



<u>Decision Ref:</u>	2019-0329
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Errors in calculations
<u>Outcome:</u>	Partially upheld

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

Background

The Complainants hold three mortgage loan accounts with the Provider. During the terms of these loans, arrears accrued on each of the loan accounts. The Provider began sending the Complainants quarterly arrears letters to notify them of their arrears. When the loan accounts matured the Provider advised the Complainants of the outstanding balance on each account. The Complainants assert that the outstanding balances were higher than previously advised and that the Provider has unlawfully charged interest on the arrears. To address their outstanding balances, the Complainants assert that the Provider has exerted pressure on them to enter into a new repayment arrangement. The Complainants are also dissatisfied with the level of customer service received.

The Complainants' Case

The First Complainant states that in **2008/2009** "... I had a verbal agreement with mortgage staff in [the Provider's named Dublin branch] to pay a monthly amount of 100 euro that would cover interest, balance of payment was to help reduce overall figure. The monthly amount to be paid each month was 50euro 20euro 30euro." The First Complainant states that he continued paying this amount until **October 2012** when it was increased to €120. The First Complainant states that he was informed at a meeting with the Provider at a [different Provincial branch] that the monthly payment being made was not enough to cover interest on account number 3. The First Complainant states that he continued to make these

repayments until **April 2015** “... when after periodic phone conversations with the [Provider] account No2 was slightly overpaid.”

The First Complainant states that he asked the Provider if it could transfer any overpayment balance to account number 1 and was told this would be done. The First Complainant states that he never received a letter acknowledging this agreement. The First Complainant states that he had a further conversation with the Provider where he expressed to the Provider that he hoped to have account number 1 cleared by **April 2016**. The First Complainant states that the Provider has “... told me that none of the above conversations had ever happened. They record all phone calls and should be able to produce copies of calls if required.”

In or around **February 2016** the First Complainant states that the Provider “... rang me and was aware of hoping to clear No1 account by April 2016 when she told me there was approx 5000euro to be added to this account because they made an error and for approx. six years had sent me the wrong amount, with regular letters saying the balance on the account in January 2016 was 1,187.40euro. This amount increased to 6,294.35euro in February 2016.”

In **2016**, the First Complainant states that he had a meeting with the Provider at its [Provincial branch] and “... during this conversation [Provider’s agent] said the bank had made a mistake, said sorry, had since rectified their mistake and they want their money in a new loan agreement until July 2034.” The First Complainant states that “[t]he bank has pressurised [the Second Complainant] and myself to sign up to a new arrangement also solicitors letters threatening court action if we do not make full payment or surrender the house to the bank.”

The First Complainant states that ever since the maturity of the three accounts, it has been stated on all letters from the Provider that there was no interest on accounts that are in arrears. The First Complainant submits that “... considerable interest has been added to all three accounts.”

The First Complainant states: “I have verbally agreed with [the Provider’s agent] to sign up to a new agreement, but first would be very grateful for your advice and opinion on the concerns I have set out. ... Should a Financial institution like [the Provider] be allowed to treat their customers with such a way and not suffer any consequences for their own mistakes.”

The Provider’s Case

The Provider has set out a detailed timeline of events in its submissions to this Office. The Provider states that on **16 April 2010** it offered the Complainants an alternative repayment arrangement (ARA) of a six month interest only repayments arrangement with a minimum payment of €100 per month to be apportioned between each of the Complainants’ three accounts in the amounts of €50, €30 and €20. On **17 April 2010** the Provider issued a Mortgage Form of Authority (MFA) in respect of each account to the Complainants. The MFAs were re-issued to the Complainants on **6 May 2010**. The Provider states that it received the signed MFAs on **17 May 2010**.

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The Provider states that on **1 July 2010** account number 1 matured and the mortgage was not fully redeemed. The balance outstanding on this account was approximately €7,800 of which €4,350 was arrears. The Provider states that on **24 August 2010** it contacted the First Complainant because the monthly repayments under the ARA were not being met. The Provider submits that the First Complainant was advised that the interest only arrangement must be adhered to. The Provider states that on **8 October 2010** it contacted the First Complainant as no payments were received since **July 2010**. By letter of the same date, the Provider states that it wrote to the Complainants confirming non-adherence to the ARA and that the six month interest only period was due to expire at which point their mortgage accounts would revert to full capital and interest repayments.

The Provider states that on **18 May 2011** the Complainants were given the contact details for Money Advice Service representative (representative) and on **23 June 2011** it received a call from the representative based in [Provincial Town] and the First Complainant. On **18 August 2011** MABs contacted the Provider to advise that the Complainants were dealing with their account holding branch and would return the Standard Financial Statement (SFS) shortly. The SFS was received on **25 August 2011**. The Provider states that on **21 September 2011** it assessed the Complainants' circumstances and offered a term extension by way of MFAs on all accounts with a repayment of €100 across all three loan accounts. However, the arrears would not be recapitalised at that point but an arrangement could be put in place after six consecutive months of repayments to clear the arrears over a period of time. The Provider states that on **11 October 2011** it received a call from the representative requesting clarification on the arrears.

The Provider states that on **16 January 2012** it contacted the First Complainant to discuss the MFAs as these had not been returned. The Provider states that the First Complainant advised that he could not afford the repayments as his situation had not improved. The Provider states that it offered to arrange a meeting with a case manager but this was declined by the First Complainant as he had gone through everything with his representative. The First Complainant advised that he would continue to pay what he could.

The Provider states that it contacted the First Complainant on **23 February 2012** and was advised by the First Complainant that he was reluctant to accept its proposals as he would be 65 years of age when the mortgages expired. On **2 March 2012** the Provider contacted the First Complainant to follow up on the MFAs. The First Complainant advised that he did not want to commit to a term extension.

On **25 October 2012** the Provider met with the First Complainant to discuss arrears on the mortgage accounts. The Provider requested that the Complainants complete an SFS. A completed SFS was received on **29 November 2012** and sent for assessment. The Provider offered the Complainants an ARA on **20 December 2012** and issued MFAs on **21 December 2012**. The Provider states that on **24 January 2013** it issued a letter to the Complainants confirming that the ARA was not accepted within the stipulated timeframe and was therefore considered as being declined. The Provider also advised the Complainants of the Mortgage Arrears Resolution Process (MARP).

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Following this the Provider's offer and MFAs were re-issued. On **25 July 2013** the Provider issued a decline letter to the Complainants as they had not accepted the offer. The Provider states the on **14 August 2013** it contacted the First Complainant to discuss arrears. The Provider states that the First Complainant declined making payments to the accounts and advised that he would clear the arrears but did not have a specific arrangement for doing so. The Provider states that on **23 August 2013** the First Complainant contacted it and advised that the Complainants were declining its proposal. The Provider states that it advised the First Complainant that there was no alternative available to it other than enforcement of the mortgages unless arrears were cleared in full or an agreement was made. The Provider states that the First Complainant did not want to be hit with legal fees but did not give an indication as to when the arrears would be cleared.

The Provider states that on **21 November 2013** it issued a Calling in Debt letter to the Complainants requesting repayment of all three mortgages within 10 business days. The Provider contacted the First Complainant on **18 December 2013** and the First Complainant advised that the Complainants wanted to continue paying €100 across all three accounts. The Provider states that it informed the Complainants that a new SFS was required in order to conduct a further assessment. On **6 January 2014** the Provider contacted that First Complainant and completed the SFS over the phone. The SFS was then sent to the Complainants to sign along with a MARP brochure and MARP guide. The Provider states that it contacted the First Complainant and requested that the arrears be cleared. The Provider also advised the First Complainant that the SFS had not been returned. The Provider states that the Complainants returned an unsigned SFS on **17 February 2014**. A completed SFS was received on **6 March 2014**.

The Provider states that it did a quarterly review on all three accounts on **21 January 2015**. Arrears stood at €11,000 across all three accounts with a total outstanding of €17,000. The Provider states that the First Complainant advised that he would be making a lump sum payment over the coming 18 months and would continue to pay €120 per month. The Provider states that it contacted the First Complainant on **4 August 2015** and was informed that the mortgages would be cleared by **April 2016**. The Complainants were continuing to pay €120 per month.

The Provider states that it contacted the First Complainant on **20 January 2016** to discuss the accounts. The Provider states that the First Complainant advised that he hoped to clear the arrears in **April 2016** but did not state how he would do this. The First Complainant stated that the Provider's previous case manager informed him that the second mortgage account had been cleared and was overpaid. The Complainant further stated that there were arrears of €1,187 on the first mortgage account and arrears of €10,122 on the third mortgage account. The Provider states that it advised the First Complainant that the actual balances on the mortgage accounts were higher and that the arrears balances do not equate to the balance outstanding. The Provider states that the quarterly review letters state the arrears balance. The Provider states that the case manager issued statements to the Complainants for all mortgage accounts detailing the outstanding balances.

The Provider states that the First Complainant stated that his local branch advised him that they had agreed to hold interest on the mortgage accounts. The Provider states that its case manager advised the First Complainant that this could not be done without a written agreement in place and that no such agreement was in place. The Provider states that on **22 January 2016** it assessed the Complainants' situation and recommended a proposal for forbearance as the mortgage accounts were past maturity. This included capitalisation of arrears and term extensions to 2034. MFAs were sent to the Complainants.

Interest on Arrears

Following a number of unsuccessful attempts to contact the First Complainant, the Provider spoke with him on **24 February 2016**. The Provider states that the First Complainant advised that he was unhappy with the accounts accruing arrears and agreed to call the Provider the following month. The Provider states that a meeting was held with the First Complainant and his case manager on **16 March 2016**.

The Provider states that the Complainants have been in continuous arrears since **2009** and remain in arrears following the maturity of all loan accounts. The Provider states that it has made a number of offers to the Complainants in order to address the arrears however, the Complainants have declined to accept them, accepting only one. The Provider has set out each of the ARAs offered to the Complainants in its submission to this Office.

The Provider does not accept that there was a verbal agreement in **2008/2009** regarding reduced repayments of €100 per month. The Provider states that on **28 January 2009** the First Complainant contacted it. The Provider *"... accepts that the Complainant may have been advised that he needed to maintain payments of as much as possible and that the minimum payment of €100 a month would be necessary in order to prevent the balance increasing. Nevertheless, the [Provider] cannot countenance any circumstances where the Complainant reached the conclusion that the terms of his mortgage had been changed to an interest only mortgage prior to being offered a short term arrangement to that effect in 2010."*

The Provider submits that at all times it was a condition of the loans that the Complainants would make repayments in accordance with general condition 4(a). The Provider states that the Complainants failed to maintain repayments in accordance with general condition 4(a) which gave rise to arrears on the accounts and a remaining balance following the maturity of each of the loan accounts.

In response to the First Complainant's submission that considerable interest has been added to the arrears on the accounts the Provider refers to general condition 5 and states that the terms of the loans specifically provide for the charging of interest on a daily basis on the balances outstanding. The Provider submits that it should also be noted that the loan offer letters also provides for surcharge interest to be applied to arrears balances.

The Provider states that it has not applied surcharge interest since the introduction of the Code of Conduct on Mortgage Arrears (CCMA). The Provider submits that surcharge interest is distinctly different from interest being applied to an outstanding balance. The Provider

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states that this was explained to the Complainants during a telephone conversation on **20 January 2016**.

The Provider submits that while it does not apply additional interest and surcharges as provided under general condition 5(c) to mortgage arrears, interest will continue to accrue on the outstanding balance which would include arrears whether capitalised or not, in accordance with general condition 5(a). The Provider further submits that where a balance is outstanding post maturity, it will continue to apply the relevant prevailing interest rate. The Provider states that the daily accrual of interest is calculated by reference to the outstanding account balance and this does not give rise to additional interest being charged where the account is in arrears.

Incorrect Account Balances

The Provider *“... does not accept that it conveyed an incorrect account balance but understand[s] that the Complainants were confused [by] the statements as to the arrears on their accounts which were past maturity.”* The Provider refers to the quarterly arrears letters which issued to the Complainants following the introduction of the CCMA. The Provider states that arrears correspondence notifies a borrower of missed payments and arrears on accounts. The Provider states that due to internal system reporting, the Complainants' accounts which had passed maturity were not reflecting the entire outstanding balance as arrears.

The Provider states that it wrote to the Complainants on **3 March 2016** confirming that the maturity date had passed and the current amount outstanding was now reflecting as arrears. The Provider re-extended the protections of MARP and invited the Complainants to submit an SFS.

The Provider refers to the annual statements which issued to the Complainants confirming the actual balances on their accounts. The Provider also refers to correspondence calling in the Complainants' debt and confirming the balances outstanding on **4 January 2011** and **21 November 2013**. The Provider *“... accepts that the quarterly arrears correspondence has caused some confusion ...”* The Provider states that *“[i]n an effort to acknowledge the confusion the [Provider] closed [the second account] waiving the balance outstanding of €260.90. The [Provider] made a further offer of €1,000 in response to this complaint ... The Complainants declined to accept this offer.”*

New Repayment Arrangement

The Provider states that it is committed to working with the Complainants to find a resolution to their long term arrears.

The Provider submits that it offered a number of ARAs since **2010** of which the Complainants only accepted one in **April 2010**. The Provider states that the Complainants did not adhere to this arrangement and have not maintained payments at a level which addresses their mortgages. The Provider submits that the Complainants cannot make payments at a level of

interest only because capital is not being addressed. The Provider states that it has tried to address this with the offer of term extensions.

The Provider “... *refutes the Complainants’ contention that it exerted undue pressure on the Complainants to sign up to a new arrangement.*” The Provider states that it made an assessment of the Complainants’ financial circumstances and offered a number of solutions to keep the Complainants’ monthly repayments in line with what they could afford. The Provider states that the Complainants declined its offers and it was therefore left with no alternative but to contemplate legal proceedings as all other avenues have been exhausted.

Customer Service

The Provider does not accept that it provided poor customer service to the Complainants. The Provider states that the Complainants have raised a complaint and it has made a reasonable offer in recognition of that complaint. The Provider submits that the Complainants are seeking a debt reduction in excess of €13,000. The Provider states that the Complainants have provided no basis for the write down or the assertion that interest does not accrue to an account in arrears. The Provider states that it remains willing to engage with the Complainants to try to accommodate a mutually acceptable long term sustainable solution.

The Complaint(s) for Adjudication

The complaints for adjudication are that the Provider:

1. made a verbal agreement with the First Complainant in 2008/2009 to repay monthly amounts of €100;
2. provided incorrect account balances to the Complainants over a number of years;
3. exerted pressure on the Complainants to enter into a new repayment arrangement;
and
4. provided poor customer service and communication.

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.

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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 13 September 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.

Analysis

The Verbal Agreement

While the First Complainant asserts that he had a verbal agreement with the Provider in **2008/2009** to make monthly repayments of €100, he has failed to provide any further detail or evidence to demonstrate that an agreement was in fact entered into.

In the Provider's CACs Notes dated **24 October 2012** it is stated:

"met with [the First Complainant] at my request. He is currently paying 100 pm between all 3 mortgages ... and can't understand why the arrears and balances are increasing. ... He said he was told by 'some fella in the bank' that this was sufficient to keep the accounts online ..."

In a call which took place between the Provider and the First Complainant on **20 January 2016** the First Complainant acknowledges that the verbal agreement was quite some time ago and that he cannot remember the names of the people he was dealing with.

I find that there is insufficient evidence to support the Complainants' position.

Account Balances

The loan agreements the subject of this complaint were entered into by the Complainants in **2000** and **2001**.

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The Complainants' loan accounts subsequently went into arrears. The first and second loan accounts matured on **1 July 2010** and **1 November 2011** while the third loan account matured on **1 January 2016**. From around **January 2013** the Provider began writing to the Complainants advising them of the arrears that had accrued on each of the loan accounts. The format of these letters is quite similar. The letters reference the relevant account number and the amount of arrears in respect of each account is then set out. The letters specifically deal with the arrears on each account and no reference is made to the balances outstanding. At the time the Provider began sending these letters the first and second loan accounts had matured. Therefore, the arrears on these accounts should equal the outstanding balances. However, this was not the case for these two accounts. Furthermore, the Provider acknowledges that due to internal system reporting, the accounts which had passed maturity were not reflecting the entire outstanding balance as arrears. This does not appear to have been an issue with the third account as it did not mature until **1 January 2016**.

The Provider wrote to the Complainants by letter dated **14 December 2014** setting out the outstanding arrears in respect of each account. At that time, the second loan account had an arrears balance of €132.95 however, according to the Complainants' account statement the outstanding balance was approximately €380. The documents submitted in this complaint do not show that any further correspondence was sent by the Provider to the Complainants in respect of this account until **2 March 2016** when it advised the Complainants that they were required to discharge the outstanding balance when the loan matured on **11 November 2011**.

The Provider has also furnished a significant number of letters from its arrears support unit which set out the various alternative repayment arrangements proposed by the Provider. These letters also set out the arrears that have accrued on the Complainants' loan accounts. In the Complainants' account statements, each statement shows the transactions which took place on each account over the course of the relevant year. They also show the outstanding balance following each transaction and in a separate line at the end of each statement the closing arrears balance is displayed.

The evidence in this complaint also indicates that the Complainants' representative engaged with the Provider on the Complainants' behalf during **2011**. The Provider received a letter from the representative dated **23 June 2011** which enclosed an *Account Details* sheet. This sheet set out separately the balance outstanding and the arrears on the Complainants' accounts.

Having considered the evidence and submissions in this complainant I find that the arrears letters sent by the Provider to the Complainants did not correctly reflect the total amount of arrears on the first and second loan accounts. Furthermore, the Provider has not furnished any arrears correspondence sent to the Complainants in respect of the arrears on the second loan account between **14 December 2014** and **2 March 2016**. When the Provider is sending correspondence to a borrower in respect of a loan account that has matured it is incumbent on the Provider to ensure the correct balance is stated in the correspondence.

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While the Complainants had other information available to them which identified the correct balances outstanding, this does not absolve the Provider of its responsibility to correctly state the Complainants' outstanding arrears.

While the Provider may have incorrectly stated the Complainants' arrears in its correspondence, I do not accept that the Provider has incorrectly applied interest to the first and third loan accounts. However, the evidence available to me does not demonstrate that the Complainants were aware of any balance outstanding on the second loan account from when the last payment was made on **24 April 2015** until **2 March 2016**. On a call which took place on **4 August 2015** between the Provider and the First Complainant, the Provider agrees that the second loan account was cleared and confirms that a letter acknowledging this would be issued to the Complainants. The Provider has not provided a copy of this letter to this Office and I have not been provided with evidence which demonstrates that this letter was sent to the Complainants. Furthermore, the account statements for the first and second accounts indicate that, in line with the First Complainant's evidence, the €20 repayment being made to the second account was split between the first and third accounts with repayments on each of these accounts increasing by €10 in **August 2015** and no further payments were made to the second loan account. Taking these matters into consideration, I do not accept that the Provider was entitled to charge interest on the second loan account after **April 2015** especially as it was confirmed by the Provider in **August 2015** that this account was cleared. However, I note that the Provider has now waived the balance outstanding on this account.

Pressure to enter into an Agreement

Having considered submissions and evidence in this complaint (including the call recordings furnished by the Provider), I do not accept that the Provider has exerted any undue or unreasonable pressure on the Complainants to enter into an alternative repayment arrangement. In particular, during a call which took place between the Provider and the Complainants on **16 March 2016**, the Provider advised the Complainants about a possible alternative arrangement and further advised the Complainants of the importance of obtaining independent financial advice.

Customer Service

Having considered submissions and evidence in this complaint including the call recordings furnished in evidence, I accept that the Provider has provided poor customer service and communication has, in the main, been acceptable other than the issues identified above in relation to the account balance and application of interest.

For the reasons outlined above, I partially uphold this complaint and direct the Provider to pay a sum of €5,000 in compensation to the Complainants and review its systems for issuing arrears letters.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2) (b) 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 €5,000, 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 the Provider to review its systems for issuing arrears letters when loan accounts reach their maturity date and that if its system incorrectly records loan account balances when any such accounts reach maturity that its system be updated to properly record such balances.

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**

7 October 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.