



<b><u>Decision Ref:</u></b>	2018-0130
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Lending
<b><u>Conduct(s) complained of:</u></b>	Application of interest rate
<b><u>Outcome:</u></b>	Substantially upheld

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

#### **Background**

This complaint concerns the Complainant's loan account held with the Provider and concerns a shortfall of approximately €11,000 demanded by the Provider, approximately 17 months before the expiry of a 10-year €40,000 loan, as a result of historic increases to applicable variable interest rates. The Complainant maintains that he signed up to a fixed term loan and, therefore, the shortfall is not due. He also complains that, if any sums were due, they should have been added to his direct debit repayment as they arose, rather than being demanded at the end of the loan.

#### **The Complainant's Case**

On approximately the 17<sup>th</sup> July, 2007, the Complainant applied for a loan with the Provider via a "Term Loan Application Form". The following appeared under the "Facility Details" section of that form:-

<b>Loan Required</b> €40,000	<b>Purpose</b> House Renovation		<b>Cost of Purchase</b> €40,000
<b>Existing loan</b> €0.00	<b>Term in months</b> 120	<b>Repayment Frequency</b> Monthly	<b>Repayment Amount</b> € 487.42

<b>LPP Premium</b> €0.00	<b>LPP Plan</b>	<i>(Interest Details)</i> 8.100	<b>Value €</b>
<b>Total Loan</b> €40,000	<b>Security</b>		

Under the “*Payment Instructions*” section, into which details of the account to be debited with the instalments were inserted, the following appeared:-

*“If the Loan is granted, I/we hereby authorise [REDACTED] to debit my/our account with instalments as indicated below, the amount or number of which may vary if the interest rate changes, until the loan and any interest accrued thereon is repaid in full”.*

Immediately above the Complainant’s signature, which was witnessed and authorised, the following appeared:-

*“I/We hereby apply for a term loan in accordance with this application”.*

The Complainant states that he never missed a repayment and this is not disputed by the Provider. On the 3<sup>rd</sup> February, 2016, approximately 17 months before the date of expiry, he received a letter stating that the 23 repayments (this number turned out to be incorrect) left on the Loan would not be sufficient to clear it by the expiry date (“**the Initial Letter**”). In order to clear the Loan, a further €11,088.12 would be due. The Provider stated that the shortfall arose because, although increases in interest rates had caused an increase in the amount repayable under the Loan, “*as per your terms and conditions your repayment did not increase to meet that rate change*”. The Provider gave the Complainant three options in order to repay the shortfall:-

- 1) Continue monthly repayments after the date of expiry, until the Loan was repaid in full;
- 2) Contact the Provider and increase repayments so the loan would be repaid by the date of expiry;
- 3) Repay all outstanding amounts, including interest, on the date of expiry.

The Initial Letter was not clear as to the default option which would apply on the expiry of the loan. Part of the letter suggested option (1) was the default, while the final two paragraphs implied that the Complainant was required to make a decision in order for option (1) to be implemented.

Between approximately the 9<sup>th</sup> February, 2016, and the 3<sup>rd</sup> March, 2016, the Complainant liaised with his branch and made four calls to the Provider, in order to express his dissatisfaction at the content of the Initial Letter. Various technical issues on the Provider’s side meant that the Complainant was hampered in the reporting of his complaint but the complaint was eventually received. During one of those calls the Complainant noted that he did not buy newspapers.

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Between the 11<sup>th</sup> February, 2016, and the 4<sup>th</sup> May, 2016, holding letters were sent by the Provider but, by letter dated the 6<sup>th</sup> May, 2016, the Provider again wrote to inform the Complainant that the usual monthly instalments would not be sufficient to clear the loan on the expiry and a further payment of €11, 089.57 would be required (**"the Correction Letter"**). The Provider set out additional reasons for the shortfall in this letter, as follows:-

- *"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*
- *There were variances in the scheduling of your repayment instalments. For example, where your repayment date fell on a Saturday, we did not collect your repayment until the next working day which would be a Monday, or a Tuesday on a Bank holiday weekend. This results in interest being applied on a higher balance for a short time. Interest is added and is calculated on the daily balance outstanding over a 365 day year or 366 days in a leap year".*

The Provider set out the same options for repaying the new sum due, although this time option (1) was explicitly stated to be the default.

By letter dated the 25<sup>th</sup> May, 2016, the Provider addressed the substance of the complaint which had been put forward by the Complaint between 11<sup>th</sup> February, 2016, and the 3<sup>rd</sup> March, 2016 (**"the Substantive Response"**). That letter purported to explain the reason for the Correction Letter by stating that:-

*"...the Provider subsequently became aware that the letter issued in February 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 recently issued a further letter to all customers to advise of the error in the 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 Substantive Response also set out the rates of interest applicable to the Loan since the inception date, as follows:-

*"26<sup>th</sup> November 2007 from 8.1% to 8.6%  
28<sup>th</sup> April 2008 from 8.6% to 9.6%  
14<sup>th</sup> July 2008 from 9.6% to 10.1%  
1<sup>st</sup> April 2010 from 10.1% to 11.4%".*

Although the letter referred to advertisements in the national press in relation to the rate changes, same were not enclosed. Reference was also made to statements issued to the

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Complainant on the follow dates which, the Provider said, *“included details of the increased Interest Rates”*:-

*“16<sup>th</sup> July 2008  
16<sup>th</sup> July 2009  
16<sup>th</sup> July 2010  
15<sup>th</sup> July 2011  
13<sup>th</sup> July 2012  
12<sup>th</sup> July 2013  
11<sup>th</sup> July 2014  
10<sup>th</sup> July 2015”.*

In his complaint to the Financial Services Ombudsman, the Complainant maintains that the Loan was a fixed rate loan for €40,000 with €18,490 interest, over a 10-year period. He states that he does not understand the demand for €11,088 which has been demanded and he *“would not have signed to this in the beginning had [he] known of this”*. In a further submission the Complainant repeats that the contract was for a loan of €40,000 at 8.1% interest and that he *“signed a contract under these terms”*. He emphasises that he would never have signed up to a €40,000 loan if it required a repayment of €70,000.

### **The Provider’s Case**

According to the Provider, at the time of the loan application, the Complainant would have been *“advised of the terms and conditions of the loan”* and provided with, among other things, a copy of the Terms of Business which state at (J):-

*“We will be fair, honest and professional in all our business dealings with you”.*

Under a credit agreement entitled *“Consumer Term Loan Variable Rate”* dated the 20<sup>th</sup> July, 2007, the Complainant received a €40,000 loan from the Provider, subject to a term loan variable rate, then at 8.1% (**“the Loan”**). According to the agreement, the Loan was repayable in 120 monthly instalments of €487.42 (expiring on the 20<sup>th</sup> July, 2017), €58,490.40 would be due thereunder, the cost of the credit was €18,490, the APR was 8.4% and the interest rate was 8.1%. However, it was noted by way of asterix (\*) next to each of the period of agreement, the number of repayment instalments, the amount of each instalment, the total amount repayable, the cost of the credit, the APR and the interest rate (described as term loan variable rate) that *“[t]hese may increase or decrease at our discretion see General Condition 5 and 7 overleaf”*. In addition, the term loan variable rate was expressed to be *“currently 8.1%”* and it was stated that the date of expiry could change under General Condition 5(d).

General Condition 5 provides:-

#### ***“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*

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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.

- (b) Interest will accrue and be calculated on the daily balance outstanding and a 365 day year or 366 day in a leap year and will be payable as well after judgment as before. Interest will be debited to your account at monthly or at such other periodic rests as we in our absolute discretion shall decide. This means that if you do not pay the instalments on time the unpaid interest will be capitalised and you will pay interest on interest.
- (c) You will give to us a standing order or a direct debit mandate allowing us to debit your account with the appropriate payments due to us hereunder. If there are insufficient funds in your account to meet any such direct debit or standing order you may be charged a reversal fee in accordance with our then current scale of fees.
- (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 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, 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 accrual 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 period, 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" [emphasis added].

General Condition 7 provides:-

***"Change in the APR:***

*The annual percentage rate of charge, 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*

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*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 Complainant signed the Loan under a declaration which stated:-

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

The Provider relies upon the terms of the Loan and, in particular, the asterixed items in the Loan referred to above, the explanation of the asterix (*i.e. “[t]hese may increase or decrease at our discretion see General Condition 5 and 7 overleaf”*), the declaration on the Loan signed by the Complainant and the final sentence of para. 5(d)(ii) of the General Terms and conditions (*i.e. [a]s a result of any change in the interest rate we may vary the amount of the instalments or the Period of Agreement or both”*). In addition, the Provider relies upon the instruction in the *“Payment Instructions”* portion of the loan application extracted above.

In its submission, the Provider states that *“As per the Terms and Conditions of the Credit Agreement...[the Provider] did not increase or decrease the monthly repayments in line with its interest rate changes, therefore, the Complainants’ (sic) monthly repayment amount remained unchanged while the Variable Interest Rate increased over the term of the loan”*.

The Provider notes the changes in the variable rate referred to above and states that, in accordance with General Condition 5(d)(i) they were advertised in one national newspaper on the 27<sup>th</sup> November, 2007, 28<sup>th</sup> April, 2008, 14<sup>th</sup> July, 2008, 31<sup>st</sup> March, 2010. The relevant portions of those advertisements read:-

**27<sup>th</sup> November, 2007**

*“VARIABLE RATE PERSONAL LOANS*

*The interest rate applying to variable rate personal loans will increase by 0.50% on all loans that have been draw down for amounts of €9,000 or more, effective from start of business on Monday 26<sup>th</sup> November 2007.*

*The rates applying to existing loans appear on loan statements...”*

**28<sup>th</sup> April, 2008**

*“...Variable Rate Personal Loans*

*Personal Variable Loans with drawdowns of €9,000 or more will increase by 1%...”*

**14<sup>th</sup> July, 2008**

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“...Variable Rate Term Loans

*“Variable rate AA and AAA term loans will increase by .50%”*

**31<sup>st</sup> March, 2010**

“...Variable Rate Personal Loans

*Personal Loan rates – drawdowns of:-*

*Less than €5,000 will increase by 1.35%*

*Between €5,000 and €8,999 will increase by 1.85%*

*€9,000 or more will increase by 1.30%*

*The rate applicable to individual customers is determined in accordance with their loan documentation.*

Variable Personal Loan Customer Notice

*[Provider] would like to advise customers that the interest rate applicable to all existing variable rate personal loans will increase by 2%. The rate applicable to individual customers is determined in accordance with their loan documentation”.*

The Provider also states that the rate changes were stated in annual statements issued to the Complainant on the dates stated in the Substantive Response, as envisaged by clause 5(d)(ii) and, therefore, the Provider claims that it went over and above its notification obligations under General Condition 5:

*“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 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 repayment or arrears. At the current payment levels we estimate your payments to...reduce by or increase by “X” (X denoted the number of payments)’.*

The Provider has provided the dates upon which the statements issued, a copy of the template of the statement which it maintains was included on Provider statements from 2011 and a copy of the statement of account, printed on the 8<sup>th</sup> August, 2017, recording details of the transactions on the account from the 20<sup>th</sup> July, 2007. The Provider has not provided copies of the actual statements in the form in which the Complainant would have received them and, therefore, the template relied upon is not visible in the statement of account provided.

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In the list of transactions in those copy statements at "26NOV07" the following appears: "Rate Fr. 8.100 to 8.600", at "28APR08" "Rate Fr. 8.600 to 9.600" appears, at "14JUL08", "Rate Fr. 9.600 to 10.100" appears and at "01APR10", "Rate Fr. 10.100 to 11.400" appears.

By letter dated the 18<sup>th</sup> July 2017, the Provider offered to reduce the balance outstanding on the relevant account by €2,000 and to cap the interest at 11.4%, "as a gesture of goodwill".

### **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 19 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, my final determination is set out below.

The issue to be considered is whether the demand by the Provider for an additional €11,000 was reasonable given the notification provided.

I consider that the Terms and Conditions make clear that the interest rate on the Complainant's loan is a variable interest rate. I therefore accept that the Provider was entitled to vary the interest rate either upwards or downwards. I note that on each occasion the interest rate changed it was increased.

I note this loan was taken out 10 years ago and that one of the methods of informing the Complainant of the most important event in his loan contract, namely an interest rate

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increase, is by way of an advertisement in a National Newspaper. The methods of communication and the manner in which people access information has changed very significantly in the last ten years. Therefore, I believe it is questionable as to whether this is an appropriate method of communicating such an important change in a contract in the modern age where newspaper readership is on the decline. It is questionable (perhaps even in 2007) to effectively impose upon a customer a duty to inspect newspapers daily, for 10 years, for news of a rate increase.

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, it is not oppressive to require a 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.

Furthermore, the newspaper advertisements (themselves small and containing some exceptionally small and difficult to read font) did not make clear which loans were affected. In particular, they did not clearly state the Loan which the Provider 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 the 27<sup>th</sup> November, 2007, the loans affected by the increase of 0.5% are described as "*Variable Rate Personal Loans*". In the advertisement of the 28<sup>th</sup> 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 the 14<sup>th</sup> 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 the 31<sup>st</sup> 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.

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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, the variable interest rate increases resulted in an additional €11,000 being demanded by the Provider. 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 claims that it went over and above its notification obligations under General Condition 5.

To justify this claim, it states that it also notified the Complainant of the rate increases by way of statements and, while it claims this was unnecessary given the newspaper advertisements, it claims that General Condition 5(d)(ii) was also complied with. Most disappointingly the Provider has not produced the annual statements in the form in which it states the Complainant would have received them.

In its original Schedule of Evidence supplied to this Office, the Provider submitted copies of the statements. However, as these did not show the "message" which the Provider seems to rely on, namely:

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

I wrote to the Provider seeking copies of these statements on 6 June 2018 and received a similar set of copies of statements that did not include the above message. Therefore, I have no evidence that the Complainant was informed in the manner in which the Provider claims.

General Condition 5(d)(i) 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 (e.g. "26NOV07 Rate Fr. 8.100 to 8.600") in the list of transactions, on the Provider's own evidence, the increase of the 26<sup>th</sup> November, 2007, was not notified until the 16<sup>th</sup> July, 2008, the rate increase of the 28<sup>th</sup> April, 2008, was not notified until the 16<sup>th</sup> July, 2008, and the rate increase of the 1<sup>st</sup> April 2010, was not notified until the 15<sup>th</sup> July, 2010. In the circumstances, the references in the annual statements relevant to those increases amount more to confirmation, in one instance at a remove of 8 months, of a rate increase which had been in effect for several months.

In addition, General Condition 5(d)(i) implies that a notice would follow a rate increase and, therefore, that each individual rate increase would be specifically notified to a customer. The Provider relies upon the first annual statement on the Loan dated the 16<sup>th</sup> July, 2008, as valid notification of rate increases on the 26<sup>th</sup> November, 2007, the 28<sup>th</sup> April, 2008 and the 14<sup>th</sup> July, 2008. While the statement might possibly have been

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sufficient, from a dates perspective, to notify the increase of the 14<sup>th</sup> July, 2008, 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)(ii). In addition, I do not accept that the use of one statement, whatever its nature, to give “bulk” notice of two historic and one recent rate increase meets the requirements of General Condition 5(d)(ii).

It should also be noted that the template which the Provider states was included on Provider statements from 2011 (itself not clear on whether there had, in fact, been a rate increase or whether there would be an increase in the number of payments) only intervened 1 year and 3 months after the final interest rate increase.

Therefore, it is not clear that the Provider complied with its notice obligations under General Condition 5 of the Terms and Conditions. Thereunder, the Provider was obliged to give notice of any variation in the applicable interest rate by “*advertisement published in at least one national newspaper*” (5)(d)(i) or by “*a statement addressed to [the borrower]*” (5)(d)(ii).

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 change (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 and/or annual statements were sufficient to discharge those obligations.

I do not think it was reasonable to demand the additional payment, given the failures in notice set out above. It should be noted that, had such clear notice occurred, the Complainant would almost certainly have come to understand at an early stage that he had in fact signed a variable rate loan, not a fixed term loan.

He may well have taken steps to address the matter at that stage or at least would have had the option, whether by requesting the Provider to increase repayments or otherwise and he would at least have been spared the imposition of interest on the additional interest charged on his loan and the resulting surprise further repayment of approximately €11,000 on a €40,000 loan, 8 ½ years into the term of the loan.

In those circumstances, it is my view that the demand of the additional repayment, itself implicitly grounded upon unsatisfactory notice of the rate increases, was unreasonable and oppressive.

I believe it was unreasonable and oppressive not to increase repayments on the loan or at least provide the Complainant with this option, 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 he had in fact signed up to a variable rate loan.

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It should be noted in this context that, on one reading of the Initial Letter, the Correction Letter 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. The Terms & Conditions did in fact provide for the option of increasing payments to avoid a shortfall at the end.

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.

Furthermore, 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 Complainant each time there was the interest rate increase 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).

Finally, I find that the Provider did not provide a proper explanation for the conduct complained of when it should have been provided in light of the various failures in customer service which arose in the wake of the conduct complained of. I note in that regard the error contained in the Initial letter which was not corrected until approximately three months later, the difference between the reasons for the shortfall provided in the Initial Letter and the Correction letter and the fact that the Complainant was hampered in the logging of his

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complaint by technical issues on the Provider side. All in all, the complaint was not dealt with substantively until well over 3 months after it had been made.

Further, I find the suggestion in the corrected letter that one of the reasons why this payment was due to be because of late payments most unacceptable when the Complainant had not missed any payments.

In the circumstances, I believe that the conduct of the Provider was unreasonable. While I note the Provider's argument that the statements issued, newspaper advertisements and the Substantive Response could arguably constitute notice of interest rate increases sufficient to satisfy the requirements of General Condition 5(d)(ii) and could entitle the Provider to receive from the Complainant the monies due in interest from that point onward, in all of the circumstances, I am not satisfied that this would be a just resolution.

I note the Provider offered to reduce the balance outstanding on the loan by €2,000 and cap the interest rate at 11.4% as a gesture of goodwill. In all the circumstances of this complaint, I do not find this sufficient.

I accept that the Complainant was on notice for the last 17 months or so of the loan that the interest rate had increased and that additional repayments would be required and therefore he should make some contribution to the shortfall. Therefore, in order to do justice between the parties I direct the Provider to significantly reduce its demand.

To conclude, given the unreasonable actions of the Provider as set out above, I substantially uphold this complaint and direct the Provider to write down its demand for €11,088, to €2,000 and that no further interest is to apply to any amount above the original sum of €58,490.40, being the amount of credit advanced, together with the cost of the credit identified in the original loan documentation, in full and final settlement of this loan.

For the avoidance of any doubt if the Complainant has made any payments over the sum of €60,490.40 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.

**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 (f)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider change the consequences of the conduct complained of under s. 60(4)(a) of the Act of 2017 by withdrawing its demand for repayment on the Loan of any sums beyond €60,490.40 and by treating the loan as cleared upon the payment of that sum.

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**

13 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.**