufficient to satisfy the requirements of General Condition 5(d) and could entitle the Provider to receive from the Complainants the monies it is demanding in interest from that point onward, in all of the circumstances, I am not satisfied that this would be a just resolution.

I accept that the Complainants were on notice for the last 26 months of the loan that the interest rate had increased and that additional repayments would be required. Therefore, in order to do justice between the parties I propose to direct the Provider to significantly reduce its demand.

To conclude, given the unreasonable actions of the Provider as set out above, it is my Legally Binding Decision that this complaint is substantially upheld this complaint. I direct the

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Provider to write down its demand for €7,492.83 to €1,500 and that no further interest is to apply to any amount above the original sum of €41,316.00, being the amount of credit advanced (€27,650.00) together with the cost of the credit (€13,666.00), in full and final settlement of this loan. For the avoidance of doubt if the Complainants have made any payments over the sum of €41,316.00 plus the €1,500 in respect of this loan, the Provider should refund this amount to the Complainants. Furthermore, the Provider should ensure that this arrangement does not adversely affect the Complainants' credit rating.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(b) and (c)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to write down its demand for €7,492.83 to €1,500 and that no further interest is to apply to any amount above the original sum of €41,316.00, being the amount of credit advanced (€27,650.00) together with the cost of the credit (€13,666.00), in full and final settlement of the loan.
- 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**

31 August 2018

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.