



<u>Decision Ref:</u>	2019-0165
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Loans
<u>Conduct(s) complained of:</u>	Application of interest rate Errors in calculations
<u>Outcome:</u>	Partially upheld

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

Background

This complaint is in respect of a mortgage taken out by the Complainant with the Provider. The Complainant states that he has been overcharged on this loan.

The Complainant's Case

The Complainant took out a mortgage loan in **2006** with the Provider to assist with the purchase of a business premises for his Company.

The Complainant states that he made monthly repayments of €4,144.78 from **1 December 2006** to **2 June 2009**. On **1 July 2009** the Complainant voluntarily increased his monthly repayments to €5,500 and continued paying this increased amount until **December 2010**. From **4 January 2011** to **1 December 2014**, the Complainant made monthly repayments of €4,528.53.

In **August 2014**, the Complainant contacted his Provider to discuss extending the length of the term of his mortgage.

In **September 2014**, an account manager with the Provider quoted the Complainant varied repayment amounts based on a fifteen, sixteen, seventeen, eighteen, nineteen and twenty year mortgage period.

On **3 October 2014**, the Complainant emailed his account manager to confirm that he wished to proceed with a twenty-year mortgage for €345,000. The Complainant followed up on this email with the Provider on **9 October 2014** to enquire whether the account manager had received the email. The account manager responded the same day to confirm receipt of the Complainant's email dated **3 October 2014**.

Throughout October, November and December 2014 the Complainant made repeated attempts to persuade the Provider to advance his mortgage extension application, however his application was never processed. During this time the Complainant continued to pay €4,258.23 per month.

The Complainant states that in **December 2014** he reduced the mortgage repayments to €2,000, hoping that this would encourage the Provider to meet with him to discuss his mortgage extension application.

The Complainant states that the account manager never reported back to him on his mortgage loan application. On **4 March 2015**, the Complainant received an email from the account manager requesting more information and seeking to arrange a meeting with the Complainant. The Complainant telephoned the account manager, he received no answer and left a message for her to telephone him back.

The Complainant did not hear from the account manager until **16 September 2015** when the Complainant was told that she was moving department and that his account would be taken over by her colleague.

It is not clear whether the provider contacted the Complainant between December 2014 and September 2015 about any arrears on the loan, since the Complainant was paying €2,000 a month during this period. This was €2,258.23 less than the contractual payment of €4,258.23. The new account manager telephoned the Complainant on **16 October 2015** and they arranged a meeting to take place on **24 November 2015**. The Complainant attended the meeting with his father and his accountant. The Complainant states that his accountant presented a viable fifteen year plan to the account manager based on the information received from the previous account manager and on a valuation of the building carried out by an auctioneer.

The Complainant states that this plan allowed the Provider to move the Complainant from a loss-making tracker mortgage to a fifteen year mortgage which the Complainant would be able to meet with lower repayments.

The account manager advised the Complainant that as the mortgage was in a distressed state, the only option available to the Complainant would be the sale of the asset. The Complainant's accountant explained to the account manager that if the asset was sold, there would be a shortfall of €90,000 that the Provider would lose. The Complainant states that the account manager told him that he would be pursued through the courts to pay the shortfall.

The Complainant states that he asked the account manager the following questions:

"I had approached the Provider in August 2014 when the account was fully up to date for assistance or to extend the term out as I had foreseen the repayment becoming too much for the Company and the Provider had never come back to me despite me chasing for nearly 6 months....

I had increased the repayment myself in 2009 for 18 months and the interest rates had dropped significantly in the last 4 years so I asked him how I was in arrears or even if I was how much was I in arrears?"

The Complainant states that the account manager did not have answers to these questions but assured the Complainant that he would revert immediately on these questions and that these points would be taken into consideration and discussed before the Provider made any decision.

The Complainant states that he did not receive any correspondence from the account manager following their meeting. On **16 December 2015**, the Complainant emailed the account manager asking him to forward the information he promised the Complainant at their meeting on **24 November**:

"You explained that you had taken over our file in summer of 2015 and that you did not have all the details available to you. You suggested there may be an issue with the account that needs to be addressed and that you would evaluate same and refer back in due course...

We made you aware of the following points that you did not know about and you wished to cross check against [the Provider's] records:

- 1. Original loan payment figure was €4144.78*
- 2. From July 2009 I increased my payment to €5500 per month for 18 months*
- 3. We communicated months in advance of making our repayment change that we may have an issue and could someone in the Provider's office assist us*
- 4. A member of the Provider's team did start this procedure and then did not follow up accordingly (We gave you copies of these communications)*
- 5. We suggested that in reality the original schedule may not be out of line with the planned expectation at the 31.12.2015 (or very little out)"*

The account manager replied to the Complainant's email on **24 December 2015**:

"I note your comments below and apologies for not reverting sooner. I am on annual leave until 4/1/2016 and will address your points raised on my return"

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On **16 February 2016**, the account manager telephoned the Complainant. The Complainant states that the account manager told him that the Provider would not assist him with his application to extend the loan. The Complainant was told that he had three options available to him at this point:

1. *“Pay back the loan in full by the end of March 2016;*
2. *Secure finance from another Provider and pay back the loan in full by the end of March 2016;*
3. *Or Your loan will be sold to another group or provider”.*

On **23 February 2016**, the Complainant received an email from the Provider:

“I have reviewed your repayments since drawdown and comment as follows:

- *Loan was drawn down over a period between 20/10/2006 and 24/11/2006, totalling €607,000 over a 15 year period.*
- *Monthly repayments of €4,144.78 commenced on 1/12/2006, running until 2/6/2009.*
- *Increased monthly repayments of €5,500 commenced on 1/7/2009, running until 1/12/2010.*
- *Over this 18 month period and on the basis of the original month repayment amount of €4,144.78.*
- ***This equates to an overpayment of circa €24,393.96.***
- *On 4/1/2011 monthly repayments recommenced at €4,433.22, running until 3/10/2011 and then increasing to €4,528.53 from 1/11/2011 until 1/12/2014.*
- *From the 6/1/2015 to date monthly repayments decreased to €2,000 with the exception of a missed repayment in May 2015, €4,000 lodged in August 2015 and €4,528 lodged in December 2015.*
- *Monthly repayments in January and February 2016 have continued at €2,000.*
- *The net effect of the reduced repayments between January 2015 to date, based on the last full repayment amount of €4,528.53 is that we should have received 14 repayments of €4,528.53, totalling €63,399.42 Vis a Vis repayments received during this period of €30,528. **This equates to an underpayment of circa €32,871.42.***
- *On the basis of the above calculations the loan is net in arrears in the sum of circa €8,477.46”*

On **4 March 2016**, the Complainant’s father replied to the Provider’s email of **23 February 2016**.

“Your message seems to signify that at the time of our meeting last November that our Mortgage Account was not actually in arrears as we suggested on the day. We are also not sure if your calculations fully cover the dramatic drop in interest rates from August/September 2011 to date and there may still be some variance to be calculated in our favour”

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On **10 March 2016**, the Provider replied to the Complainant's father's email of **4 March**:

"The calculations as detailed in my email of 23 February 2016 have been purely based on the repayments received vis a vis the agreed payment schedules. The calculations do not account for any variances in interest rates, as I don't have access to a calculator to allow me to determine same...."

...The Provider's stated outcomes for the Complainant's borrowings with the Provider remain, namely:

- 1. Full repayment of the outstanding debt by 31 March 2016 or*
- 2. Full refinance of the outstanding debt with another Provider by 31 March 2016, or*
- 3. Sale by the Provider of the debt to a third party"*

On **23 August 2016**, the Complainant wrote to the Provider and submitted a data access request for his file to assist with his complaint against the Provider. The Complainant states that he did not receive a response to this letter.

On **12 December 2016**, the Complainant instructed his solicitors to write to the Provider calling upon the Provider to furnish the Complainant with a full schedule of all payments to date, interest rates and payments charged together with full particulars of the alleged arrears outstanding. Furthermore, the letter complained of overcharging by the Provider on the Complainant's account.

The Complainant states that he never received his mortgage schedule or an accurate breakdown of the alleged arrears from the Provider.

On **16 December 2016**, the Provider through its solicitors replied to the Complainant:

"We are instructed that the Provider denies that your clients have been overcharged interest in respect of this Facility...."

In the interest of fairness however the Provider is agreeable to and has already commenced carrying out an interest recalculation exercise to ensure that no such overcharging took place in respect of the Facility and the Provider will be in a position to share with you and your client the outcome of such exercise in early January."

The Complainant states that the Provider did not complete the review in **January 2017**, that the review was only finally completed in **August 2017**. The Complainant further states that no mortgage schedule or breakdown of alleged arrears was included in the Provider's letter of **16 December 2016**.

On **2 February 2017**, the Complainant's solicitors wrote to the Provider seeking a copy of the recalculation exercise that the Complainant had been told would be carried out by the end of **January 2017**.

The Complainant did not receive a response to the letter of **2 February 2017**.

On **14 February 2017**, the Complainant's solicitors again wrote to the Provider to remind the Provider to furnish the Complainant with its findings from the recalculation exercise. In addition, the letter requested the following information be furnished to the Complainant:

1. *Confirmation of the basis of their interest charges*
2. *Details of calculation of the rate of interest used to compute each periodic interest charge of the loan*
3. *Details of the computation of the periodic amounts of interest charged on the loan*
4. *How the overpayments have been applied to the principle*

The Complainant's solicitor received an email acknowledging receipt of the letter and that the Provider's solicitor would revert in due course once he had received an update from the Provider.

The Complainant did not receive any response to this letter.

The Complainant states that at all times he has tried to get the Provider to furnish him with the correct mortgage figure to allow the Complainant to settle the mortgage.

The Complainant is seeking firstly, for the Provider to furnish the Complainant with the documentation that was requested on a number of occasions. Secondly, for immediate resolution of all issues to allow the Complainant keep a loan approval offer from an alternative provider.

The Provider's Case

The Provider states that, in 2005, when the Complainant applied for the mortgage for a commercial industrial unit in his own personal name, which was financed by the Provider over 15 years.

On **17 October 2005**, the Provider issued its loan facility letter which confirmed the Provider's approval to a loan of €540,000 repayable over 15 years. The loan repayments were initially set at €3,957.41 per month to repay the capital and interest over 15 years. The interest rate quoted was the Provider's variable Prime 1 rate plus 1.25%. The Provider states that the Complainant confirmed his acceptance to the terms and conditions of the facility letter by signing it and returning it to the Provider.

The Provider summarises the transactions on the loan account as follows:

“24 October 2005 – A loan of €540,000 was approved. A partial draw down of €70,010.00 was made. Quarterly interest thereafter was charged to the loan noting that the building being financed was at that time in the course of construction.

30 May 2006 – the customer lodged €39,920.00 in reduction of the loan leaving the balance at €31,842.03.

13 October 2006 – with quarterly interest charges, the balance of the loan had increased to €32,241.81”

The Provider states that the above summary explains the source of the disputed amount of €32,241.81 and that it had been correctly calculated by the Provider. It explains the changing balances as follows:

On **30 May 2006**, a lodgement of €39,920.00 reduced the balance of the loan to €31,842.03. The Provider states that by **13 October 2006** the loan balance had risen to €32,241.81 following the charging of standard quarterly interest.

On **20 October 2006**, The Provider states that the loan balance was at €572,241.78. The Complainant had meanwhile sought additional finance from the Provider of €100,000 to assist with improvements to the property and the total facility of the loan was increased from €540,000 to €640,000.

On **13 November 2006** the Provider issued a new facility letter in the amount of €640,000. This letter states that:

“This Facility Letter supersedes all prior agreements, arrangements or correspondence between the Bank and the Borrower in relation to the Facility”

The Provider submits that this 2006 Facility Letter supersedes the original 2005 Facility Letter. The Provider states that the loan was to be repaid over 15 years from the date of the first draw down (which took place on **24 October 2005**) with monthly repayments of €4,961.93. The Provider states that it decreased the interest margin to 1.25% over its variable rate cost of funds. The 2006 Facility Letter stated that the drawdown of remaining €62,000 was to be made in one amount.

On **24 November 2006** the amount of €62,000 was drawn down. This amount represents the remainder of the total available loan facility. This left the loan balance at €639,241.81.

On **1 December 2006** repayments in the amount of €4,144.78 commenced in reduction of the loan. The amount of €4,144.78 was lodged on a monthly basis from **December 2006 until 2 June 2009**.

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The Provider states that it is satisfied that the correct interest rates were applied on its systems from the date of the first draw down on **24 October 2005** to the date of closure of the loan. In relation to this interest rates, the Provider states as follows:

“The initial rate applied to our systems was a rate of Prime 1 plus 1.25% on 21 October 2005. This is the correct rate for the initial loan of €540,000 and as detailed in the accepted facility letter dated 17 October 2005. Prime 1 rate included a margin to the Provider of 0.50% and the total margin to the Provider was 1.75%.

In May 2016 the Provider changed the way it quoted its rates and the Prime rates were removed. The rate was changed for Prime 1 + 1.25% to Cost of Funds plus 1.75%. The margin to the Bank remained the same with no impact on the customer. This rate of costs of Funds + 1.75% continued to be applied to the loan until 7 November 2006.

Our records confirm that on 8 November 2006, the Provider’s margin was decreased to cost of Funds + 1.75%. This is consistent with the terms of the subsequent accepted facility letter dated 17 November 2006. This rate was correctly applied to the loan to closure.”

The Provider states that its records indicate that the loan interest rate was correctly applied to the loan account however, the amount of the standing order was incorrectly applied. As per the 2006 Facility Letter monthly repayments should have been €4,961.63. The monthly repayments were incorrectly set at €4,144.78 as the calculation was based on a 20 year loan instead of a 15 year loan. The Provider states that this was an error on its behalf and it apologises for this.

The Provider states that from **1 July 2009 to 1 December 2010** the repayment amount was increased to €5,500.00 with the agreement of the Complainant. The Provider states that it is unclear who initiated the change to the standing order in 2009 and it noted the Complainant’s comment that he initiated the change.

The Provider states from **January 2011**, a new monthly repayment of €4,433.22 commenced which was calculated to repay the loan over the remaining term. From **November 2011** the repayment amount was increased to €4,528.53 to take into account that the variable rate of interest had risen. The Provider states that it was satisfied with this arrangement and that this was designed to have the loan repaid by expiry.

The Provider states that monthly repayments of €4,528.53 continued until **1 December 2014**. The Provider states that it did not classify the loan as being in arrears as monthly repayments had been met.

From **January 2015**, the monthly repayments reduced to €2,000.00 and it is from this date that the Provider classifies the loan as having gone into arrears. The Provider states that the repayment of €2,000 was sufficient to cover interest with only a small part of that payment available towards reducing the capital.

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The loan repayments of €2,000 continued until **18 February 2016**. The Provider accepts that it did not communicate with the Complainant clearly the detail of the arrears. The Provider states that it appreciates that the Complainant was provided with incorrect and unclear information as to the level of arrears and how they were incurred.

The Provider states that the loan was sold by the Provider in 2016 as part of a loan disposal process to a third party. The Provider states that the Complainant is dissatisfied that the Provider sold his loan to a third party and the Complainant believes that the Provider has overcharged his loan by €32,241.81.

The Provider states that it has now been able to locate the historic account statements. These have been supplied in evidence to this Office. These statements document the relevant transactions on the accounts and purport to show how the amount of €32,241.81 was arrived at. The Provider states that there was no error of €32,241.81 in the calculation of the loan balance as alleged by the Complainant.

The Provider states that the matter was resolved and communicated to the Complainant. The Provider states that it undertook an interest recalculation on the account and on **1 August 2017**, it informed the Complainant that the interest on the account had been recalculated and a refund of €5,233.46 was offered to the Complainant in respect of this. The Provider states that the Complainant did not take up its offer to pass the amount to the new owners of the loan. The Provider states that this offer remains open to the Complainant.

The Provider states that as the standing order was incorrectly set up, it accepts that the Complainant was not responsible for the incorrect repayments on the loan. Therefore, the Provider did not class the Complainant as being in arrears until the Complainant reduced the loan repayments to €2,000 in January 2015.

The Provider notes that the Complainant is dissatisfied with how his loan and complainant in relation to it was managed by the Provider. The Provider recognises that the repayment standing order was incorrectly set up by the Provider in 2006. The Provider states that it has committed to refunding the overpayment of interest it charged.

The Provider accepts that the account manager did not respond to the Complainant in late 2014 when he sought to renegotiate his loan. The Provider further accepts that this aspect of the complaint should have been upheld in the Provider's letter of **1 August 2017**.

The Provider recognises that there were delays in responding to the Complainant's complaint and it apologises for this.

The Provider is offering the amount of €8,500 to the Complainant in settlement of all aspects of the complaint.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has overcharged the mortgage loan account in the amount of €32,241.81. Additionally, that there have been delays and poor communication by the Provider in its dealings with the Complainant, including a failure to provide him with a Final Response Letter to allow him to progress his complaint with this Office and a failure to provide a Mortgage Payment Schedule when requested to do so.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 23 May 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.

It is evident from the volume of documentary evidence before me that the Complainant has at all times attempted to engage with the Provider but without success. The complaint arises from a mortgage account taken out by the Complainant with the Provider in 2005 for the purposes of purchasing a business premises.

The Provider summarises the transactions on the loan account as follows:

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“24 October 2005 – A loan of €540,000 was approved. A partial draw down of €70,010.00 was made. Quarterly interest thereafter was charged to the loan noting that the building being financed was at that time in the course of construction.

30 May 2006 – the customer lodged €39,920.00 in reduction of the loan leaving the balance at €31,842.03.

13 October 2006 – with quarterly interest charges, the balance of the loan had increased to €32,241.81”

The Provider states that the above summary explains the source of the disputed amount of €32,241.81 and that it was correctly calculated by the Provider. This is the exact amount which the Complainant states he has been overcharged on his mortgage in his submissions to this Office.

On 26 October, the Complainant drew down a further €540,000 resulting in a borrowed total of €572,241.81. The Provider then approved a further loan facility of an additional €100,000. On **13 November 2006** the Provider issued a new facility letter in the amount of €640,000. This letter states that:

“This Facility Letter supersedes all prior agreements, arrangements or correspondence between the Bank and the Borrower in relation to the Facility”.

The Provider submits that this 2006 Facility Letter supersedes the original 2005 Facility Letter.

On foot of the new Facility Letter, the Complainant drew down a further €62,000 on 24 November, bringing the total amount borrowed to €639,241.81 against an approved facility of €640,000.

The Complainant commenced repayments of €4,144.78 on **1 December 2006**. In or around mid-2009 the Complainant increased the monthly repayments to €5,500. The Complainant states that he paid this increased amount of his own accord and was not requested to do so by the Provider.

In 2011, the Complainant decided to repay a smaller amount per month as he was finding it difficult to meet the increased payments of €5,500. The Complainant contacted the Provider and it set a repayment amount of €4,433.22 which began in **January 2011**. In **November 2011**, the Provider contacted the Complainant to inform him that it had made a mistake and that repayments would have to be made in the amount of €4,528.53. The Complainant agreed to begin repaying this amount.

I note from the Facility Letter dated **13 November 2006** that repayments should have been made in the amount of €4,961.63 from the outset of the loan and not €4,144.78. The Provider accepts that it made an error in this regard by applying a 20 year loan calculation instead of a 15 year loan calculation.

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In **August 2014** the Complainant contacted the Provider in an attempt to extend the duration of his mortgage. The initial adviser that the Complainant was dealing with agreed to give the Complainant a quote based on extending the mortgage over a longer period of time.

On **3 October 2014** the Complainant emailed the adviser confirming that he wished to proceed with a 20 year mortgage for €345,000. The Complainant received email confirmation six days later that the adviser received this email, but did not receive any further correspondence in respect of this from the Provider.

In **September 2015** the Complainant was informed that his account adviser was changing. The Complainant met with the new account adviser on **16 October 2015** to discuss his mortgage extension application. At this point the Complainant was informed that his account was in arrears. The Complainant attempted to obtain information as to how he was in arrears and the amount of the arrears. This information was not made available to the Complainant.

I note that in 2015 the Complainant made 12 repayments in the amount of €2,000 and an additional repayment of €2,528.00.

In **February 2016** the Complainant was informed that the Provider would not assist him with his application to extend out the loan period. The Complainant was given three options by the Provider:

*“Pay back the loan in full by the end of March 2016;
Secure finance from another Provider and pay back the loan in full by the end of March 2016 or
Your loan will be sold to another group or Provider”*

I note from the email correspondence between the Complainant and the Provider that the Complainant was seeking information on the exact arrears amount. By email dated **23 February 2016** the Complainant received some information on his repayments since drawdown. These figures did not take into consideration the drop in interest rates from August/September 2011. Remarkably, the Provider in an email to the Complainant dated **10 March 2016** stated:

“The calculations do not account for any variances in interest rates, as I don’t have access to a calculator”.

I note that on **11 March 2016**, the Complainant offered to settle the outstanding amount through an 80% settlement of his mortgage. This was rejected by the Provider on **24 March**. On **29 March**, the Provider re-iterated the same three options as above. On **12 June**, the Complainant offered a 90% settlement figure and on **24 June** a 94% settlement. Both were rejected by the Provider who responded that, “Full payment is required.” On **8 July** the Provider repeated the same three options were available as in February. On **28 August** the

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Provider told the Complainant that the sale of the loan to a third party was too far advanced to halt the process.

On **4 August 2016** the case manager for the Provider discussed the loan with his senior manager and wrote, *"It was agreed that no consideration would be given and we would deal with the [Complainant's] complaint when it arrives."* The following day the same manager informed the Complainant's father that *"the Bank would show no financial consideration of the company overdraft."*

While I will not interfere with the commercial discretion of the Provider, I can examine the conduct of the Provider in considering or not considering any request by the Complainant.

In that regard, I note the uncompromising approach taken throughout by the Provider, which I find surprising and most disappointing given that it was its misplacement of key documents, poor communication and miscalculations which had given rise to the overall situation in the first place, all of which the Provider accepts. The refusal even to discuss the proposed settlement figures in June shows an unreasonable and unacceptable level of intransigence towards the Complainant.

I note from the submissions before me that the Complainant claims to have suffered significant psychological effects from the long and difficult process including counselling and psychotherapy. I am not in a position to establish if the Provider is responsible for these. What is clear to me is that the conduct of the Provider caused great inconvenience to the Complainant, much of which could have been avoided, through better communication.

With respect to the complaint that the amount of the mortgage was overcharged, I have not been provided with evidence which supports this contention. The Provider has submitted clear evidence to this Office which explains the position with regard to specific reference to the amount of €32,241.81. The separate issue of the miscalculation of the interest on the loan and the overpayment of that interest has been acknowledged in the Final Response Letter of the Provider.

I note that the Complainant never received the documentation that he had requested from the Provider on many occasions in relation to mortgage schedule and breakdown of alleged arrears.

The Complainant's solicitor wrote to the Provider on 12 December pointing out that the Complainant, at a meeting on 24 November 2015 had asked the Provider's account manager responsible for his account for a *"full schedule of all payments to date, interest charged and arrears owing"*.

The letter went on to outline, among other things, that the Complainant had obtained a forensic accountant report which had concluded:

- "(i) There are unexplained differences between documents prepared by [the Provider] in respect of balances outstanding. One such difference is in the sum of €32,241.81.*

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- (ii) *There is no consistent margin charged in relation to the rate of interest when compared to the ECB rate”.*

It further stated:

“Our client also believes you have overcharged him on his mortgage by applying the incorrect interest rate and are in breach of your obligations pursuant to your mortgage contract”.

In this correspondence, the solicitor, once again on behalf of the Complainant, stated:

“We also call upon you to provide us with a full schedule of all payments to date, interest rates and payments charged together with full particulars of the alleged arrears outstanding”.

The Complainant’s solicitor received a response to this correspondence dated 16 December from the Provider’s solicitors.

This stated *“we are instructed that the Bank denies that your clients have been overcharged interest in respect of this Facility”.*

The correspondence goes on to state:

“In the interest of fairness however the Bank is agreeable to and has already commenced carrying out an interest re-calculation exercise to ensure that no such overcharging took place in respect of the Facility and the Bank will be in a position to share with you and your client the outcome of such exercise in early January. To the extent that such an exercise reveals any overcharging the Bank will of course comply in full with its regulatory obligations in this regard as originator of the Facility and your client’s rights in this regard will not be impacted by the Transfer”.

In its Final Response Letter dated 1 August 2017, the Provider stated that there was an overpayment of interest of his loan account in the amount of €5,233.46, which the Provider offered to pay to the third party which had purchased the loan.

I note from the correspondence between the Complainant’s solicitor and solicitor for the Provider that the Complainant was promised a full review of his mortgage would be completed by the end of **January 2017**. Having sent a number of reminders, the Complainant states that he did not receive this information.

On **23 August 2016** the Complainant wrote to the Provider informing it that he was proceeding with his formal complainant against the Provider. The Complainant did not receive a response to this letter.

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The Complainant made a complaint to this office on **15 March 2017**. The Complainant had not been furnished with a Final Response Letter. On **27 March 2017** this Office wrote to the Provider requesting that it review the Complainant's complaint and issue a Final Response Letter within the following 15 working days.

On **8 May 2017** the Provider wrote to this Office stating that it had issued a response to the FSPO letter [dated 27 March 2017] on **21 April 2017**. However that response had not reached this Office. For that reason, the Provider enclosed a copy of its letter dated **21 April 2017** in its 8 May response.

The Provider states in its letter dated **21 April 2017** that:

"The Provider does not believe that the letter dated 12 December 2016 from the Complainant's Solicitors was a complaint but rather a letter before action...

...on this basis and legal advice received we do not believe that this issue falls within the scope of the Ombudsman's office".

The Complainant received the same letter from the Provider on **12 May 2017** which the Provider sent to this Office dated **21 April 2017**.

This Office again wrote to the Provider on **26 May 2017**. On **9 June 2017** this Office received a response from the Provider which included the following:

"...Our solicitors confirmed to the Complainant's solicitors that the Provider was willing to undertake a review of the interest charged. Regrettably, this piece of work has not yet been completed.

...In the circumstances, we have now logged a complaint on our systems and will liaise directly with the Complainant..."

The manner in which both the Complainant and this Office were treated by the Provider is most unacceptable.

Any reasonable person reading the letter from the Complainant's solicitor would understand that the Complainant had been forced to engage the services of a solicitor in order to get some response from the Provider.

The main purpose of the letter was to try once again, after many previous attempts, to get certain information from the Provider in relation to the Complainant's mortgage which he had sought time and again.

It is evident from the Complainant's solicitor's correspondence that the Complainant was firmly of the view that he had been overcharged interest.

/Cont'd...

I am at a loss to understand the Provider's assertion in its letter of 21 April 2017 that the Complainant's solicitors letter of 12 December 2016 "*did not seek an explanation or justification but rather demanded we reverse certain legal decisions made within the permits of our relationship within five days*".

Further, that letter goes on to say "*...on this basis and legal advice we do not believe that this issue falls within the scope of the Ombudsman's office*".

The Complainant's solicitor's letter of 12 December 2016 did, clearly in my view, seek both explanations and justification for the conduct of the Provider.

It very clearly stated that the Complainant believed he had been overcharged interest by the Provider. He was indeed later proved to be correct in this assertion and I find the Provider's efforts to avoid dealing with him and responding to his requests for information to be compounded by its efforts to avoid the jurisdiction of this Office and its reluctance to provide responses to this Office.

Despite a significant amount of letters being sent by this Office to the Provider, the Complainant did not receive a Final Response Letter until **1 August 2017**. This was a very frustrating process for the Complainant and it is disappointing and unacceptable how both he and this Office were treated in this manner by the Provider.

I note that the Provider has offered the sum of €8,500 to the Complainant in settlement of all aspects of the complaints. However, given the appalling communication, combined with its efforts to avoid dealing with the Complainant's complaint, resulting in considerable delay and inconvenience caused to the Complainant by the Provider, I do not find that this amount is at all sufficient, particularly given that it is accepted that the Complainant was overcharged in the amount of €5,233.46. This would leave a sum of only €3,266.54 as compensation for the delay and inconvenience, caused to the Complainant.

For the reasons set out above, I partially uphold this complaint and I direct the Provider to pay the sum of €20,000 to the Complainant. This is in addition to the interest overpayment of €5,233.46.

I note the Provider's offer was to refund the interest to the entity to which it sold the Complainant's loan. I will be directing that both the €20,000 and the €5,233.46 be paid directly to the Complainant to an account of his choosing.

Conclusion

My Decision is that this complaint is partially upheld, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2) (b), (d), (f) and (g)**.

I direct pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the sum of €20,000 and the sum of €5,233.46 be paid by the Provider directly to the Complainant.

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**

17 June 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.