



<u>Decision Ref:</u>	2019-0237
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Multiple Products/Services
<u>Conduct(s) complained of:</u>	Failure to provide accurate account/balance information Fees & charges applied Maladministration
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns the Complainants' accounts held with the Provider.

On 14 October 1997 the Complainants drew down mortgage loan account (ending in '4953). On 17 September 1999 the Complainants drew down a secured personal loan account (ending in '7683) which was secured against the Complainants' property. The Complainants submit that discrepancies occurred on their loan accounts between 2001 and 2008, which they only became aware of in September 2014.

The Complainants' Case

The Complainants submit that between 2001 and 2008 they lodged funds into their current accounts (accounts ending in '3841, '4585 and '1930) to meet the repayments on their loan accounts (accounts ending in '4953 and '7683). The Complainants submit that these lodgements were never transferred to the loan accounts.

The Complainants submit that in relation to loan account ending in '7683, they have calculated the payments which were due over the years to total €48,362.44 for the original loan amount of €25,394.76. The Complainants submit that they have paid €32,207.43, and question why they have been charged €48,362.44 on the initial loan amount of €25,394.76.

The Complainants submit that in relation to mortgage loan account ending in '4953 the loan repayments amount to €71,085.28 for a loan amount of €44,440.83. The Complainants submit that they have already paid €50,535.02, together with the unaccounted payments of €3,967.28, which they state is an overpayment of €10,061.47 on the original loan amount of €44,440.83.

The Provider's Case

The Provider submits that it does not have access to account records to investigate and inform itself as to the substance of the transactions complained of. The Provider states *"It is not the case that the Bank is declining to investigate the matter or acting contrary to its obligations, the legal time limit for retention of the required records has long since passed and it is not possible for the Bank to access those records. The Bank fully investigated and responded to those queries that were within the requisite time frame in its response dated 7th January 2015"*.

The Provider submits that annual statements are issued on all mortgage and term loan accounts, and in addition customers receive regular statements on current accounts. The Provider states that *"The onus is on the customer to raise any query regarding the transactions detailed therein on receipt of the statement"*.

The Provider submits that the terms and conditions of the current accounts state it is the duty of the customer to examine and check the correctness of all entries on account statements promptly after receipt and to advise the bank of any errors or discrepancy found therein. It states that *"In the absence of such a report from the Customer the statement shall as regards the Customer thenceforth be conclusive evidence of the correctness of the entries recorded therein"*. The Provider states that *"the failure to make such a report within the allotted period (initially 42 working days which was amended in 2010 to 30 days) shall constitute a representation by the Customer to the Bank that the statement is correct and the Bank will not be liable for any loss"*.

The Provider submits that account numbers ending in '3841 and '1930 have been purged from its systems as any activity on these accounts ceased more than 6 years ago. The Provider states, *"Consequently we are unable to address any issues regarding these accounts"*.

The Provider states that it *"maintains that repayments and interest pertaining to Mortgage Account number [ending in '7683] were applied correctly and in accordance with the Terms and Conditions of the account"*.

The Complaint for Adjudication

The complaint is that the Provider failed to transfer funds to the Complainants' loan accounts, which led to arrears occurring on the accounts.

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 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 12 July 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, within the period permitted, I set out below my final determination below.

Before turning to the issue at hand, I would point out the following:

Provision 51 of the Financial Services and Pensions Ombudsman Act 2017 provides, among other things, the following:

"51. (1) A complaint in relation to conduct referred to in section 44(1)(a) that does not relate to a long-term financial service shall be made to the Ombudsman not later than 6 years from the date of the conduct giving rise to the complaint.

(2) A complaint in relation to—

/Cont'd...

(a) conduct referred to in section 44(1)(a) that, subject to the requirements specified in subsection (3), relates to a long-term financial service, or

(b) conduct referred to in section 44(1)(b), that is subject to the requirements specified in subsection (4), shall be made to the Ombudsman within whichever of the following periods is the last to expire:

- (i) 6 years from the date of the conduct giving rise to the complaint;*
- (ii) 3 years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct giving rise to the complaint;*

...

(3) The requirements referred to in subsection (2)(a) are that—

(a) the long-term financial service concerned has not expired or otherwise been terminated more than 6 years before the date of the complaint, and the conduct complained of occurred during or after 2002, or

...”

Consequently, this Office will not be examining any conduct complained of prior to 2002.

The first Complainant submits that she made most of the unaccounted payments into an old account ending in ‘3841, and when she asked the Provider for statements for this account she was informed that this account did not exist anymore. The Complainant states that “*I can’t understand why they closed/cancelled it without my permission, I always thought & still do, know that, unless I give a letter giving any bank the permission to close my accounts they don’t have a right to close an account without my permission... And how can they close one account & not close another account that I haven’t used over six years, which is acc/no [ending in ‘4585]”.*

I note that account number ending in ‘3841 is a current account and is therefore not a long-term financial service. The Provider submits that account numbers ending in ‘3841 and ‘1930 were closed in 2004, and consequently, this aspect of the complaint cannot be examined as the conduct complained of occurred more than 6 years from the date the complaint was made to this Office.

The issue to be determined is whether the Provider incorrectly failed to transfer funds to the Complainants’ loan accounts during the period 2002 to 2008, which led to arrears occurring on the accounts.

The Complainants submits that between 2001 and 2008 they lodged funds into their current accounts (accounts ending in ‘3841, ‘4585 and ‘1930) to meet the repayments on their

/Cont’d...

mortgage loan and secured personal loan account, however the funds were not transferred to their accounts which resulted in arrears on their accounts.

The Provider submits that it issues statements on mortgage and term loan accounts on an annual basis and customers would also receive regular statements on their current or cashflow accounts. The Provider states that *"In the event the account holder had any queries or concerns relating to transactions or account history it should be brought to the attention of the Bank as soon as possible following review of the Statements"*.

The Provider submits that the terms and conditions of current accounts state it is the duty of the customer to examine and check the correctness of all entries on account statements promptly after receipt and to advise the bank of any errors or discrepancy found therein. The Provider states that *"In the absence of such a report from the Customer the statement shall as regards the Customer thenceforth be conclusive evidence of the correctness of the entries recorded therein"*. The Provider states that *"the failure to make such a report within the allotted period (initially 42 working days which was amended in 2010 to 30 days) shall constitute a representation by the Customer to the Bank that the statement is correct and the Bank will not be liable for any loss"*.

Provision 49 of the Consumer Protection Code 2006 provides that:

"CONSUMER RECORDS

49 A regulated entity must maintain up-to-date consumer records containing at least the following:

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information concerning the consumer.*

Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, must be retained for 6 years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible."

The Provider submits that as the transactions queried by the Complainants took place more than 6 years ago, placing it outside the standard banking retention period, it is no longer required to maintain the records/documentation. The Provider submits that current accounts ending in '3841 and '1930 were closed in 2004 and were purged from its computer system on 27 May 2013 as any activity on these accounts ceased more than 6 years ago.

/Cont'd...

The Provider states "It is not the case that the Bank is declining to investigate the matter or acting contrary to its obligations, the legal time limit for retention of the required records has long since passed and it is not possible for the Bank to access those records. The Bank fully investigated and responded to those queries that were within the requisite time frame in its response dated 7th January 2015".

The Complainants submit that in relation to loan account ending in '4953 the loan repayments cost €71,085.28 for a loan amount of €44,440.83. The Complainants submit that they have already paid €50,535.02, together with the unaccounted payments of €3,967.28, which they state is an overpayment of €10,061.47 on the original loan amount of €44,440.83.

The Provider submits that the Letter of Loan Approval issued to the Complainants on 17 September 1997 detailed the cost of credit as IR£31,846.02 (€40,436.10) with the total amount repayable being IR£66,846.02 (€84,876.94). The Provider submits that this was based on the assumption that all monthly repayments are made in full and on time within the period of agreement of 20 years, and that the interest rate remains unchanged.

The Provider submits that the Complainants signed the Acceptance of Loan Offer in the presence of their Solicitor. The Provider submits that by signing the Acceptance of Loan Offer, the Complainants confirmed that they had received the letter of approval and Terms and Conditions of the Loan, their Solicitor had fully explained the Terms and Conditions and that they accepted them. The Provider submits that as missed payments resulted in the accrual of arrears on the account, the Principal outstanding reduced at a slower rate than anticipated, resulting in an increase in the cost of the credit.

The Provider has submitted a copy of the Letter of Approval dated 17 September 1997 for account number ending in '4953, which I note sets out, among other things, the following:

"IMPORTANT INFORMATION AS AT 17.09.1997

<i>1. Amount of credit advanced</i>	<i>: £35,000.00</i>
<i>2. Period of Agreement</i>	<i>: 20 year(s)</i>
<i>3. Number of Repayment Instalments</i>	<i>: 240</i>
<i>4. Amount of Each Instalments</i>	<i>: £271.35</i>
<i>5. Total Amount Repayable</i>	<i>: £66,846.02</i>
<i>6. Cost of This Credit (5 minus 1)</i>	<i>: £31,846.02</i>
<i>7. APR*</i>	<i>: 7.5%</i>
<i>8. Amount of endowment premium (If applicable)</i>	<i>: £0.00</i>
<i>9. Amount of mortgage protection premium (If applicable)</i>	<i>: £0.00</i>
<i>10. Effect on amount of instalment of 1% increase in first year interest rate.**</i>	<i>: £292.75</i>

* *Annual Percentage Rate of Change*

/Cont'd...

****** *This is the amount by which the instalment repayment will increase in the event of a 1% increase at the start of the first year in the interest rate on which the above calculations are based"*

The Complainants submit that in relation to mortgage loan account ending in '7683, they have calculated the payments which were due over the years which total €48,362.44 for the original loan of €25,394.76. The Complainants submit that from 1999 to 2014 they have paid the amount of €29,667.99 together with the unaccounted payments of €2,208.29, which is an overpayment of €6,481.53 on the initial amount of €25,394.76.

The Provider submits that the interest rate applicable to this loan account at drawdown was a Variable Rate of 7.25%. The Provider submits that should the interest rate have remained unchanged and all the required repayments made on the due date the total amount repayable over the term of 15 years would have been IR£32,863.53 (€41,728.08), the cost of credit being IR£12,863.53 (€16,333.31). The Provider submits that these figures were detailed on the Letter of Approval issued to the Complainants on 10 September 1999, and the Complainants signed the Acceptance of Loan Offer confirming their acceptance of same.

The Provider submits that the Variable Interest rate fluctuated, the Complainants availed of Alternative Repayment Arrangements and arrears accrued on the account due to missed payments. The Provider submits that as a result, the Principal outstanding reduced at a slower rate than anticipated resulting in an increase in the cost of the credit.

The Provider has submitted a copy of the Letter of Approval dated 10 September 1999 for account number ending in '7683, which I note sets out, among other things, the following:

"IMPORTANT INFORMATION AS AT 10.09.1999

1. Amount of credit advanced	: IR£20,000.00
2. Period of Agreement	: 15 year(s)
3. Number of Repayment Instalments	: 180
4. Amount of each Instalments	: IR£182.57
5. Total Amount Repayable	: IR£32,863.53
6. Cost of This Credit (5 minus 1)	: IR£12,863.53
7. APR*	: 7.50%
8. Amount of endowment premium (If applicable)	: IR£0.00
9. Amount of mortgage protection premium (If applicable)	: IR £0.00
10. Effect on amount of instalment of 1% increase in first year interest rate.**	: IR£194.02

* Annual Percentage Rate of Change

****** *This is the amount by which the instalment repayment will increase in the event of a 1% increase at the start of the first year in the interest rate on which the above calculations are based"*

I must accept that the cost of credit for the mortgage loan account and the secured personal loan account was set out in the Letters of Loan Approval, and the Complainants were on notice of this. Furthermore, I accept the Provider's submission that where interest rates fluctuate, arrears accrue or alternative repayment arrangements are agreed between the parties, this can result in the principal balance outstanding reducing at a slower rate which results in an increase in the overall cost of credit.

The Complainants question why in 2004 they were charged ten bank charges of €4.44 and late charges of €4.42 for account number ending in '4953. The Complainants submit that the charges were applied twice in April and September 2004. The Complainants also submit that in 2004 there were six charges of €4.44 applied to account ending in '7683. The Complainants also submit that the late charges applied to the accounts from 10 January 2012 to 18 August 2014 are "*so ridiculously high*". The Complainants state that "*the amounts are from €17.02c in 2012 to €51.23c in August 2014*".

The Provider submits that "*Late Charge Fees*" are applied in relation to the arrears amount on the mortgage loan account. The Provider submits that the following was outlined at Condition 4.9 of the mortgage loan conditions issued with the Letter of Approval for Mortgage Account ending in '4953:

"The Mortgagor shall pay [the Provider] a late charge or commission of £2 per cent for every month or part of month that may elapse between the due date and date of payment of any Monthly Repayment, instalment of interest, fine, insurance premiums, fees costs, late charges or commissions and expenses upon the whole amount of such Monthly Repayment or amount in arrears. Other sums (save principal due or payable by reason of Conditions 6 or 7) payable under or by virtue of these conditions where they have fallen into arrears shall at the discretion of the [Provider] be subject to the said late charge or commission."

The Provider submits that a late charge will be applicable where the payment is late or not made to the account as per the mortgage loan agreement, and that this charge will apply to the amount of the monthly repayment or amount in arrears. The Provider states that "*Accordingly late charges are applied to the Mortgage Account as the required repayments were not adhered to and arrears accumulated on the loan*".

The Provider submits that loan account ending in '7683, issued in September 1999, was also subject to the same condition under the conditions issued in 1999 with the Letter of Loan Approval, and therefore late charges were applied to the account as the required repayments were not adhered to and arrears accumulated on the loan.

The Provider submits that referral/unpaid direct debit fees are applicable to accounts where there is insufficient funds to meet the repayments presented and repayments returned unpaid.

The Complainants also question why they were charged sundries on the accounts between 1998 and 2004. The Complainants submit that the sundries charged for account number ending in '4953 were as follows:

1998	€2,319.15
1999	€2,930.70
2000	€3,846.19
2001	€3,107.29
2002	€ 64.60
2003	€ 68.85
2004	<u>€4,023.22</u>
	€16,360.00

The Complainants submit that the sundries charged for account number ending in '7683 were as follows:

2001	€2,955.30
2002	€2,261.71
2003	<i>"unfortunately for me I don't have the statement for 2003 on this account that shows the amount of sundries charged"</i>
2004	<u>€1,375.60</u>
	€6,632.61

As set out above, any conduct complained of prior to 2002 will not form a part of this examination.

The Provider submits that the loan statement provided by the Complainants for account ending in '4953 covers the period from 1 January 2002 to 31 December 2002. The Provider submits that there are no payments returned unpaid during this period, however, there were late fees amounting to €64.60 during this period. The Provider states that *"The amount of €64.60 noted as sundries on the loan Account Statement is the total amount of the late fees"*.

The Provider submits that the loan statement provided by the Complainants for account ending in '4953 covers the period from 1 January 2004 to 13 October 2004. The Provider submits that the repayments/credits noted for this period amount to €8,609.84, however some of these repayments were returned unpaid during this period, namely eight payments of €440.83 (€3,526.64) plus a payment of €436.00, totalling €3,963.24. The Provider submits that in addition, late fees and referral fees amounting to €59.98 were charged during this period. The Provider states that *"The amount of €4,023.22 noted as sundries on the loan Account Statement is made up of the returned payments (€3963.24) plus the late fee €59.98 – total €4023.22"*.

The Provider submits that the loan statement provided by the Complainants for account ending in '7683 covers the period from 1 January 2004 to 15 October 2004. The Provider submits that the repayments/credits noted for this period amount to €3,371.22, however some of these repayments were returned unpaid during this period, namely five payments of €220.55 (€1,102.75) plus a credit of €223.60, totalling €1,362.35. The Provider submits that in addition, late fees and referral fees amounting to €49.25 were charged during this period. The Provider states that *"The amount of €1375.60 noted as sundries on the loan Account Statement is made up of the returned payments (€1326.35) plus the fees €49.25 – total €1375.60"*.

Based on the evidence before me, I accept that the sundries appearing on the loan account statements were made up of late fees and referral fees, and returned unpaid repayments.

The Complainants submit that they found a few discrepancies with their mortgage loan account ('4953) and personal loan account ('7683). The first Complainant states that *"I can see a lot of payments that I had paid into these two accounts and some payments were paid into the old account numbers [ending in '3841 and '4585] but none of them show up on the statement for account numbers [ending in '4953 and '7683]. I have been looking at these two accounts from 1997, 1999 to 2014 and I [know] that even though I had paid monies into these accounts, I don't see them accounted for on the statements of these two accounts. I would like to know where these unaccounted payments [went]"*.

The Complainants have submitted numerous lodgement receipts and redacted extracts from their current account statements. While the lodgement receipts for current account number ending in '3841 evidence that money was paid into their current account (ending in '3841) at that time, I have not been provided with sufficient account statements in order to determine whether all the lodgements were used to make payments to the loan accounts.

The Provider submits that prior to December 2013 it did not withdraw funds from customers paying accounts for their mortgage payments until two days after it applied the payment to the mortgage loan. The Provider states that *"The Complainants provided receipts for lodgements made to account number [ending in '3841] in the amount of €240.80, €450.00 & €25.00 on 30th October 2003 which they state are not accounted for. While I am unable to view this account as it is purged from the Bank's systems I would note that the lodgements in question are evidence on the Statement of account [ending in '3841] provided by the Complainants with their submission"*.

The Provider goes on to state that *"The Complainants state that they lodged the sum of €450.00 to account number [ending in '3841] on 19th April 2004 however it wasn't until the 23rd of April 2004 that a manual mortgage repayment of €440.00 was deducted. As can be seen from the statement submitted by the Complainants a lodgement of €450.00 was made to account number [ending in '3841] on 19th April 2004 together with an additional lodgement of €12.00, as the account was overdrawn prior to the lodgements this resulted in a credit balance of €440.59."*

/Cont'd...

A direct debit in the amount of €440.00 was presented 23rd April 2004 leaving a credit balance of 59 cent. (There would not have been sufficient funds to meet a payment of €450.00)".

I note that the Complainants have submitted a copy of a lodgement slip for €450.00 paid into account number ending in '3841 on 19 April 2004. The first Complainant has made a handwritten note on her statement, beside the entry "*Manual Direct Debit 440.00CR*" on 23 April 2014, that "*€450 was paid on the 19/4/04 Acc No [ending in 3841]. Not on this statement*". I note account ending in '3841 has an entry on 23 April 2014 of a direct debit for €440.00. It is clear from the current account statement ending in '3841 that there was a balance of €440.59 as at 22 April 2014, and therefore a payment of €450.00 could not have been taken by the Provider at that time. Instead a manual direct debit payment in the sum of €440.00 was taken.

The Provider also states that "*The Complainants state a lodgement of €662.00 made to account number [ending in '3841] on the 30th January 2004 is unaccounted for. The statement relating to account number [ending in '3841] provided by the Complainants with their submission indicates the balance of the account increased to €662.00 from €00.00 on the 30th January 2004 which would indicate the payment was received. This statement also indicates a lodgement of €450.83 was received in April 2004*".

The Complainants submit that on 6 March 2004 they "*paid the amount of €670.00 between these two accounts [account ending in '4953] and [account ending in '7683]*" into current account ending in '7683, that is, €450.00 for account ending in '4953 and €220.00 for account ending in '7683. The Complainants submit that these payments are not accounted for, and resulted in a late charge of €3.14 being applied.

The Provider submits that the account number on the receipt provided by the Complainants relating to a lodgement in the amount of €450.00 on 6 March 2004 is illegible however the receipt which would seem to be automated does state '*Memorandum only the amount paid in is subject checking by the Bank*'. I also note that there is a receipt relating to a lodgement in the sum of €220 on 6 March 2004, which states that "*MEMORANDUM ONLY THE AMOUNT PAID IN IS SUBJECT TO CHECKING BY THE BANK*". This receipt relates to account number ending in '7683. I must accept that these lodgements were subject to checking by the Provider and are not conclusive evidence that these amounts were lodged to the accounts.

The Provider states that "*I note the receipts in relation to the lodgements of €25.00 and €450.00 to account number [ending in '4953] and the lodgements of €222.00 & €15.00 to account number [ending in '7683] are dated 6th August 2002 and stamped and initialled by the same staff member. Records indicate the amount of €25.00 & €450.00 was lodged to account number [ending in '4953] on 6th August 2003 and the amount of €222.00 & €15.00 was lodged to account number [ending in '7683] on 6th August 2003. It would seem that the teller in question had incorrectly dated the stamp as 6th August 200[2] on the 6th August 200[3]*".

/Cont'd...

The Provider also states that *“The Complainants submitted receipts for a lodgement in the amount of €303.00 to account number [ending in ‘4953] and the amount of €233.00 to account number [ending in ‘7683] which they state are dated 6th September 2008. While the receipts are not clearly legible I would note that lodgements for the same amounts were made on the same date one year earlier. The amount of €303.00 was lodged to account number [ending in ‘4953] on 6th September 2007 and a lodgement in the amount of €233.00 was lodged to account number [ending in ‘7683] on 6th September 2007”*.

I note that the account statements for accounts ending in ‘4953 and ‘7683 confirm this. That said, it is disappointing that the Provider incorrectly date stamped the lodgement receipts on two separate occasions, that is, on 6 August 2003 and 6 September 2007.

I note that the Complainants have submitted a lodgement receipt for €40.00 on what would appear to be the 19 April 2002. The account number on the lodgement receipt states that it is account ending in ‘7682 and not account number ending in ‘7683. This €40 lodgement does not appear on the account statement for account ending in ‘7682. In the absence of a lodgement docket, I cannot say whether account number ending in ‘7682 or ‘7683 was inserted.

I note that the Provider in a letter to the Complainants, setting out the mortgage loan details for account ending in ‘4953, dated 14 October 1997 sets out the following:

“I would like to thank you for choosing [the Provider] for your loan requirements and confirm the above details of your loan. In relation to the management of your account, I would also like to draw your attention to the following points:

- 1. Making your loan repayments by direct debit ensures all repayments are made on time and in a much more convenient manner for you. It is [the Provider’s] policy that all loans should be repaid on a direct debit basis. The initial repayment, which represents the interest accrued at the end of this month, together with the monthly/annual Insurance Premium, will be collected by direct debit on the 5th working day of next month. Subsequent payments will be collected on the last business day of each month.*
- 2. It is important to ensure that there are sufficient funds in your... Bank Account to meet these direct debits, in order to allow for the clean running of your account and to avoid any charges in respect of late payments.*
- 3. For ease of reference, you should quote your above account number on all correspondence to [the Provider] relating to your loan account.*
- 4. [The Provider] will issue a Statement of your account each January for the previous year. It is advisable to check your statement and keep it somewhere safe for future reference.”*

/Cont’d...

A similar letter was also issued to the Complainants by the Provider on 16 September 1999 in respect of the loan account ending in '7683.

I note that Special Condition D of the Letter of Approval for account ending in '4953 dated 14 October 1997 states:

"THAT PRIOR TO THE DRAWDOWN OF THE LOAN THE APPLICANT WILL COMPLETE A VARIABLE DIRECT DEBIT MANDATE TO AUTHORISE THE [PROVIDER] TO COLLECT THE AGREED MONTHLY INSTALMENT DUE ON THE MORTGAGE LOAN AND ANY INSURANCE OR ASSURANCE INSTALMENTS WHICH HAVE BEEN ARRANGED OR WILL BE ARRANGED BY THE [PROVIDER] AT THE REQUEST OF THE APPLICANT."

I note that Special Condition B of the Letter of Approval for account ending in '7683 dated 10 September 1999 provides:

"THAT PRIOR TO THE DRAWDOWN OF THE LOAN THE APPLICANT WILL COMPLETE A VARIABLE DIRECT DEBIT MANDATE TO AUTHORISE THE [PROVIDER] TO COLLECT THE AGREED MONTHLY INSTALMENT DUE ON THE MORTGAGE LOAN AND ANY INSURANCE OR ASSURANCE INSTALMENTS WHICH HAVE BEEN ARRANGED OR WILL BE ARRANGED BY THE [PROVIDER] AT THE REQUEST OF THE APPLICANT."

I note that the Provider submits that the Complainants requested cancellation of the direct debits for accounts ending '7683 and '4953 on 4 September 2001, and it appears that the Complainants were making ad hoc payments from that date. By cancelling the direct debits this can affect scheduled repayments and the smooth operating of an account.

To conclude, while it is disappointing that the Provider incorrectly date stamped the Complainants' lodgement receipts on 6 August 2003 and 6 September 2007, there is no evidence before me that the Provider failed to transfer funds to the Complainants' loan accounts.

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

Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 August 2019

/Cont'd...

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.

