



<b><u>Decision Ref:</u></b>	2019-0074
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Variable Mortgage
<b><u>Conduct(s) complained of:</u></b>	Application of interest rate Failure to process instructions
<b><u>Outcome:</u></b>	Rejected

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

**Background**

This complaint relates to a mortgage account and the Provider's alleged maladministration and failure to comply with a change of address request.

**The Complainant's Case**

The Complainant holds a mortgage account with the Provider. The Complainant had four separate addresses registered with the Provider. The Complainant states that on 14 May 2009, he met with a branch manager of the Provider. He states that the purpose of this meeting was to discuss the possibility of getting a reduction in the interest rate on the mortgage account. The Complainant states that at this meeting, it was also noted that the Provider was sending correspondence to an address other than the Complainant's main residence [other address]. The Complainant states that he asked the branch manager to change his address to his [main] residence which he states was the property over which the mortgage was attached. The Complainant states that the branch manager assured him that these requests would be carried out and should be successful.

The Complainant sent a letter dated 14 May 2009 to the branch manager requesting to renegotiate the then mortgage rate. The Complainant points out that the address provided

by him in that handwritten letter was the address that he had asked the Provider to record as his [main] address.

The Complainant states that the Provider, on 15 May 2009, sent a letter to his [other] address indicating that it was prepared to offer the Complainant a revised variable rate mortgage of 2.99%.

The letter stipulated that if the Complainant wished to accept that offer, he needed to confirm his acceptance in writing within the next 10 days. The Complainant states that due to the fact that the Provider never effected the change of address request, the letter was sent to the [other] address and was therefore never received. In those circumstances he was unable to accept the offer. The Complainant states that a simple clerical error on the Provider's part has cost him dearly.

The Complainant would like the Provider to reinstate the 2009 offer from the date of the offer on 15 May 2009.

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

The Provider denies any wrongdoing. The Provider states that notwithstanding the Complainant's assertion that he made a verbal request for change of address to the former branch manager on 14 May 2009, there is no record of this and there was no formal written documentation from the Complainant requesting a change of address until 8 April 2013. It is the Provider's view that the Complainant is not entitled to have the offer backdated to May 2009.

### **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.

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A Preliminary Decision was issued to the parties 11 February 2019, 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, I set out below my final determination.

The central point of this dispute is the meeting that the Complainant held with the branch manager on 14 May 2009.

The Complainant's case is that in addition to requesting a change of interest rate on the mortgage, he also requested, verbally, that the branch manager arrange for a change of address to be noted on his account. He states that he was assured that this would happen.

There is a letter of the same day, 14 May 2009, handwritten by the Complainant and containing his [main] address. That letter is a letter formally requesting the Provider to renegotiate his current interest rates. There is no mention in that letter of a request to change the Complainant's address. The Complainant explains this by saying that he was verbally assured by the branch manager that this would take place.

The following day, by letter dated 15 May 2009, the Provider wrote to the Complainant at the original [other] address, offering a revised and reduced variable rate and stipulating that confirmation of the Complainant's acceptance of this offer must be received or sent in writing within the following 10 days.

The Complainant states that because that was sent to the [other] address, he never received it and never had an opportunity to accept it and as a result of which he has suffered significantly, both financially and personally.

The Provider's case is that it does not accept that there is sufficient evidence to demonstrate that a change of address was requested. The Provider has stated that there are no minutes or notes on the Complainant's loan file documenting this request. The Provider also makes the case that following the expiry of the 10 day acceptance window, the Complainant did not follow up on the request and did not seek to negotiate the mortgage rates any further until over two years later on 25 November 2011.

Ultimately, the Complainant did write to the Provider requesting a change of address in April 2013. That request does not make any reference to a request made four years previously.

In the absence of documentary evidence, it is necessary to look at all of the extraneous and surrounding documents and circumstances.

The Complainant places significant amount of weight on the fact that his letter of 14 May 2009, which requested the rate change, used the [main] address that he had requested to

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be applied to his account. However, having carefully considered all of the documentation and correspondence provided to this Office, I note there is a letter handwritten by the Complainant to the Provider in 2011. That letter, like the letter of 14 May 2009, contains an address belonging to the Complainant.

However, the address used in the letter of 2011, is the original [other] address that was attached to the mortgage account and remained on the mortgage account until the Complainant made a written change of address request in April 2013. In addition, there is a letter dated 10 August 2011 from the Complainant's home insurance Provider addressed to the Complainant at an [address] other than that on the original mortgage account or the [main] address that has been on the account since 2013.

In addition to the foregoing, the Provider has produced the entire file history pertaining to the Complainant and there does not appear to be a record of a change of address request made in 2009.

In light of all of the foregoing circumstances and considerations I have not been provided with sufficient evidence that a change of address request was made to the Provider in 2009 and that the Provider failed to act upon same.

For the reasons outlined above, I do not uphold this complaint.

## **Conclusion**

My Decision pursuant to **Section 60(1) (d)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

11 March 2019

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.**