



<u>Decision Ref:</u>	2019-0121
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions Dissatisfaction with customer service Failure to provide correct information Maladministration
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants entered into a mortgage agreement with the Provider on **27 January 2004**, in the amount of €150,000. The Complainants have stated that since 2016 the Provider has failed to accept their verbal and written instructions (i) to apply a lump sum repayment of €10,000 to their account, to reduce the term of the mortgage and (ii) to increase the amount of the monthly instalment they wish to pay, by €100.00 per month.

The Complainants are also unhappy that the Provider has provided them with conflicting information on a number of occasions, with regard to what the maturity date of the mortgage would be if the lump sum payment was used to reduce the overall term of the mortgage.

The Complainants' Case

The Complainants submit that on **10 August 2016** they made a €10,000 lump sum payment to their mortgage account. The Complainants submit that prior to so doing, they spoke with the Provider's loan servicing company and identified a reduction to the term of the loan as their desired outcome, as opposed to reduced monthly payments.

The Complainants submit that a week later, on **19 August 2016** they received a letter from the Provider notifying them that the monthly repayment would be reduced to €650.50, which the Complainants submit was contrary to their instruction that the monies be applied to reduce the term of the loan.

The Complainants submit that they wrote to the loan servicing company on **23 August 2016** instructing that the term of the loan be reduced and not the monthly payment.

The Complainants submit that on **25 August 2016** they received a letter from the loan servicing company asking them to confirm whether their preference for the allocation of the €10,000 was a reduction of the term or the monthly payments. The Complainants submit that they assumed that this letter had crossed with theirs of **23 August 2016**, which gave instructions to the Provider to reduce the term.

The Complainants submit that on **10 September 2016** they telephoned the loan servicing company to confirm if the monies had been applied in the manner requested. They submit that they were assured during this conversation that the lump sum was being applied to the term of the mortgage and that the mortgage end date would be brought forward from **July 2023 to July 2021** as a result. The Complainants submit that during this phone call they also requested that an additional €100.00 be applied toward the mortgage repayments each month and they submit that it was confirmed to them that this would be put into effect.

The Complainants submit that they were therefore surprised to receive a phone call from another, third party provider on **03 October 2016** querying which account the Complainants were referring to in their letter, in which they had asked for a lump sum to be applied to reduce a mortgage. The Complainants submit that the third party provider in question was confused by its having received the letter, in circumstances where, although the Complainants had previously been customers of that provider, they no longer were. The third party provider explained to the Complainants that their letter of **23 August 2016** had been passed to them by the loan servicing company, which also acted for that particular provider. The Complainants submit that they were upset that their personal details had been wrongfully issued to a third party in this way, by the loan servicing company.

Regarding their instructions to reduce the term of the mortgage, the Complainants submit that following a number of phone calls seeking to establish that their instructions had been applied, the loan servicing company advised them that the **September 2016** monthly payment had been reduced instead of the term.

The Complainants submit that the loan servicing company claimed that it did not have any instructions on file from the Complainants regarding a term reduction. The Complainants submit that it had in fact received such instructions from the Complainants, in their letter of **23 August 2016**, but that the loan servicing company had wrongfully issued the letter to a third party provider instead of recording it on their account and implementing the instructions.

The Complainants submit that in its final response letter of **13 December 2016**, the Provider accepted and noted that they wanted to reduce the term of the mortgage, not the monthly repayment as set out clearly in their letters of **23 August 2016** and a fax of **04 October 2016**.

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The Complainants submit that in its Final Response Letter, the Provider claimed that it had properly applied a lump sum of €10,000, reducing their mortgage from €61,598.30 to €51,698.30 on **10 August 2016**. The Complainants submit that the Provider has however given them various different redemption dates as a result of this payment. They submit that they were initially informed that it would result in a two year reduction to the term of the mortgage, but were then informed that the length of the mortgage would be reduced by one year and finally they were told that there would be a 13 month reduction, as a result of the lump sum repayment.

The Complainants submit that in its final response letter of **13 December 2016** the Provider identified that their monthly repayment "*before any of this began*" was €766.54.

The Complainants submit that the Provider's position is that reducing the term of the mortgage by one year would result in saving of 12x €766.54, which equates to **€9,198.48** but they query why the Provider has repeatedly failed to explain why the saving as a result of their lodgement comprise less than the lodged sum of €10,000.

The Complainants submit that under the rules of compound interest, the making of a payment of €10,000 toward the principal sum, should result in a sum of more than €10,000 in saved payments, not less. The Complainants submit that, "*it is basic compound interest that the savings must amount to more than €10,000 not less.*"

The Complainants refer to page two of the Provider's final response letter of **13 December 2016**, the final paragraph of which reads... "*Following your conversation on 22 August 2016, a letter was issued to you dated 25 August 2016 which estimated that the lump sum payment of €10,000 would reduce the term of your mortgage by approximately two years*". The Complainants note that this paragraph also asserts "*I am sorry that the information provided to you... [...] ... was incorrect*". The Complainants submit that it was never explained to them how this was the case or what interest rates were being used to calculate these matters.

The Complainants submit that they have consistently, and formally in writing, since **24 August 2016** told the Provider that they did not want to reduce the monthly repayments towards their mortgage to be reduced. The Complainants submit that despite letters and "countless" telephone calls the Provider reduced the monthly repayment to **€650** from **September 2016**, against the Complainants wishes and instructions.

The Complainants submit that in an effort to bring about a further reduction to their mortgage term they subsequently instructed the Provider in writing (a) not to reduce their mortgage repayments and (b) to collect a further sum of €100 per month, in order to further shorten the term of the mortgage. The Complainants submit that this latter instruction was issued verbally during a telephone conversation on **10 September 2016** and confirmed by the Provider in writing in its letter of **06 October 2016**. The Complainants submit that the Provider's final response letter of **13 December 2016**, however, confirms that this was not done. The Complainants submit that they are at a loss in this regard due to the Provider's failure to carry out an instruction it had acknowledged in writing.

The Complainants have submitted that they asked the Provider in **April 2017** to illustrate the effect that payment of a further €10,000 against their mortgage would be. The Complainants submit that by letter dated 21 April 2017 and confirmed on the phone on 26 June 2017 the Provider offered a reduction of 19 months on the term of the mortgage, resulting in a maturity date of 31 December 2021. The Complainants submit that they *“fail to see how the corporation can tell me a payment of €10,000 in 2016 can result in an (ultimate but not as yet apparently applied) reduction of 13 months, while a similar amount paid in 2017, at similar interest rates can result in a reduction of 19 months. (From 25 July 2023 to 31 Dec 2021...)”*

The Complainants submit the conduct of the Provider has caused them a great degree of stress and that they have spent a great degree of time attempting to effect a reduction in their mortgage, in order to pay it down early which has not occurred and submit that as a result they will pay more interest than they intended, when the matter is ultimately resolved.

The Provider's Case

The Provider has submitted the following timeline of events:

It submits that on **10 August 2016** it received a lump sum payment of €10,000 from the Complainants and that this payment was allocated to the Complainants' account as a partial repayment, reducing the outstanding balance from €61,698.30 to €51,698.30.

The Provider submits that in line with clause 2.2 of the general terms and conditions of the mortgage, the monthly instalment was reduced from €766.54 (inclusive of Tax Relief at Source ("TRS")) of €3.14) to €650.50 (inclusive of TRS).

The Provider submits that on **19 August 2016** it issued correspondence to the Complainants acknowledging receipt of the lump sum payment of €10,000.

The Provider submits that on **22 August 2016** the First Complainant contacted its offices and spoke with a member of its Customer Service Team ("CST"). It submits that during this call the Complainant stated that he wished for the lump sum payment to be reflected in the term of the mortgage, thus reducing the maturity date. The Provider submits that it was agreed during this call that it would review the Complainants' request to reduce the mortgage term and issue correspondence detailing the Bank's offer with regards the proposed term reduction. The Provider submits that its Agent further confirmed that the Complainant would need to confirm to the Provider his preferred option.

The Provider submits that on **24 August 2016** it received a letter signed by the Complainants in which they requested the lump sum payment of €10,000 be applied to reduce the lifetime of the mortgage, rather than the amount of the monthly instalment. The Provider submits that this letter was however inadvertently forwarded to a third party bank and was not updated on the Complainants' account.

The Provider submits that on **25 August 2016** correspondence was issued to the Complainants requesting confirmation of their preferred option for the allocation of the lump sum payment was a term reduction. The Provider submits that this letter stated that the term of the account would reduce by two years and that these figures were estimates

and subject to change with the passing of time and changes to the applicable interest rate. The Provider acknowledges that the Complainants did not respond to its letter of 25 August 2016 as they had sent correspondence to its offices at an earlier date detailing their preference with regards the allocation of the lump sum payment.

The Provider submits that on **10 September 2016** the Complainant spoke with a member of its CST and queried the maturity date of the mortgage. The Provider submits that the Agent reviewed the account, referred to the Provider's letter of 25 August 2016 and stated the maturity date would be 2021.

The Provider submits that during this call the Complainant also requested to increase his monthly instalment by €100.00 on account -2300, that is, from €766.54 to €866.54, to which the Agent agreed, effective from September 2016. The Agent further stated that she would request the increase in repayments for a twelve month period and that this arrangement would be reviewed on an annual basis. The Provider acknowledges that its Agent agreed to increase the monthly repayments by €100.00, which would mean the Provider would apply for a monthly repayment of €866.54 effective from September 2016. The Provider submits that whilst it did increase the monthly instalment by €100.00 the increase was applied to the revised repayment of €650.50 and not the original monthly instalment of €766.54.

The Provider acknowledges that its letter of **25 August 2016** contained inaccuracies with regards the term reduction in recognition of the lump sum as the term reduction was confirmed as two years. It further notes that this information was reiterated to the Complainant during a call with its associate on 10 September 2016 when he was given assurances that the information in its letter of 25 August 2016 was accurate. The Provider submits that it recognises that the Complainant was provided with incorrect information on those two dates and that its Agent did not advise the Complainant that his monthly instalment had been reduced and that the original maturity date remained as July 2023.

The Provider submits that on **04 October 2016** the First Complainant contacted its offices and advised that a representative of a third party bank had contacted him on 03 October 2016 to acknowledge receipt of the Complainants' letter which had been sent to its offices in August 2016. The Provider submits that during this call the Complainant requested assurances that the lump sum payment had reduced the term. In response, the Agent informed him that the original maturity date remained on the account but that the monthly instalment had reduced as a result of the allocation of the lump sum payment. The Provider submits that the Agent also confirmed that the Provider had not increased the monthly repayment to €866.54 as requested. The Agent proceeded to take a payment of €116.04 by way of Visa debit card in order to address the deficit between the monthly repayment of €750.50 deducted by way of Direct Debit (DD) on 28 September 2016 and the monthly repayment of €866.54 the Complainant had requested to pay on 10 September 2016.

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The Provider submits that it was subsequently agreed a complaint would be raised on behalf of the Complainants and the issues raised would be investigated. It submits that later that day it received correspondence from the Complainants in which they stated that the allocation of the lump sum payment of €10,000 was to reduce the term and not the scheduled monthly instalment. The Complainants also requested to increase the monthly instalment by €100.00. The Complainants requested confirmation of when the amendment was completed and the revised maturity date.

The Provider submits that on **06 October 2016** its CST completed an assessment of the Complainants' account and correspondence was issued to the Complainants confirming that the outcome of its assessment had determined that, based on the allocation of lump sum payment of €10,000 the Provider could facilitate a term reduction of 1 year and the monthly instalment would reduce to €738.38. It submits that it was outlined to the Complainants in this letter that they would need to confirm in writing that they were accepting the terms of the restructure. The Provider submits that it offered the Complainants a term reduction of one year and a reduction to the monthly instalment from €766.54 to €738.38. The Provider submits that the reason it offered the Complainants a term reduction, plus a reduction to the monthly instalment was due to a system limitation which only allowed the Provider to offer a term reduction of years and not years and months. The Provider submits that the Complainants would have been at no financial loss over the term of the loan by its having offered a term and monthly instalment reduction opposed to a term reduction.

The Provider submits that on **13 October 2016** the Complainant spoke with a member of its ASU regarding the content of its letter of **06 October 2016**. It submits that during this call the Complainant raised his concerns at the proposed term reduction as the term reduction equated to twelve monthly instalments of €766.54 which totalled €9,198.48 when the lump sum allocated was €10,000. The Provider submits that it was agreed during this call that its Agent would review the status of the account and contact the Complainant once the Provider's review was finalised.

The Provider submits that on **14 October 2016** it received correspondence from the Complainant in which he outlined his concerns and referenced his instruction to reduce the term of the mortgage and increase the monthly instalment. The Provider submits that whilst it notes the Complainant stated in his letter of **13 October 2016** "*please take this as instruction to lodge the €10,000 lump sum payment*", it was not in a position to implement the proposed changes outlined in its letter of **06 October 2016**, as the Complainants had expressed their concerns with the Provider's calculations. The Provider submits that it acknowledges it did not follow up with the Complainant following its call on **13 October 2016**.

The Provider submits that on **21 November 2016** the Complainant contacted its offices and expressed his dissatisfaction that the term of the mortgage had not been reduced and that the Provider had yet to increase the monthly instalment. The Provider submits that during this call its Agent completed provisional calculations in recognition of the lump sum payment reducing the term and an increase in the monthly instalment to approximately €866.00. The Provider submits that its Agent advised the Complainant that he could

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implement the amendment to the term and increase the monthly instalment by €100.00. The Provider submits that its Agent proceeded to state that if the Complainants were to maintain a monthly instalment of €878.17 effective from December 2016, the mortgage would reach maturity in September 2021, as opposed to the original maturity date of July 2023.

The Provider submits that on the same date correspondence was issued to the Complainants outlining the proposed repayment terms and it requested that both parties sign the proposed reschedule terms.

The Provider submits that on **24 November 2016** it received further correspondence from the Complainants in which they raised a number of issues regarding the content of its letter of **21 November 2016**.

The Provider submits that it was not in a position to implement the amendment to the term and monthly instalment at that stage as the Complainants were disputing the term reduction offered by it.

The Provider submits that it concluded its investigation into the issues raised by the Complainants and issued a Final Response Letter addressing the oversight in its letter of **25 August 2016** and the information provided to the Complainants on **10 September 2016**. The Provider submits that that the information provided to the Complainants on **06 October 2016** was however correct, as it was not in a position to amend the term by years and months and therefore the Complainants had the full benefit of €10,000 allocated to the account as the term of the mortgage was reduced from **July 2023** to **July 2022** and a reduction to the monthly instalment of €766.54 to €738.38.

The Provider submits that in its Final Response it requested the Complainants to confirm their preference with regards the monthly instalment to be maintained.

The Provider submits that on **21 February 2017** the First Complainant contacted its offices and queried the monthly instalment the Provider was deducting on a monthly basis. The Provider submits that its Agent confirmed the monthly repayment it was applying for was €650.82, and that it was subsequently agreed on this call that its Agent would request an increase in the monthly repayment, to €761.00, and that this amendment would be effective from March 2017.

The Provider submits that on **21 April 2017** the Complainant contacted its offices and queried the monthly instalment it was applying for on a monthly basis, to which its Agent confirmed the Provider was deducting a sum of €650.82. The Provider notes that the Complainant proceeded to detail his previous requests to increase the monthly repayment, to which its Agent confirmed she would liaise with the relevant personnel in order to determine how it could facilitate the request.

The Provider submits that later that day the Complainant spoke with a member of its CST regarding the status of the account and the Complainant's previous request to its offices were discussed. The Provider submits that it was subsequently agreed on this call that the

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Provider would deduct a sum of €850.00 as a monthly repayment on the account, effective from May 2017.

The Provider has submitted a breakdown of *“the total number of repayments and interest the Complainants would have made/incurred if the lump sum payment had not been allocated in August 2016 and what benefit the Complainants would have received as a result of this allocation,”* as follows:

The Provider has submitted that if a lump sum payment of €10,000 had not been applied to the mortgage and there was no variation to the interest rate:

- *“Repayments due (Monthly Instalment of €769.10 exclusive of TRS) = €63,108.90*
- *Interest charged over the duration of the loan (If not variation to interest rate) =€2,133.94*
- *Term of loan — 83 Months*
- *Maturity date - July 2023*
- *Total amount due for Final Repayment in July 2023 would be €42.70”*

The Provider has also submitted an outline of *“the variation as to the repayments and interest charged based on the allocation of the lump sum payment in August 2016 and the allocation of the lump sum payment of €10,000 if the Complainants had accepted the proposed terms of our letter of 6 October 2016”*:

- *“Repayments due (Monthly Instalment of €738.38) = €52,521.80*
- *Interest charged over the duration of the loan = €1,546.84*
- *Term of loan — 71 Months*
- *Maturity Date - July 2022*
- *Final repayment in July 2023 would be €835.20”* [this date of 2023 was subsequently confirmed by the Provider to be a typo and that the final repayment date should have read July 2022].

The Provider submits that the Complainants would have saved €10,587.10 in repayments (€63,108.90 - €52,521.80 which incorporated an interest saving of €587.10). It submits that the variation in interest that would have been charged (€2,133.94 - €1546.84) would have been €587.10.

The Provider submits that a revised assessment of the Complainants’ account was completed on **21 November 2016** and that due to a system upgrade it was in a position to offer a term reduction of years and months. It submits that, as such, it proposed a term reduction of 13 months in its letter of **21 November** which would reduce the maturity date from **25 July 2023** to **30 June 2022**. The Provider submits that the monthly instalment confirmed to the Complainants was €761.24.

The Provider submits that having completed a review of its calculations of 21 November 2016 it notes there was a discrepancy with the maturity date of June 2022 which was communicated to the Complainants on **21 November 2016** and **13 December 2016**.

The Provider submits that taking into consideration the balance as at **21 November 2016**, the applicable interest rate of 1% and if the Complainants were to maintain a monthly repayment of €761.24, the loan would be completed in **May 2022**. The Provider submits the following calculations in this regard:

- *“Repayments due (Monthly Instalment of €761.24 from 31/12/2016 and an initial repayment of €769.10 to be billed on 31/11/2016) = €50,921.51*
- *Interest charged over the duration of the loan from 30/11/2016 to 31/05/2022 =€1,384.17*
- *Term of loan — 67 Months*
- *Maturity date — May 2022*
- *Final repayment due in May 2022 would be €671.81”*

The Provider submits that this outlines that the Complainants would have saved €12,187.39 in repayments (€63,108.90 - €50,921.51 which incorporated an interest saving of €749.77). The Provider submits that the variation in interest that would have been charged (€2,133.94 - €1,384.17) was €749.77.

As regards to the Complainants' submissions that the Provider failed to increase the monthly instalment payable by €100.00, it submits by way of response that the monthly instalment was automatically reduced to €650.50 once the lump sum payment was allocated to the account in August 2016. When the Complainant contacted its offices on 10 September 2016 to request an increase in the monthly instalment by €100.00 the Provider increased the revised monthly instalment from €650.50 to €750.50 in September and October 2016.

The Provider submits due to an administrative oversight a sum of €650.50 was applied for by way of Direct Debit (DD) on **28 November** and **28 December 2016** and a sum of €650.82 was applied for on **28 January 2017** and **28 February 2017**.

The Provider submits that, with regards to the Complainants' further requests in **October 2016** and **November 2016** to reinstate the monthly DD, it did not implement this amendment on the basis that the Complainants had raised concerns in October and November 2016 with regards to the revised maturity date communicated to them as a result of the lump sum payment of €10,000 allocated in **August 2016**.

The Provider submits having completed a review of the issues raised by the Complainant, it recognises that incorrect information was provided to the Complainants on **25 August 2016** and **10 September 2016** and that the Provider did not fully clarify how the Complainants were receiving the full benefit of the allocation of €10,000 when their concerns were raised in their letters of **13 October 2016** and **21 November 2016**. The Provider submits that, as a result it has completed an extensive review of the account in order to determine if the Complainants were negatively impacted as a result of its amendment to the monthly instalment in August 2016 (reducing it to €650.50) and also factoring into the consideration the Complainants request to increase the monthly instalment to €866.54 in September 2016.

The Provider submits that having done so, it is of the view that if the lump sum had been actioned in accordance with the Complainants' initial instructions, the interest charged on the account would have been in the sum of €350.87 but that as a result of the monthly instalment decreasing, the interest charged was €368.30. The Provider has submitted a breakdown of this.

The Provider submits following figures are based on the term reducing once the lump sum of €10,000 was allocated on **10 August 2016**:

The Provider submits that the following figures are based on the term reducing once the lump sum of €10,000 was allocated on **10 August 2016** and a monthly instalment of €869.10 being deducted from **30 September 2016**:

- *Revised monthly instalment taking into consideration the Complainants' request to increase the monthly repayment to €869.10 (exclusive of TRS of €2.56), the term would have reduced from 83 months to 61 months. However the 61st repayment would have been for a sum of €1,006.60.*
- *Interest that would have been charged from August 2016 to April 2017 if the increased repayment of €866.54 was maintained = €348.55.*
- *Interest that was charged to the account from August 2016 to April 2017 based on the monthly instalment being reduced to €650.50 = €368.30. Variation - €19.75*

The Provider submits that having identified the variation in the interest charged on the account if the Complainants' requests of **25 August 2016** and **10 September 2016** had been actioned, an adjustment in the sum of €19.75 has been made to the Complainants' account.

By submission dated 28 July 2017, the provider has submitted that “with regards to the query raised by the Complainant as to the maturity date communicated on 24 April 2017, please see a breakdown as to how this maturity date was calculated:

- *Repayments Due (monthly instalment of €650.50 due from April 2017 to November 2021 which incorporates a lump sum payment of €10,000 in April 2017, a final repayment of €727.45 on 31 December 2021 = €47,155.45*
- *Interest Charged over the duration of the loan from 30 April 2017 to 31 December 2021= €894.19*
- *Term of Loan: 57 months*
- *Maturity Date: 31 December 2021*
- *Final Repayment of €727.45*

The Provider submits that, “the complainants received the full benefit of the allocation of the €10,000 however it is important to note the monthly instalment incorporated into our calculations and how this affects the proposed maturity date. I can confirm that a monthly instalment of €650.50 was the monthly instalment incorporated in our calculations in April 2017”.

Within the same submission, the Provider has submitted that in response to the Complainants' query regarding the maturity date if the lump payment of €10,000 allocated to the account on **10 August 2016**, the outstanding balance (which incorporates the credit balance of €942.97) and the future repayment of €866.54 were taking into consideration, the maturity date would be **October 2021**.

- *“Repayments Due (€866.54 effective from August 2017, a repayment of €850.00 would be due in July 2017) = total repayments if no variation to interest rate, which incorporated a monthly instalment of €866.54 = €44,865.79*
- *Interest charged over the duration of the loan if no variation to interest rate = €974.12*
- *Term of loan: 52 months*
- *Maturity date: 31 October 2021*
- *Total Amount for Final Repayment = €688.79”*

The Provider has submitted that as the Complainants did not confirm their acceptance of the proposed repayment terms, the term of the mortgage has yet to be amended to reflect the allocation of the lump sum payment.

The Complaints for Adjudication

The Complainants' complaint is that the Provider has acted wrongfully in the following respects:

It delayed in applying €10,000 to the Complainants' mortgage account in the first instance;

It failed to provide them with information as to how a lump sum repayment can result in savings of less than €10,000 when the repayments remain the same;

It failed to action the Complainants' written instruction from 24 August 2016 and onwards to maintain their mortgage repayments at the level they were before the lodgement of €10,000 was made and to effect a reduction to the term of the loan instead;

It provided incorrect information as to the reduction in the mortgage term as a result of the lump sum payment;

It failed to action the Complainants' instructions to increase their repayments by €100 a month;

It has systematically failed to follow the Complainants' instructions with regard to their mortgage 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

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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 **08 April 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, the final determination of this office is set out below.

I note the following timeline of events, from the evidence furnished, in relation to the conduct complained of by the Complainants.

25 July 2016

The First Complainant rang the loan servicing company and advised it that they wished to pay a lump sum off their mortgage account, in the sum of **€10,000**. He stated that he wished to have the funds applied in reduction of the term of the loan. He advised that he wished to effect the transfer of monies by way of electronic fund transfer.

The Agent advised that he should submit a letter to the Provider confirming that the Complainants wished to have the funds applied to reduce the term of the loan, whilst keeping the amount of the monthly repayment the same.

The Agent advised the Complainant that the proposed payment would reduce the term of the mortgage by approximately 13 months, but indicated that she would get formal confirmation of that.

10 August 2016

The €10,000 payment was received by the loan servicing company from the Complainants.

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17 August 2016

The First Complainant rang the loan servicing company seeking to establish that the money had been received by the loan servicing company and allocated to the Complainants' mortgage account.

The Agent, upon checking the application of funds to the Complainants' account, could not see anything "*on the system*" and advised the Complainant that the monies had not been applied at that time. The Complainant queried how he could trace it and the Agent advised him to contact the originating bank.

18 August 2016

The Second Complainant contacted the loan servicing company to confirm that the originating bank had advised her that the payment in question had been executed on **10 August 2016**. The Complainant told the Agent that the originating bank had "put a trace" on the monies and having done so, confirmed to her that the transfer had been successfully executed and the monies received into the Provider's account. She explained that the originating bank had accordingly advised her to contact the loan servicing company, which is what she was doing.

The Agent asked the Complainant to send in a copy of the confirmation which she had received from the originating bank, so that it could investigate the matter. The Complainant asked if she could email it as she was anxious to avoid delays but was advised that she would have to send it by post. She expressed concern but the Agent said that if she sent in the letter, it could investigate it further. The Complainant expressed her nervousness about the large amount of money having seemingly gone missing. She asked if she could receive a call back when there was an update available and the Agent assured her that he would do that.

I note that despite the Agent assuring the Complainant that she would be contacted with an update, that this did not occur.

It is most disappointing and completely unacceptable that the written authority which did issue from the Complainants to the Provider, directing the term reduction, which was received by the Provider on **24 August 2016** was not recorded or applied to the Complainants' account and instead, in what the Provider has described as a "clerical error", it forwarded the Complainants letter to a third party provider.

As a result of this error, the instructions in the letter containing the Complainants' instructions regarding the loan were not applied to the Complainants account. This led to extended issues with the Complainants' mortgage account.

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19 August 2016

The €10,000 payment was credited to the Complainants' mortgage account. A letter issued to the Complainants, from the Provider, confirming this. The letter also stated that, "*your revised monthly payment will be €650 with effect from your payment due on 28 September, 2016.*"

24 August 2016

The loan servicing company received a letter from the Complainants, which stated as follows:

Dear Sir/Ms,

My wife, [Second Complainants' name], and I have last week lodged €10,000 from [third party bank] in [location] by electronic transfer from [Second Complainant's] account for favour of our mortgage account number -2300

Please use this money to reduce the lifetime of the mortgage, that it [sic] the redemption date, as opposed to the amount of the monthly payment.

Should you need any further information please do not hesitate to contact the undersigned.

25 August 2016

A letter issued from the loan servicing company to the Complainants which noted the lump sum payment had been received and asked about the Complainants' preference for the allocation of the sum, as follows:

Could you please indicate to us by way of return letter that your preference is for the lump sum of €10,000 to be applied as a term reduction.

Should you wish to proceed, this will result in the term of the mortgage on the above account reducing by approximately 2 years....

10 September 2016

The First Complainant called the loan servicing company and queried the maturity date of the mortgage as a result of the lump sum payment. He was told the maturity date would be in 2021. During the same call, the Complainant requested the Provider to effect an increase to their monthly repayments on mortgage account -2300 by €100.00 and the Agent confirmed agreement to an increase of the monthly instalment from €766.54 to €866.54, effective from **September 2016**. She told him that "*if there's any problems with that we will let you know, but you can take it that it will be from 28th September.*"

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Recordings of the calls between the Complainants and the Provider have been furnished in evidence.

Having considered the content of the call recording of the telephone conversation of 10 September 2016, I note that the Agent also explicitly confirmed the amended maturity date as being **25 July 2023**. The Complainant specifically asked whether that date took into account the €10,000 which they had lodged. The Agent responded by checking the content of the letter that had issued to them. I note the following exchange in this regard:

*Agent: According to the letter that was sent out to you, the term of the mortgage on the above account reduced by approximately two years. So that would bring it down by 2 years, so it would be **2021**.*

Complainant: Oh right. So the end date is now 2021?

A: Yeah.

C: I don't wish to question your ability, or your brilliance at this, but are you sure about that? Because I am just trying to calculate exactly how long it's going to take me to finish it off and I would hate to be wrong on the point that that 2023 already takes in the €10,000 that I lodged. Is there any way of checking that?

A: One second now. [Pause] No, that would be right. The.. the.. If you hadn't made any lump sum it would be 2023.

C: Great.

A: And because it's now been reduced by approximately 2 years, so that brings it down to 2021 .

C: So it's somewhere around 2021, because it's approximately 2 years.

A: Yes exactly.

During this telephone call, the Complainant also noted that the direct debit which collected his monthly mortgage repayment, as well as a repayment toward another, ancillary loan, was €908.00 in total. He asked the loan servicing company if they could increase this amount whereby they would pay an extra €100.00 per month toward their mortgage loan. The Agent noted that the monthly repayment to the mortgage account at that time stood at €766.54, and the other loan repayment was in the amount of €141.98.

The Agent confirmed that because there were two accounts that the Complainant would need to advise it as to which account he wished to make increased repayments into. The Complainant confirmed to the Agent that he wished for an extra €100 to be applied to mortgage account -2300 and he asked how he could do that. The Agent confirmed that she could do that for him, that the updated arrangement could be requested for a year, and that

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it could be reviewed after the end of that period. I note the following exchange which occurred:

Agent: So you want to bring it up to €866?

Complainant: Yes please.

A: Yep. That's no problem. I can get that done for you. It's just on that account that you want it done?

C: Yes. Great. Thank you. I presume that will be taken up the next SEPA transfer?

A: Bear with me now one second and I'll just check and see.

C: The last one left my account on the 29th September, so I don't imagine there will be another call until the 29th October... I'm sorry, the last one left on the 29th August...

A: That's okay. Bear with me now one second and I'll just check this for you. Okay, yeah, so we should be able to do that. You wanted to save the same date again?

C: Yes please.

A: So that will be the 28th September. Okay that's fine. If there's any problems with that we will let you know, but you can take it that it will be from 28th September.

[my emphasis]

At the conclusion of the call, the Agent, again, asked the following of the Complainant:

A: So just to confirm so, you want an increase of €100 on the main account.

C: I want it on the mortgage account, number -2300

A: Perfect, that's no problem.

On the basis of the foregoing, I am satisfied that the Complainants reasonably expected that from **28 September 2016**, the monthly repayment towards their mortgage account which would be called for by the loan servicing company was €866.

I note that the Provider has acknowledged that the information which it provided to the Complainants during this call of **25 August 2016** contained inaccuracies with regard to the term reduction in recognition of the lump sum, as the term reduction was confirmed as two years. It further acknowledges that this information was also re-iterated to the First

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Complainant during a call on **10 September 2016** when the Complainant was given assurances that the information in its letter of **25 August 2016** was accurate. The Provider says that it recognises that the Complainants were provided with incorrect information on those two dates and that it did not advise the First Complainant that his monthly instalment had been reduced and that the original maturity date remained as **July 2023**. It further acknowledges that it agreed to increase the monthly repayments by €100.00 which would mean it would be applying for a monthly repayment of €866.54 effective from **September 2016**. The Provider has said that it acknowledges that while it did increase the monthly instalment by €100.00, the increase was applied to the revised monthly repayment of €650.50 and not the original monthly instalment of €766.54.

04 October 2016

The First Complainant rang the loan servicing company and requested assurances that the lump sum payment had reduced the term of the mortgage. The Agent confirmed the original maturity date remained on the account and that, instead the monthly instalment had been reduced as a result of the allocation of the lump sum payment.

During the call, the Agent advised the Complainant that the lump sum was being applied to reduce the monthly repayment amount, pending receipt of a letter from the Complainants with instructions as to how they wanted the monies to be applied.

The Complainant advised the Agent that he had previously spoken with the loan servicing company, on **10 September 2016** and that on that date the Agent in question had provided him with an amended maturity date, as a result of the money having been lodged into the account. This, the Complainant suggested, demonstrated that the loan servicing company was in fact in receipt of the letter which he had sent to it on **23 August 2016** with instructions that the money was to be applied to reduce the term of the loan.

The Complainant explained to the Agent that he had a number of difficulties with how matters had been progressed since they made the lump sum payment. He explained that it had been a stressful period for them, as initially the loan servicing company "*lost the money*". The Complainant queried whether it now turned out that the money had not been properly applied, in the manner requested. He further explained that he had received a telephone call the previous day from a third party provider regarding correspondence which it had received, asking it to reduce the term. He questioned why his details had been wrongfully disclosed to a third party by the Provider.

The Agent said that it would register a complaint on his behalf.

The following exchange then occurred as to the Complainants' instructions for the application of funds to their mortgage account:

C: *Are you telling me that you want me to again send you an instruction on what to do on reducing the term of my mortgage?*

/Cont'd...

A: *Yeah, unfortunately [Complainant's name] because we have to have a letter on file here before our team can action the...*

C: *Yeah. But I have sent you that letter, months ago!*

[Both parties speaking over each other]

A: *I am not denying or confirming that. It...it's ...the.. the point...For us to reduce the term, we have to have the letter in our hands here, viewing it, before we can reduce the term. That's the situation as it is.*

C: *Yes. But I sent that letter.*

A: *But, we don't have it [Complainant's name]. I understand you sent the letter. But we don't have it here...*

C: *You don't have it on your file...*

A: *No.*

C: *...Because you gave it to [Third Party Provider]. Ring [Third Party Provider] and ask them for it back!*

[pause]

A: *I could look into that. I wouldn't know how to go about that [Complainant's name] but I can look into it here. I can look into it for you.*

Subsequently:

C: *An apology wouldn't go amiss here [Agent's name].*

A: *If something has gone wrong here [Complainant's name] I will apologise to you, it will have to be investigated first...*

C: *This is what drives me nuts. I have lodged money with you, you lost it, you misapplied it, it's still not properly applied. I have sent you letters, you've lost them, you've given them to third parties and now you turn around and you say to me, 'if something has gone wrong on our end [Complainant's name]'. And, in a way, I have a certain sympathy for you because you are just picking up this detail and looking into this this morning, you are fresh to this. But everytime I ring you (You, corporate), I am on the phone for nearly an hour and I have to explain the whole thing to somebody new and they tell me they are not familiar with it but that if something is wrong they will sort it out, but it's not sorted out [Agent name]. I am not happy about it.*

The Complainant subsequently said that he would write that day to the loan servicing company with instructions it to use the €10,000 in reduction of the term of the mortgage while increasing the monthly payment. He went on to ask the Agent that he was speaking with:

C: *How could somebody in your office decrease my mortgage repayment and then increase it again by another 100, while somebody else in your office tells me the end date for my mortgage has been changed?*

A: *Because... when you enquired about it first, we sent an inquiry over to our team here looking after that to run a calculation for us so that we would know*

/Cont'd...

what the term reduction would be. Normally when we speak to the person then we tell them what the term reduction, the calculation and so on.

C: When you spoke to me on the 10th September, you had my money about three weeks...To my mind you used the term, past tense, it has been reduced.

A: If that's the case it was done incorrectly...

[my emphasis]

[Parties speaking over each other, inaudible]

C: ...It never occurred to me in any possible way, shape or form that you could still be thinking about this.

A: I mean, if you were advised on that call...

C: It is just so annoying and so irritating to me. You need to immediately take another €100 out of my bank account, to make up for the €100 that you reduced it by in September. Don't you?

A: Yeah. If you want to do that, we can do that for you...

C: I want you to do that. It is my instructions to you, do not reduce the monthly repayment that I make to you.

A: No, I understand that [Complainant's name], we have gone through all that...

C: That has always been my instruction.

A: I understand that...

C: But in September you didn't do that. You took the extra €100 that I wanted you to take but you reduced the monthly thing. That means that the repayments against my mortgage are at least €100 down. Aren't they?

A: Once we fix the issue it will bring your monthly instalment back up...

C: ...I want you to take this as an instruction from me now to restore, by taking more money out of my bank account, the amount you reduced the September payment, which is about 100 quid, is it? 110 or something?

A: Roughly that

C: Will you take that out of my bank account and put it against my mortgage now?

A: It wouldn't be possible to do it now as that would involve doing a direct debit, which would take ten working days to set up and it may...

C: So you're telling me that you actually can't do it until the 28th September which is my next direct debit

A: The easiest of doing it would be to take a card payment from you, that would be applied automatically then.

C: Can you do that now?

A: Yeah.

C: Okay let's do that

[Agent took a card payment of €116.04]

The Complainant also requested the Agent to increase the monthly instalment by €100.00. The Complainant requested written confirmation of when the amendment was completed and the revised maturity date.

On **04 October 2016**, the Complainant sent a fax to the loan servicing company.

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The first faxed document comprised a letter of instruction and stated:

Please take this as notification that the recent lump sum of €10,000 lodged to this account should be used to reduce the TERM of the mortgage and not the monthly payments.

I have separately arranged for these monthly payments to be increased by €100 per month, which I understand is happening.

Please confirm receipt of this, my second attempt to instruct you in this regard, by post to [Complainant's name and address]. Please also confirm the altered dates for completion of the mortgage.

[This was signed by each of the Complainants].

The second document was a letter of "formal complaint".

06 October 2016

A letter issued from the loan servicing company to the Complainants, in which it notified them that the outcome of its assessment had determined that, the allocation of the lump sum payment of €10,000 would result in a term reduction of 1 year and the monthly instalment would reduce to €738.38. The letter stated as follows:

We write with reference to the above mortgage account and further to your recent letter received 04/10/2016.

We note from your letter that you made a Lump Sum Payment of €10,000 to reduce your outstanding balance on your mortgage and you also advised you would like to reduce the term of the mortgage.

Based on the Lump Sum Payment made of €10,000 the term can be reduced by 1 year and the monthly instalment will be approximately €738.38 per month.

In order to apply the 1 year term reduction to the account please confirm in writing that you wish to proceed with this option which would need to be signed by all parties on the Mortgage Account.

The Provider has submitted, in this regard that:

An assessment of the account was successfully completed on 6 October 2016 and communication of the Bank's proposed term reduction was communicated to the Complainants on the same date. The Bank offered the Complainants a term reduction of one year and a reduction to the monthly instalment from €766.54 to €738.38. The reason the Bank offered the Complainants a term reduction and a reduction to the monthly instalment was due to a system limitation which only allowed the Bank to offer a term reduction of years and not years and months. The Bank would like to

/Cont'd...

confirm that the Complainants would have been at no financial loss over the term of the loan by offering a term and monthly instalment reduction opposed to a term reduction. Our letter of 6 October 2016 also advised the Complainants they would need to confirm in writing they were happy to proceed with the proposed reschedule term and that this option would need to be signed by both parties to the mortgage.

Whilst the Provider has submitted that the reason it offered the Complainants a term reduction and a reduction to the monthly instalment was due to an internal system limitation, which only allowed the Provider to offer a term reduction of years, and not years and months, I note that this was not clearly explained to the Complainants. Because the Complainants repeatedly asserted that they did not wish for any reduction in the monthly amount, it appeared to the Complainants that the Provider was simply failing to carry out their instructions, and that this was compounded by the fact that on a number of occasions they were told that their instructions would be implemented.

If the Complainants had been listened to more carefully and their concerns had been heard, better communication could have avoided a considerable element of this complaint.

Whilst the Provider's position is that the Complainants would have been at no financial loss over the term of the loan by its offering a term and monthly instalment reduction, as opposed to a term reduction, this is in my view most unsatisfactory, as the Complainants' clear instructions were that they did not want to reduce the monthly instalment and that in fact they wished to increase the monthly amount paid so as to reduce the term further.

10 October 2016

The loan servicing company issued a letter by way of acknowledgment of the Complainants' complaint.

13 October 2016

The First Complainant rang the loan servicing company. He noted that although he had requested the money to be applied to reduce the term by the loan servicing company, it had instead, and contrary to his instructions, applied it to reduce the monthly repayments. Regarding the content of the Provider's letter of **06 October 2016**, the Complainant raised his concerns at the proposed term reduction as the term reduction was stated to be one year, which equated to twelve monthly instalments of €766.54 which totalled €9,198.48 when the lump sum allocated was €10,000.

The First Complainant queried how, if a year's mortgage repayments (taken as being €766 multiplied by 12) only equates to approximately €9,108, whether a mistake had been made in the calculations in this regard. The Complainant submitted to the Agent that it appeared that instead of being credited with €10,000 the account was only being credited with approximately €9,000.

The Complainant was transferred to another Agent who told the Complainant that he had calculated that in keeping the repayments at the amount they were, the lump sum payment would result in a reduction of one year to the mortgage term.

The Complainant explained that it didn't make sense to him. He asked:

C: How come, how is it, that when I lodged 10,000 and it reduces the term of the mortgage, meaning there should be less interest to pay, but I don't get the full benefit of the 10,000 I get the benefit of just 9,000. One would imagine that if you pay off a mortgage earlier, that it should work the other way – that you get the benefit of the amount you pay in capital plus a sum of reduced interest.

...

A: Now, from the point of view of, we'll say if we were to key the one year, we couldn't, see, our system only lets us to key it in years, so you're, we say 'one year. Like, it probably could be one year two months or one year three months or one year and a half.

C: Its still, no its still, I need you to be specific.

...This is information that you have to provide me how much does my mortgage cost, if I pay off how much will my mortgage come down by. If you are saying it will come down by one year, you are cheating me.

The Agent said that the lump sum "did reduce your overall outstanding balance and therefore did reduce your monthly payment down from what you were paying before, down to €650.50".

The Complainant explained that this was a mistake by the company. He explained he had given instructions to it, in which he had asked it to reduce the term. He said it didn't do this. He said he had written a letter and subsequently another letter, asking it not to decrease the monthly repayment

He explained that he had arranged over the phone to increase the payment he was making by €100 a month, in order to continue paying off the mortgage as soon as possible. He told the Agent:

What your company did was to reduce the term of my mortgage by applying the 10,000 incorrectly, down to about €650 and then to add on the extra €100 that I wanted to take, that I wanted to pay, and then at the end of September you came to my bank and took about €750, €760 or something like that, out of my account. None of this was what I asked you to do, what I asked you to do, and this is again the subject of the complaint, I asked you to reduce my mortgage by applying the 10,000 and to tell me what that will reduce it by. I did speak to someone in that call on the 09th September, who told me that the mortgage would reduce by two years, which seemed extraordinarily good but I wasn't

/Cont'd...

looking a gift horse in the mouth. But I got your letter this morning ...saying that the €10,000 applied to my account would take 1 year off my mortgage which is a total application of about €9,100.

..That does not apply €10,000 to my mortgage, it applies about €9,000 to my mortgage and I say that's cheating. And secondly, because my mortgage would therefore be of a shorter duration there should therefore be less interest to pay and I say that is the second element where you are cheating me.

The Complainant explained that he needed to have the matter resolved as soon as possible and asked that the company issue its final determination on the issue to him. The Agent concluded the call by said he would "go back over" the calculations.

I note that whilst the Complainant has correctly identified that €766.54 multiplied by 12 (months) equates to an amount less than €10,000, this calculation does not take into account the amount resulting from a reduction in the monthly repayment from €766.54 to €738.38, over the remaining term. However, I do note that a reduction to the payment is not what the Complainants wished to occur.

14 October 2016

The First Complainant wrote a letter to the Provider. It referred to the Provider's letter of **06 October 2016**, and stated:

This represents the third time that I have written such confirmation to you...I am at a loss as to how many times you want this instruction in writing, but for the avoidance of any possible doubt: please take this as instruction to lodge the €10,000 lump sum against the term of the mortgage numbered above."

The Complainant's letter also expressed concern at the Provider's letter of 06 October 2016 on the basis that:

it contradicts information given to me previously...I have been told previously that my mortgage repayments were €766.54 per month. Yet in this letter the bank states: 'Based on the lump sum payment of €10,000 the term can be reduced by 1 year'. There is surely some mistake as 12 times the monthly payment of €766.54 amounts to just 9,198.48.

The Complainant also noted that, "for the avoidance of doubt the amount I was paying per month was €766.54. I want my monthly payment to reflect the additional voluntary increase I have already started paying of €100 per month, making it at least €866 and I want the €10,000 to reduce the term loan".

01 November 2016

The loan servicing company issued a holding letter to the Complainant in relation to his complaint.

/Cont'd...

03 November 2016

The First Complainant rang the loan servicing company and said that he hadn't heard back from anyone at the loan servicing company. The Agent said a holding letter had just issued to him from the Complaints Department.

21 November 2016

The First Complainant rang the loan servicing company. He sounded frustrated and distressed.

He noted that the Loan Servicing Company was still not taking the correct amount of money from his account on a monthly basis. He explained that he had asked on a number of occasions for it to reinstate the monthly payment of €766 and also to have a further €100 taken in repayments, on top of that.

He asked incredulously why it was that the company was preventing him from paying back his mortgage early, and expressed frustration at the fact that, "you are reducing the amount I want to pay every month" adding "please stop dropping my mortgage, I want to pay it off".

The following exchange then occurred:

A: *Your direct debit at the moment [Complainant name] is set up for €750.50. It is not set up for €650, it is not set up for anything less, so it actually is gone back up to in or around what you were paying before.*

C: *That is a mistake. Jesus [Agent's name], this is not difficult to grasp.*

A: *In September...*

C: *I have asked you to take an additional €100 a month out of my account on top of the mortgage. But the mortgage before I started all this was €760. Not €650. It only became €650 when I paid the €10,000 and when I paid the €10,000, I said to you please do not reduce my monthly repayment. I want to reduce the term rather than the monthly repayment....If I pay off more I reduce the term.*

A: *Exactly.*

C: *And this is not rocket science. And I said to you [Agent's name] and I said to everyone, my mortgage before all of this was €760, not €650...*

A: *I know that, yeah.*

C: *...I want to pay off the 10 grand and then I want to add €100 a month on to that €760, to bring it up to about €860 or something around there, €900 would suit me fine, but I did not want, and I told you [Agent] and I have notes on this and there are recordings on this and I told [Other Agent] and I have notes on this and you have recordings on this and I have put it in writing, do*

/Cont'd...

not reduce my mortgage . You have reduced my mortgage. Can you see why I'm mad as hell about this?

A: I can see your point. I totally can. But can I just go back a second and backtrack this for one minute. Before you made the 10,000 payment, your monthly repayment was €766.54, right. On the...

C: What month was the last time...?

A: 28th July was the last time €766.54 was taken. Subsequent to that then you did make a lump sum payment on 10th August of €10,000. On 28th August there was a payment then of €766.54 and on the 28th September there was payment of €750.50..

C: Now, that was a mistake. That's where the mistake came in.

A: Okay.

C: Because what you did, you calculated the €10,000 and you dropped my mortgage to €650 and then you looked at it again and you said, oh, he wants to pay an extra €100 and you brought it back up to seven hundred, and what did you say it was?

A: €750.50.

C: And that's wrong and I have been trying to tell you since 26th September that that's wrong. That's not what I want to do. I wanted you to leave my mortgage at the €760. And I wanted to pay you an extra ten thou...an extra €100 a month, bringing the payments up to at least €860. Now, I can't get you to take money off me. What do I have to do [Agent]?

A: Okay...

C: This not news to you, I told you this before.

A: I never said it was. I'm just saying it is €750.50 at the moment. If you wish to pay an extra €100, then you can pay an extra €100...

C: No, no, no, no, no, no. Do not go there. You are not giving that to me.

A: ...I'm not...

C: ...I am already paying an extra €100. Listen to me, please. I want that €10,000 to affect the term of the loan, not the monthly repayment. That was my instruction when I gave you that money. That has been my instruction ever since. You do not reduce my mortgage to €650, taking that €10,000 in and

/Cont'd...

reduce the monthly payments. I did not want that. That is not why I gave you the money

A: *Oh, I know that. I understand that.*

C: *It is not the same thing. Because reducing my monthly repayments, curtails, eh, does not curtail the length of the mortgage, it is not the same thing...*

The Agent responded by noting that a letter had issued from the loan servicing to the Complainants, on the **13th October 2016**, which stated that it would reduce the term by one year. The Complainant responded it was with regard to that, that he was making contact, to query the figures, as by his calculations, it only amounted to approximately €9,000. The Agent said that the calculations from the Provider advised that it would take one year off the account and that the repayments would be approximately €738.

The Agent responded that €738 represented a slight reduction to the monthly payment. The Complaint responded that he did not authorise any reduction to be made and that he wanted to pay approximately €866.00 per month. The Agent advised the Complainant that he could implement the amendment to the term and increase the monthly instalment by €100.00. The Complainant was told that if the Complainants were to maintain a monthly instalment of €878.17 effective from **December 2016**, the mortgage would reach maturity in **September 2021** opposed to the original maturity date of **July 2023**.

The following exchange occurred between the parties:

A: *Are you telling me that you wish to pay the €760 plus the extra €100 to bring it up to €860?*

C: *Yes, and I want the 10,000 to..*

A: *...Reflect that*

C: *...To come off the term.*

C: *You are now assuring me, are you [Agent] that from now on, my monthly repayment will be €866 and you will take €10,000 as lodged on 10 August off the term of my mortgage.*

A: *Yes, I can do that for you if you want me to do that, I can arrange for that to be done.*

The Agent explained that the calculations might work out at “*a couple of cent either side*” of €866. The Complainant said he didn’t mind, as long as the repayment amount was anywhere between €850 and €900, and as long as it did not go below €850.

The Agent said that it was too close to the November Direct Debit call, to have it effected that month but assured the Complainant that any change would come into effect from **28 December 2016** onwards.

The Agent also advised the Complainant that based on a payment of **€878** per month, the Complainants’ mortgage would expire on **30 Sep 2021**, rather than **July 2023**.

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The Complainant said he needed to see these figures. The Agent said he would put the figures together and issue the information to the Complainants in a letter, and that once the Complainants confirmed that they were happy with the arrangement the loan servicing company could proceed to make the changes, with effect from **28 December 2016**.

21 November 2016

A letter issued to the Complainants, which stated that as a result of the lump sum payment, the new maturity date on the mortgage was, *“estimated 30/06/2022”* and the *“monthly instalment would be estimated €761.24.”*

The letter went on to say that *“taking into consideration the lump sum payment of €10,000 and the extra payment of €100 per month your monthly instalment would be estimated €878.17 and your new maturity date would be estimated 30/09/2021.”*

It advised *“In order to apply the term reduction to the account please confirm in writing the maturity date you would like to be applied to your account from the options above. The instruction must be in writing and signed by all parties on the mortgage account.”*

24 November 2016

The First Complainant spoke with the Agent whom he had previously spoken with on the **21 November 2016**.

The Complainant explained that he had issues with the figures presented to him in the letter and that the term reduction of 13 months proposed by the Provider, reflected an amount of less than €10,000.

He asked the Agent to multiply €761.00 by 13. The Agent confirmed this came to **€9,896.12** and the Complainant responded, *“You told me that you would give me new numbers that would at least reflect the €10,000 I lodged.”*

He said that he did not accept the calculations made by the Provider.

13 December 2016

The Provider issued their Final Response to the Complainants' complaint.

24 April 2017

The First Complainant rang the loan servicing company and advised he wished to make another lump sum payment toward the mortgage account and asked about the effect that this would have. When he asked the Agent to check the amount of monies that were being taken each month, he was told that **€650.82** was being taken monthly. He was incredulous and explained that he wanted €860 per month taken and had asked repeatedly for this to be implemented, asking *“what do I have to do to get you to take the amount of money out of my account that I want you to...?”*

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The Agent told him that the procedure was that he would have to provide written instructions as to how much he wanted to increase the monies by. He said that it should have such instructions but if it wanted him to do it a fourth time, he would. The Agent said that that was the procedure but from what he had told her "it hadn't worked" the previous three times, and she said she would ask her manager if she could take verbal instructions to increase the amount over the phone or whether he would have to submit written instructions again. She also advised that she would check the maturity date if he made a further lump sum payment.

I note that at this stage the Complainant had already been advised by previous Agents on a number of occasions that an increase to the monthly repayment would be actioned and would be taken at the next Direct Debit call. This was the first mention of the Complainants having to provide written instructions to have such a change implemented.

The Complainant subsequently missed a return call from the Agent in question. Upon ringing back, he spoke with a different Agent who advised him that according to a note on his account, if he paid a further €10,000 off the balance, the maturity date would be 2021 but that as it stood the maturity date was 2023.

Upon querying the Direct Debit amount that was being taken from his account each month, the Agent confirmed that the last Direct Debit payment toward the mortgage account was €761 (in **March 2017**) and that prior to that, it had been €650.82 (In **December 2016, January and February 2017**).

The Complainant asked why that amount had changed.

The Agent said that according to the notes on the Complainants' account, the Complainant had spoken to an Agent in February and at that time, he had requested the monthly repayment to be increased from €650 to €761. The Complainant said that wasn't correct. He explained that the previous year he had been paying €761 but that the Provider had contrary to the Complainants' wishes had reduced the monthly repayment. He told the Agent, *"You agreed to reinstate that and to increase the amount by €100. I have a letter that confirmed that you would do that."*

The Agent said she could increase the amount but that it would not be possible to increase it that month but that she would request it to be applied from the next month.

The Complainant told her, *"I have been having this conversation every month since last August"*.

I note that the Provider has acknowledged a number of failings in its/ its outsourced loan servicing administration of the Complainants' loan, as follows:

It acknowledges that it received a lump sum payment of €10,000 on **10 August 2016** and that the Complainants subsequently sent correspondence to its offices detailing their preference with regards the allocation of the lump sum payment which was received by it on **24 August 2016**.

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The Provider acknowledges that the Complainants' correspondence was forwarded to the offices of third party provider

The Provider acknowledges that the Complainants' letter was not uploaded to their account upon receipt and correspondence was issued to the Complainants on **25 August 2016** as a follow up to a conversation which it had with the First Complainant on **22 August 2016** in which it requested the Complainants confirm their preferred option in writing with regards to the allocation of the lump sum payment. The Provider acknowledges that the Complainants did not respond to its letter of **25 August 2016** as they had sent correspondence to its offices a day earlier detailing their preference with regards the allocation of the lump sum payment.

The Provider acknowledges that its letter of **25 August 2016** contained inaccuracies with regards the term reduction in recognition of the lump sum as the term reduction was confirmed as two years. The Provider acknowledges that this information was also reiterated to the First Complainant during a call with its loan servicing company on **10 September 2016** and that he was also given assurances that the information in its letter of **25 August 2016** was accurate.

The Provider acknowledges that the First Complainant was provided with incorrect information on those two dates and that the First Complainant was not advised that the monthly instalment had been reduced and that the original maturity date remained as **July 2023**. The Provider acknowledges that its loan servicing company agreed to increase the monthly repayments by €100.00, which would mean the Provider would apply for a monthly repayment of €866.54 effective from **September 2016**. The Provider submits that it increased the monthly instalment by €100.00; however, the increase to the monthly instalment which was made was to the revised repayment of €650.50 and not the original monthly instalment of €766.54.

The Provider submits that it also recognises that further to its not having actioned the Complainants' request of **August 2016** in which the term of the mortgage was to be reduced, it failed to adhere to the Complainants' requests in **October 2016, November 2016, December 2016, January 2017** and **February 2017** for an increased monthly amount to be taken.

The Provider says that it *"fully appreciates that the level of service experienced by the Complainants does not meet industry standards"* and has offered the Complainants €1,250 "by way of an apology in order to address the level of service they have experienced."

I note that the Provider's position is, *"notwithstanding the above, the Bank would request that it be noted that the Complainants' requests of 4 October 2016 and 21 November 2016 were not actioned as the Complainants subsequently expressed concerns regarding the content of our letters of 6 October and 21 November 2016."*

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However, I also note that the Provider acknowledges *“that the Complainants did not receive adequate clarification with regards the queries raised regarding the content of [its] letters of 6 October and 21 November 2016”*.

Whilst the Provider’s position is that the Complainants were not at any financial loss as a result of its proposed application of the sum, I consider that this fails to take into account the stress and inconvenience occasioned to the Complainants through its failure to implement the Complainants instructions over an extended period of time and/or to communicate effectively with the Complainants.

I note that the Provider has submitted that it was as a result of its own internal system limitations that it was unable to offer a term reduction of anything other than in years up to **21 November 2016** and that this is why there was also a reduction proposed to the monthly repayments. I do not believe that this was adequately explained to the Complainants and am of the view that this caused a great deal of confusion as to how they were receiving the benefit of the €10,000.

The Provider was asked to provide this Office with, *“evidence of compliance by the Provider with the provisions of the applicable Consumer Protection Code”* and that its response was that:

“provision 3.5 of the Code provides : A regulated entity that is in direct receipt from or on behalf of a consumer for a financial product or service must provide that consumer with a receipt.” A receipt acknowledging the allocation of the lump sum payment of €10,000 was issued to the Complainants on 19 August 2016.”

This response suggests a lack of insight into how its conduct has fallen below the standards expected of a financial service provider. I am satisfied that there are a number of instances in which the Provider has failed to adhere to its obligations pursuant to the Consumer Protection Code, 2012, as follows:

A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

2.2 acts with due skill, care and diligence in the best interests of its customers;

2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;

*2.10 ensures that any **outsourced activity** complies with the requirements of this Code;*

2.12 complies with the letter and spirit of this Code.

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*3.3 A **regulated entity** must ensure that all instructions from or on behalf of a **consumer** are processed properly and promptly.*

*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.*

*11.1 A **regulated entity** must ensure that all instructions from or on behalf of a **consumer**, including the date of both the receipt and transmission of the instruction, are recorded. Taking into account the Provider's acknowledged failures in its administration of the Complainants' account, as well as the failures identified throughout the course of this investigation and adjudication, including the unclear and inconsistent information furnished to the Complainants, the period of time during which the Provider's actions have impacted upon the Complainants and their goal of bringing forward the maturity date of their mortgage together with the associated stress and inconvenience that this has caused the Complainants, I consider that it is appropriate to uphold the complaint.*

I note that the Provider has indicated that as at 23 May 2017 the maturity date remained as **July 2023** and that the term of the Complainants' mortgage had not been amended to reflect the allocation of the lump sum payment, because the monthly instalment had not been formally increased. It has indicated that it is holding the extra repayment amounts paid by the Complainants in credit.

It is clear to me that the appalling communication on the part of the Provider has resulted in great stress and inconvenience to the Complainants.

If anyone in the employ of the Provider had taken the time to listen to the Complainants and understand the circumstances, I have no doubt that this situation could have been avoided. Instead, the Complainants were forced to tell their story over and over again, both in writing and by telephone and no one in the Provider took any interest or responsibility for rectifying the matter.

I note that the Provider has previously offered the Complainants a compensatory sum of €1,250. I do not, however, believe that this is at all sufficient to reflect the conduct which occurred and which I have identified throughout the course of this Decision. To mark the Provider's failings and the attendant inconvenience caused to the Complainants, I consider that the sum of €10,000.00 is more appropriate in this regard. This sum is also intended to take into account any financial prejudice which the Complainants have incurred as a result of the Provider's acts and omissions.

If the Provider has not already applied the credits to the Complainants' account, to effect a reduction in the term, it should proceed to do so upon receipt of the instructions of the Complainants to this effect.

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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 upheld, on the grounds prescribed in **Section 60(2)(b)(f) and (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €10,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

2 May 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.**