



<u>Decision Ref:</u>	2018-0103
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Application of interest rate Delayed or inadequate communication
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainant's Variable Term Loan account held with the Provider.

The Complainant's Variable Rate Term Loan account was issued on 28 August 2007, in the amount of €17,000.00 at a variable rate of 8.10% for a term of 120 months. The monthly repayments of the term loan were €207.15.

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

The Complainant's Case

The Complainant submits that he took out a loan with the Provider in July 2007 for €17,000.00. The Complainant, in his Complaint Form dated 20 June 2017, states "*I have paid this loan for the past ten years without missing a payment. My loan is due to finish this August 2017 and when I enquired about the final payment [on receipt of the Provider's letter dated 3 February 2016] I was informed that my loan had acquired interest over the years which I was not aware of. Nobody had informed me of same which leaves me in a financial dilemma*".

The Complainant submits that he was informed by the Provider that the interest rates had been increased and the notice of increase was in the daily newspapers, which he did not purchase. The Complainant submits that the Provider added all the accrued interest onto

the capital sum which he never agreed to. The Complainant submits that he has never been notified of any increases in interest during the term of the loan.

The Complainant states *“Because of an ongoing medical condition... which will require me to retire in the coming months. I have kept working ignoring the advice of my Doctor to make sure all outstanding loans and debts [are] paid off”*. The Complainant submits that the Provider informed him that he could extend the term loan by two years to pay off the outstanding interest. The Complainant states that *“this is completely unjustified”*.

The Provider’s Case

The Provider submits that the Complainant’s Term Loan was issued on 28 August 2007 in the amount of €17,000.00 at a variable rate of 8.1%. The Provider submits that the Credit Agreement signed by the Complainant included details of the amount of credit advanced, period of agreement and also the number of repayments.

The Provider submits that Condition 5(a) of the Credit Agreement states:

“The rate of interest applicable to your 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 Complainant’s Term Loan from inception date were as follows:

- 28 November 2007 from 8.1% to 8.6%
- 28 April 2008 from 8.6% to 9.6%
- 14 July 2008 from 9.6% to 10.1%
- 1 April 2010 from 10.1% to 11.4%

The Provider submits that Condition 5(d) of the agreement clearly indicates 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 submits that in addition to advertisements in the national press, prior to each interest rate change, the annual statements issued on the Complainant’s Term Loan account also included details of the increased interest rates. The Provider submits that statements were issued to the Complainant on 29 July 2008, 29 July 2009, 29 July 2010, 29 July 2011, 7 September 2011, 27 July 2012, 26 July 2013, 25 July 2014 and 24 July 2015.

The Provider submits that during these rate changes the repayments on the Complainant’s 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 took place during the 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"*.

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.

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 16 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.

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

The Complainant states that *"I did enquire about the final payment as it seemed to be quite large having made the payments over such a long time. I contacted [the Provider] about this and they have told me as it was a variable rate [it] could add all of the interest accrued onto the capital and I would have to enter a new loan agreement to pay the final payment in full amount"*. The Complainant submits that he never agreed to add *"the accrued interest payments to the capital"*.

The Provider submits that in accordance with the terms and conditions of the term loan account, the interest rate varied during the Period of Agreement, however the Complainant's monthly repayment amount remained unchanged resulting in a shortfall of €4,885.14 becoming payable on the expiry of the term loan on 28 August 2017.

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The Provider submits that as set out in the terms and conditions of the Credit Agreement signed by the Complainant on 28 August 2007, it was entitled to vary the interest rate at its discretion. The Provider submits that in the event of an increase in interest rate, one of the options available to it was to maintain the amount of the monthly repayment while extending the Period of Agreement.

The Provider has submitted a copy of the Credit Agreement dated 28 August 2007. I note that the amount of credit advanced was €17,000 at a variable interest rate of 8.10% for a term of 120 months and a monthly repayment of €207.15. Under the heading "IMPORTANT INFORMATION" it sets out the following:

IMPORTANT INFORMATION	
<i>(as at 28 August 2007)</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:	€17000.00
2. Period of Agreement*: 120	Months from drawdown
3. Number of Repayment Instalments*: 00120	
4. Amount of Each Instalment*:	€207.15
5. Total Amount Repayable*:	€24858.00
6. Cost of this credit (5 minus 1)*:	€7585.00
7. Annual percentage rate of charge (APR)*:	8.4% p.a.
NB: You may withdraw from this Agreement at any time within 10 days of receiving this Agreement or a copy of it.**	

*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:

SCHEDULE
Borrower(s) Name: ...
Address: ...
Term Loan Variable Rate*: (Currently 8.100% p.a.) Personal Rate
Date of Expiry: 120 months from drawdown (This may change – see General Condition 5(d) overleaf)
Special Conditions:

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The Provider submits that the Complainant accepted the terms and conditions of the variable rate term loan account and indicated his willingness to be bound by same by duly signing the Credit Agreement on 28 August 2007. I note that the Complainant 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."

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

(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

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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 while condition 5(d) of the General Terms and Conditions of the term loan indicate that it is obliged to either provide notice of the rate changes by way of a newspaper advertisement or by issuing a statement, it gave notice by way of both. The Provider submits that the changes in the interest rate applicable to the Complainant’s term loan from inception date were as follows:

- 28 November 2007 from 8.1% to 8.6%
- 28 April 2008 from 8.6% to 9.6%
- 14 July 2008 from 9.6% to 10.1%
- 1 April 2010 from 10.1% to 11.4%

The Provider submits that all interest rate changes were advertised in at least one national newspaper in accordance with the terms and conditions of the Term Loan account. The Provider has submitted a copy of the interest rate change advertisement 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.

The Complainant submits that he did not purchase daily newspapers.

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, 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 27 November 2007, the loans affected by the increase of 0.5% are described as “Variable Rate Personal Loans”. 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”.

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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 Complainant had understood that he had a variable loan and even if he had understood that his “Consumer Loan Variable Rate” loan was affected by the rate increase, he 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 Complainant it resulted in a demand for almost €5,000 in additional payments on a €17,000 loan. 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 it issued the Complainant with account statements on the following dates:

- 29 July 2008 (Due Date)
- 29 July 2009 (Due Date)
- 29 July 2010 (Due Date)
- 29 March 2011 (Reprint)
- 29 July 2011 (Due Date)
- 07 September 2011 (ATM Request)
- 27 July 2012 (Due Date)
- 26 July 2013 (Due Date)
- 25 July 2014 (Due Date)
- 24 July 2015 (Due Date)
- 23 September 2015 (Reprint)
- 22 July 2016 (Due Date)
- 21 July 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 any interest rate changes as they occurred. The Provider states that the following message was included on all statements from 2011:

“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

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levels we estimate your payments to... increase by X' (X denoted the number of payments)"

While I note that the Provider submits that the yearly statements issued to the Complainant from 2011 included a statement advising that *"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. The Provider has only submitted a copy of the account statement issued to the Complainant in January 2018 showing all payments to and from the loan account from 28 August 2007. Therefore I have no evidence that the message above was in fact conveyed to the Complainant.

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 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 amount 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 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 Complainant 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.

I note that the Complainant's representative wrote to the Provider on 14 March 2017 setting out, among other things, the following:

"... The terms and conditions of this loan state "In the event of any variation in the interest rate applicable to the loan, we shall give notice of such variation to you by (1) advertisement published in at least one national newspaper or (2) a statement addressed to you". [The complainant] received no statement and it is very sharp indeed and unacceptable to deem a person to have knowledge of an article just because it appears in a national newspaper. [The Complainant] was not made aware that the interest rate would vary and has not factored this rise in mortgage repayments into his financial repayment capacity. He has paid without fail his

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mortgage repayments every month and I would appreciate in light of the fact that he was not made aware of the rise in interest repayments that his repayments stay the same each month until the conclusion date as [the Complainant] agreed originally."

The Provider, in its submission to this Office dated 14 January 2018, states "While the Bank can appreciate the Complainant's disappointment, the Bank did not breach its contract with the Complainant and continues to hold the Complainant liable for the outstanding balance on the Term Loan Account, including any shortfall amount". The Provider goes on to state that "Notwithstanding this, the Bank has reviewed this case and in recognition of the Complainant's established record, the Bank is offering to CAP the interest rate on the Loan at its current rate of 11.40%. This will ensure the interest rate applicable to the Term Loan will not increase. However, should the interest rate reduce the Complainant will benefit from same".

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 the interest rate changes, therefore the Complainant's 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 or decrease the number of repayments required to discharge the loan, or alternatively, vary the monthly repayment amount or both.

The Provider submits that the Complainant agreed to make monthly repayments of €207.15 to the loan and this repayment amount remained fixed, as per its discretion in accordance with the terms and conditions of the loan account. The Provider submits that as the interest rate increased, the amount of interest applied to the account increased accordingly. The Provider submits that while the interest rate increased the Complainant continued to pay €207.15 monthly at a variable rate of interest in line with the Credit Agreement.

The Provider submits that due to the four increases in the variable interest rate, the Complainant's total amount repayable increased which resulted in a shortfall of €4,855.14 which became payable on the expiry date of the term loan, that is, 28 August 2017. The Provider submits that approximately eighteen months prior to the anticipated final payment due date of 28 August 2017, it issued correspondence to the Complainant dated 3 February 2016 advising him that a further €4,854.66 will remain outstanding as of 28 August 2017. The Provider submits that this letter also outlined the options available to the Complainant in relation to repayment of the shortfall, which occurred due to the interest rate increases.

The Provider has submitted a copy of its letter to the Complainant dated 3 February 2016, which states the following:

"We are writing to you in connection with your variable Term Loan... taken out on 28/8/2007. 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 28/08/2017 (the "Date of Expiry")."

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We would like to give you some advance notification that the current repayment schedule, which provides for 25 Repayment Instalments of €207.15 between now and the Date of Expiry, will not be sufficient to clear the loan in full. A further payment of €4854.66 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 and
- Late/Missed payments occurred on your account

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 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, that an additional 24 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 Complainant submits that he never missed any of the monthly loan repayments. I have not been provided with any evidence that the Complainant missed any loan repayments. It is therefore unacceptable that the Provider set out, in its letter to the Complainant dated 3 February 2016, that the shortfall was a result of increases to interest rates and "Late/Missed payments occurred on your account". The Provider should be careful when issuing such correspondence that is factually correct.

The Provider submits that further correspondence was issued to the Complainant 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

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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 Complainant and provided contact details should the Complainant wish to discuss same. The Provider has submitted a copy of its letter dated 6 May 2016.

I consider that the terms and conditions make clear that the interest rate on the Complainant's 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 provided the Provider with 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 Complainant each time the interest rate increased to advise him that it was opting to vary the period of agreement and the implications of this. The Complainant 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 Complainant the option to decide whether he 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 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 Complainant with clearer information in relation to the interest rate increases and his options, including an

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option to increase his 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%*". While it is disappointing that its letter dated 3 February 2016 contained an error, there is no evidence that this error caused any confusion. I do not find the Providers offer to cap the interest rate at 11.40% to be at all sufficient in all the circumstances.

I believe it was unreasonable and oppressive for the provider not to increase repayments, or at least provide the Complainant with the option of increasing the payments on the Loan around the time that interest rates rose, particularly when three 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 Complainant 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 be noted in this context that, on one reading of the correspondence to the Complainant and its submission, the Provider is asserting that it was not entitled to increase instalments on the Loan (repayments did not increase "*as per your terms and conditions*") but this is obviously not the case.

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 Complainant 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 Complainant was on notice for the last 18 months or so 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. I direct the Provider to write down its demand for €4,854.66 to €500.00 and that no further interest is to apply to any amount above the original sum of €24,858.00, being the amount of credit advanced (€17,000.00) together with the cost of the credit (€7,585.00), in full and final settlement of

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this loan. For the avoidance of doubt if the Complainant has made any payments over the sum of €24,858.00 plus the €500 in respect of this loan, the Provider should refund this amount to the Complainant. Furthermore, the Provider should ensure that this arrangement does not adversely affect the Complainant's credit rating.



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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 €4,854.66 to €500.00 and that no further interest is to apply to any amount above the original sum of €24,858.00, being the amount of credit advanced (€17,000.00) together with the cost of the credit (€7,585.00), 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**

9 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.