



<u>Decision Ref:</u>	2019-0397
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide calculations Delayed or inadequate communication Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant applied to the Provider for a staged drawdown mortgage loan in **October 2016**. The Complainant was provided with loan repayment details on the basis that the full amount of the loan was drawn down. The first 36 repayments under the loan were to be fixed at €791.86 after which point the repayments would be calculated by reference to a variable interest rate. The Complainant drew down the loan in stages and understood her first 36 repayments would be €791.86, irrespective of the amount drawn down. The Provider advised the Complainant that her repayments were calculated by reference to the amount drawn down and not by reference to the total loan amount. The Complainant states that her agreement with the Provider was that her first 36 repayments under the loan would be €791.86 and that the Provider has failed to honour this agreement.

The Complainant's Case

The Complainant states that she holds a mortgage with the Provider and that she “... *discussed repayment details with mortgage adviser at [the Provider] and in contract agreement.*” The Complainant states that she was advised that as she was building a house the loan amount would be given to her in stages. The Complainant states that “... *this part is fine I was advised that if I go with a 3 year fixed term this means that I would have to repay 791.96 per month for 36 months, at 3% then after the fixed term then I would be given an option of going with a fixed term again or variable.*” The Complainant explains that her “...

complaint is that I was told this and in my mortgage agreement I was told this, however, now [the Provider] are telling me that I can't pay 791.86 monthly as I have only drawn down a bit of the whole money to be borrowed." The Complainant states that this was not explained to her *"... in my contract even with my contract acknowledging the stage drawdowns."*

The Complainant states that not being able to make the full monthly repayment amount, means that she will not have repaid as much as planned by the end of the fixed term of the mortgage. The Complainant states that this is not what she agreed to and the Provider has failed to rectify the situation. The Complainant states that she was informed by the Provider that condition 4(d) of the terms and conditions that repayments are based on what has been drawn down.

The Complainant submits that:

"... it says here that this is at the lenders discretion and it contradicts what my contract sets out plainly in ESIS section part 5 I want to repay the 791.86 monthly as agreed, it seems to me [the Provider] have deliberately misled me to a situation that increases the likelihood of gaining increased profits on my repayments."

The Complainant states that if the Provider *"... had been up front I would have chosen a different fixed term or terms of mortgage or even the variable rate."* The Complainant states that she *"... would like to be able to make the repayments that I planned so that I can have this paid off my mortgage after the planned fixed term."*

The Provider's Case

The Provider states that it was approached by the Complainant in **April 2016** with the view to taking out a mortgage. Following a discussion with the Complainant, a mortgage application form was completed and signed by the Complainant on **20 October 2016**. The Provider states that an Approval in Principle (**AIP**) letter issued to the Complainant on **3 November 2016**. The Provider states that the AIP letter sets out the path, in summary form, to mortgage drawdown stage. A mortgage loan offer letter (**MLOL**) was issued to the Complainant on **8 August 2017**. The Provider states that included in this letter was a Suitability Statement, a European Standardised Information Sheet (**ESIS**), Terms of Business leaflet, Variable Rate Policy Statement leaflet, Distant Marketing Form and Data Privacy Summary brochure. The Provider states that a copy of the MLOL was issued to the Complainant's solicitor on **8 August 2017**. The Provider states that further documentation was also forwarded to the Complainant (fire policy form, life policy form and direct debit mandate). The Provider states that on receipt of the completed documentation, the first stage drawdown was issued on **11 October 2017**.

The Provider submits that it has not been presented with any allegations that it has breached the **Consumer Protection Code 2012** (the **Code**). The Provider states that it is satisfied that it has complied with Chapter 4 of the Code in providing paper based information to the Complainant prior to offering, recommending, arranging or providing the mortgage loan product and it refers to the various documents furnished to the Complainant. In particular, the Provider submits that *The Statutory Loan Details* section of the MLOL complies with section 4.29 of the Code.

The Provider states that

"[p]age 1 of the MLOL ... shows 36 monthly repayments at €791.86 each, and after this initial period there would be 324 monthly repayments at €906.83 a month 'on the terms and subject to the conditions set out in Parts 1 to 5 inclusive'."

The Provider then quotes clause 4(a) and clause 9(d) of the General Conditions and submits that the Complainant drew down the loan in stages and therefore clause 9(d) came into force. The Provider also states that it did not exercise its discretion under clause 4(d), as clause 9(d) sets out the basis for repayments on a stage draw down mortgage.

Referring to page 2 of the MLOL the Provider states that

"... Part 4 of the Special Conditions clearly provides the Complainant with a breakdown of the Stage draw down process which is detailed under (x) ..."

The Provider submits that due to the nature of a stage drawdown mortgage, it is not known in advance as to the amount that will be drawn down at any particular time until the actual amount is requisitioned by the Complainant's solicitor subject to the terms and conditions of the MLOL. The Provider further submits that under Part 4 (x) at part (g), the Complainant is advised that the first stage payment of the loan must be drawn down within 6 months from the date of the MLOL. The Provider states that it

"...would not seek repayment if No stage drawdown had taken place and therefore would not seek full repayment of an amount of 4791.86, unless the full €188,000 of credit advanced has been drawn down."

The Provider also points out that the Complainant was advised at the bottom of page 3 of the MLOL to seek independent legal advice and that she was also informed of this in the AIP letter and the Statement of Suitability Letter.

The Provider states that the MLOL advises of a repayment amount of €791.86 under *Important Information* as at **9 August 2017**. This is shown as a full repayment figure based on an amount of credit advanced, €188,000, to be repaid by 36 instalments at a fixed rate of 3% and 324 instalments at a variable rate of 4.2% thereafter. The Provider submits that it is the Complainant by way of her solicitor, who requisitions an amount to be drawn down. The actual repayment in a loan stage drawdown is based on the amount that is drawn down to date, which is determined when a requisition has taken place. The Provider states that

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“... it cannot determine and cannot provide for a numeric value by way of a repayment amount in a stage draw down mortgage in the MLOL, by the very nature that the amount to be drawn down at a particular time is not known in advance.”

The Provider submits that

“... the MLOL has to be viewed in its entirety, as it sets out that the loan between the Bank and the Complainant was subject to the terms and conditions of the loan”

The Provider also points out that the Complainant signed the MLOL on page 8 confirming acceptance of the terms and conditions attaching to the loan and that she has read and understands the terms and conditions of the loan.

The Provider submits that it is legally obliged to provide certain details in the MLOL regarding the Complainant’s repayments and that it has conformed to its statutory obligations. The Provider states that clause 9(d) of the General Conditions sets out the basis of the monthly repayments in respect of loans being drawn down in stages and in practice, this is a standard condition with stage draw down mortgages. The Provider submits that the very nature of stage draw down mortgages involves requisitions for different amounts of borrowings at different times. The Provider states that it is recommended in the documentation furnished to the Complainant that she should seek both legal and financial advice.

The Provider reiterates that the Complainant signed the MLOL on **16 August 2017** confirming that she had fully read and fully understood the terms and conditions of the MLOL and accordingly accepted the MLOL based on those terms and conditions.

The Provider states that with stage drawn down mortgages:

“... it is important to note that there is no certainty that A) that the Loan will be fully drawn down by the customer and B) as to precisely when and in what amount each stage draw down will be required by the customer. Therefore the Loan details can only be presented in the manner set out on the front page of the MLOL based on the full draw down of the Loan at the fixed rate then offered by the Provider.”

The Provider submits that these statutory loan details are set out in line with the Consumer Credit Act’s requirements which provide important and meaningful information to customers. The Provider states that this standard format allows for comparison of its offer with other lenders’ MLOLs.

The Provider acknowledges that:

“... despite the terms and conditions set out in the MLOL, the Provider appreciates that from a customer’s point of view that the information regarding the making of repayments on a stage draw down mortgage may not have been sufficiently clear ... [and] ... appreciates that from the Complainant’s point of view that this information may not have been sufficiently clear in the making of the repayments during the drawdown stages of her mortgage”

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The Complaint for Adjudication

The complaint is that the Provider failed and/or refused to honour the repayment terms contained in the Mortgage Loan Offer Letter of August 2017.

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 on 15 October 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

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Documentary Evidence

Approval in Principle

The Provider sent an Approval in Principle (AIP) letter to the Complainant dated **3 November 2016**. This letter enclosed a leaflet which set out the stages that follow approval in principle. The second stage is:

“Letter of Offer/Appoint a Solicitor

We will send you a Letter of Offer. You should review this with your solicitor, sign and return it (along with any other documents requested in the Letter of Offer) to the Bank to accept the Offer.”

Statement of Suitability

The Complainant received a Statement of Suitability (SoS) from the Provider dated **8 August 2017** enclosing the MLOL. The SoS advised the Complainant as follows:

“Before you consider whether to accept the Mortgage Loan Letter of Offer, please consider this Suitability Statement.

...

Before accepting the Mortgage Loan Letter of Offer, you should obtain independent legal and financial advice and be sure you understand the risks and benefits of a mortgage.

...

The terms and conditions of the mortgage are set out in your Mortgage Loan Letter of Offer. Please read this document carefully. ...”

European Standardised Information Sheet

The Complainant was also furnished with a European Standardised Information Sheet (ESIS) which set out a number of important details relating to the Complainant’s loan. At the top of the first page of the ESIS it stated:

“This document does not constitute an obligation for [the Provider] to grant you a loan.”

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On the second last page it states:

"13. Additional information

... If we offer you a mortgage loan we will do so by sending you a mortgage loan offer letter and, if you accept it, it will be the credit agreement between you and us."

The ESIS provides a number of features associated with the Complainant's loan:

"2. Main features of the loan

Amount and currency of the loan to be granted: €188,000

Duration of the loan: 30 Years

This is a mortgage loan to enable you to purchase your home.

This is a loan repayable by instalments of capital and interest on amortising basis so that the loan is repaid in full at the end of its duration.

Fixed rate for 36 months moving to a variable rate for the rest of the term. At the end of the fixed rate period we may offer you a choice of fixed and/or variable rates or we may move you to a variable rate. We may vary the variable rates up or down at our discretion.

Total amount to be reimbursed: €322,319.88

As the borrowing rate is not fixed for the duration of the contract, this amount is illustrative and may vary in particular in relation to variations in the borrowing rate.

This means that you will pay back €1.71 for every €1 borrowed. ...

4. Frequency and number of payments

Repayment frequency: Monthly

Number of payments: 360

5. Amount of each instalment

€791.86 for 36 months Fixed at 3.000%, during which your instalments will not change.

€906.83 for 423 months Variable at 4.200%"

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Mortgage Loan Offer Letter

The Complainant received a MLOL dated **8 August 2017**. This letter states:

“The Loan described in this Mortgage Loan Offer Letter (the “Offer Letter”) is between:

- 1) [The Provider] ... and
- 2) [The Complainant] ...

and is on the terms and subject to the conditions set out in Parts 1 to 5 inclusive. The Borrower’s attention is specifically drawn to the fact that this Offer Letter is subject to the Conditions Precedent set out in Part 3 and that under no circumstances will the Lender permit the Loan to proceed unless and until all Conditions Precedent have been complied with in full to the Lender’s satisfaction.

PART 1 – THE STATUTORY LOAN DETAILS

IMPORTANT INFORMATION AS AT 08 AUGUST 2017

1. Amount of Credit Advanced	€188,000	
2. Period of Agreement	€30 Years	
3. Number of Repayments	4. Amount of each Instalment	10. Effect of amount instalment of 1% increase in first year in interest rate**
<u>Instalments</u>	<u>Type</u>	<u>Instalment</u>
36	Fixed at 3.000%	€791.86
324	Variable at 4.200%	€906.83
5. Total Amount Repayable	€322,319.88	
6. Cost of This Credit (5 minus 1)	€134,319.88	
7. APR*	4.0%	
8. Amount of Endowment Premium (if applicable)		
9. Amount of mortgage protection premium (if applicable)		

* Annual percentage rate of charge

** 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.

(Any figures given at No. 8 and No. 9 above are estimated; if left blank, the premium is unknown)

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PART 2 – THE ADDITIONAL LOAN DETAILS

11. Type of Loan:	Repayment
12. Interest Rate:	3.000% Fixed
...	

PART 3 – CONDITIONS PRECEDENT (may be continued overleaf)

...

PART 4 – THE SPECIAL CONDITIONS (may be continued overleaf)

The Loan is subject to the following special conditions (the “Special Conditions”) which, unless stated to the contrary, must be complied with in full to the Lender’s satisfaction before the Loan, or any part of it, can be drawn down:

(a) The following Special Conditions apply to the Loan:

...

(x) The Loan will issue in stages in line with the approved Architects’/Engineer’s/ Surveyor’s Report and the following conditions apply: (a) The Lender will require the Borrower(s) to input EUR 22,000 upfront towards construction. Drawdowns will then be permitted against Property Report certificates for subsequent works completed. (b) The Borrower’s Solicitor is obliged under the Certificate-of-Title system to provide a certificate of title as of the date of the first stage of draw down of the Loan. Such a certificate of title includes certifying that the planning title is in order. In this regard if any development has taken place on the Property as of the date of the first stage draw down the Borrower’s Solicitor must obtain a satisfactory interim opinion of compliance with Planning and Building Regulations, and must furnish to this Lender in due course with their certificate of title. (c) Title to the Property must pass to the Borrower on the first stage payment. (d) To draw down each stage, the Borrower’s Solicitor is required to furnish the Lender with their Payment Requisition form, AND a Property Report Certificate from an Architect/Engineer/Surveyor acceptable to the Lender. (e) The final 10% of the loan will be retained ... until the Lender has been furnished and is satisfied with: ... (f) On occupation of the Property (and regardless of whether the final stage payment of the Loan has been drawn down or not at that time) the Borrower must provide the Lender with the documentation listed at (e) above which documentation must be to the Lender’s satisfaction. (g) The first stage payment of the Loan must be drawn down within 6 months from the date of this Offer Letter. The final stage payment of the Loan must be drawn down within 18 months of the date of this Offer Letter. The Lender may extend either or both periods at its absolute discretion.

Please note: If there is a conflict between a General Condition and a Special Condition, the terms of the Special Condition shall prevail.

This is an important legal document. You are strongly recommended to seek independent legal advice before signing it. This Offer Letter is regulated by the Consumer Credit Act, 1995 and the Consumer Protection Code, 2012 and your attention is drawn to the Regulatory Notice set out in this Offer Letter.

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Part 5 – THE GENERAL CONDITIONS

1. Interpretation and General

(a) In this Offer Letter the term ... “Loan” means the mortgage loan described in this Mortgage Loan Offer Letter (“Offer Letter”) the details of which are set out in Parts 1 to 5 inclusive.

...

4. Repayment

(a) Unless otherwise stated herein or agreed by the Lender in writing, the payment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit mandate. For an annuity, or other repayment loan, repayments shall be comprised of principal and interest and any other amounts payable and for an endowment loan shall comprise of interest and such other amounts only. The due dates for the repayment of the Loan are those dates that are from time to time set by the Lender. The amounts of such repayments and the due dates for payment thereof shall be determined by the Lender at its absolute discretion.

...

9. Draw Down

(a) All and any Special Conditions (in Part 4) must be complied with in full to the Lender’s satisfaction prior to draw down of the Loan. It is the responsibility of the Borrower and the Borrower’s agent to ensure that all Conditions are complied with.

...

(c) All and any Conditions Precedent (in Part 3) must be complied with in full to the Lender’s satisfaction within two months from the date hereof. The Loan must be drawn down within 6 months for the date hereof. The Lender may, at its absolute discretion, extend either or both periods. If this Loan Offer specifies that the loan may be drawn down in stages, this condition is hereby varied by condition (d) below.

(d) If the Loan is to be drawn down in stages, pending draw down in full, the “Loan”, for the purposes of this Offer Letter shall mean so much of the Loan as has been drawn down at any time and the monthly payment of principal and interest (or in the case of an endowment loan, interest only) shall be of such amounts as having regard only to the amount of the Loan which has been drawn down at that time, as the Lender at its absolute discretion shall stipulate provided always that this is without prejudice to the Borrower’s solicitor’s obligation to stamp and register the security documents referenced in clause 2(a) for the full amount of the Loan. Each stage shall only be drawn down on foot of an architect’s certificate or that of some other suitably qualified person in the Lender’s prescribed form or in such manner as shall be specified by the Lender in the Special Conditions. The first stage of the Loan must be drawn down within 6 months and the final stage of the Loan must be drawn down within 18 months of the date of this Offer Letter.

...”

The Complainant signed the MLOL on **16 August 2017** confirming as follows:

“1. I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions.”

The Provider received the signed MLOL from the Complainant’s solicitor under cover of letter dated **7 September 2017**.

Analysis

As stated above, the complaint is that the Provider failed and/or refused to honour the repayment terms contained in the Mortgage Loan Offer Letter.

The basis underpinning this complaint is that the Complainant did not understand that the repayment details provided to her were calculated by reference to the full drawdown of the loan. While the Complainant acknowledges that she understood she was receiving a stage drawdown loan, she believed that, irrespective of how much was drawn down, her repayments for the fixed period of the loan would always be €791.86.

The Complainant completed the Provider’s mortgage application form dated **20 October 2016**. The application form contains a number of definitions on pages 1 and 2 including a definition of the terms *drawdown*, *interest rate* and *repayment*. Further to this, page 15 contains *Important information and warnings*. Having reviewed the Provider’s application form I note that there are no references to and/or explanations of the manner in which loan repayments are calculated on foot of a stage draw down loan. Further to this, neither the AIP letter, SoS letter nor the ESIS contain any information concerning the manner in which repayments are calculated in respect of a stage drawdown loan and none of these documents explain that a stage drawdown loan will affect or alter the way repayments are calculated. Additionally, the ESIS does not provide any information or warning that the standard illustrations given are dependent on full drawdown. This is also the case for the statutory notice on Part 1 of the MLOL. From a review of the documentation provided to the Complainant, it is only the MLOL that explains, at Part 5, clause 9(d), how repayments are calculated in relation to stage drawdown loans.

The Complainant signed the MLOL acknowledging that she had read and understood the terms and conditions contained in it. Importantly, Part 5, clause 9(d) explains how repayments are calculated in respect of a stage drawdown loan. However, I am not satisfied that Complainant read and fully understood the MLOL nor did she totally understand the repayment terms of her loan.

In an email to the Provider dated **19 October 2017** she stated:

“... However the agreement I signed with the bank said nothing about only repaying 3% of what is drawdown and thereafter paying the full amount.

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It says that I'll repay the full amount for the 36 months or 3 year fixed term acknowledging that the loan will issue in stages. ..."

When considering the MLOL, it appears that the Complainant's attention focused predominantly on Part 1 of the MLOL. In an email to the Provider dated **21 October 2017** the Complainant stated:

"Regarding the repayment/mortgage agreement that I signed it says on it, on the first page, the amount of each repayment is 791.86 for 36 months at 3% fixed interest rate for this period."

This email also demonstrates that the Complainant relied on the information provided in the ESIS. Referring to the ESIS she stated:

"Again on the ESIS section, that it says was produced for myself in section 5, it says the amount of each instalment will be 791.86 for 36 months at 3% fixed during which my instalments will not change."

Further to this, in a call which took place between the Provider and the Complainant on **24 November 2017**, the Complainant stated

"... It never said in the agreement that I only had to pay a lesser amount until the fuller amount was drawn down ... It didn't say in my agreement that I had to draw down. I had a fixed agreement to pay this amount for three years. It never said that I wouldn't be paying that amount ... I'm just wondering why this wasn't put in my contract. Why was I led to believe something else ... I was under the impression that I would be paying back €791.86 for 36 months and not any less and that's what I wanted to do ... This wasn't what was disclosed to me when I signed the agreement as in once I signed it I've been told something else ... I signed it based on what was in it. I want legal to clarify for me where exactly it says my repayments would only be reflective of what was drawn down ... why does it say ... on the ESIS section that I'm going to be paying €791.86 ...

I'm wondering if legal can just tell me where in my contract that it says that I would only be paying down on what I am drawing ... on two different pages in my agreement it contradicts that ... I was under the impression in my contract that I was allowed to pay €791.86 for 36 months ... my issue is that I wasn't informed that I wasn't allowed to be paying [that] ... I'm just wondering why this was not made clear to me ... I read one thing in my loan agreement and following reading that I am informed that I am going to be making less repayments and it's not what I thought I was signing up to ... why was it not made explicit in my agreement and if it was made explicit where does it say it ... Can you see a line in my contract where it says that repayments would only be based on what had been drawn down ..."

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The evidence in this complainant suggests that the Complainant placed too much emphasis on the ESIS and Part 1 of the MLOL and did not have regard to the totality of these documents. It is important to note that the ESIS is not a legally binding document and is for illustrative purposes only. This was made clear on the ESIS.

The contractual basis of the Complainant's loan agreement is the Mortgage Loan Offer Letter (MLOL). When considering the extent of this agreement the Complainant cannot look at specific parts of the MLOL in isolation. It must be viewed and read as a whole. In such circumstances, I am satisfied that it is reasonably clear that the repayments under the loan were calculated by reference to the amount drawn down, at a particular point in time and not as set out in the statutory illustrations, or in the Mortgage Quotation, recently referred to by the Complainant. Ultimately, there is a difference between

- (i) what the Complainant understood and wanted the repayment terms to be, on the basis of the information relied on by her and
- (ii) the actual loan repayments by reference to the MLOL as a whole.

Furthermore, the Complainant was advised by the Provider on a number of occasions to seek independent legal and financial advice. A copy of the MLOL was also forwarded to the Complainant's solicitor. The Complainant has not offered evidence as to whether or not she received any such advice and if so, what this advice was.

While the manner in which the Provider presented the statutory information to the Complainant has caused her confusion, I do not accept that the Provider has failed to honour the terms contained in the MLOL. I am satisfied that the loan was administered and the repayments were calculated in line with the terms contained in the MLOL. Therefore, I do not accept that the Provider has failed to honour the terms of the loan.

The Provider is obliged pursuant to regulation 15(2) of the **European Union (Consumer Mortgage Credit Agreements) Regulations 2016** (S.I. No. 142/2016) (the **Regulations**), to provide the Complainant with an ESIS as set out in Schedule 2 of the Regulations. Further to this, the Provider is not permitted to modify the ESIS other than as permitted by Schedule 2 (see regulation 15(7)). Furthermore, the Provider is required by the section 129(1) of the **Consumer Credit Act, 1995** (the **Act**) to provide the Complainant with the information and in the format of Part 1 of the MLOL. The Act does not permit any derogation from this, and I do not accept the Complainant's contention that the Provider has been "*deceitful*".

The Provider, in conveying the information contained in the ESIS and Part 1 of the MLOL, is constrained in terms of the type of information it can provide to the Complainant in those documents and it is these documents that informed the Complainant's understanding of how her repayments were calculated in respect of her loan. The Provider was not guilty of wrongdoing in that respect.

I am satisfied that the information given to the Complainant was not entirely clear in communicating to her the manner in which repayments would be calculated on the basis of a stage draw down loan. Furthermore, the Provider acknowledges that the information regarding the making of repayments on a stage draw down mortgage may not have been

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sufficiently clear. I take the view that both the ESIS and Part 1 of the MLOL are not particularly representative of how a stage drawdown loan operates. I believe that a stage drawdown loan could be better illustrated by the Provider and it would also be prudent for the Provider to consider furnishing customers with an explanation as to the affect a stage draw down loan will have on repayments, and how such repayments are calculated.

In resolution of this complaint by letter dated **4 April 2019**, the Provider has made the following goodwill gesture to the Complainant:

*“[The Provider is] willing to offer the total amount of **€5779** in full and final settlement of the complaint.*

This payment is made up of the following:-

*a) the difference in the amount credited to the mortgage account since the first payment in November 2017 versus the total amount the Complainant could have lodged if the monthly repayments of €791.86 had commenced from the first direct debit date until the full draw down of the loan in December 2018. This amount equates to **€4,567***

*b) The maximum overpay the Complainant could have made on a repayment amount of €791.86 for this same period in the amount of **€1109***

*c) interest (being the total difference in interest on the mortgage account based on the lodgements made to the Complainant’s account from November 2017 to December 2018 versus the monthly repayment of €791.86 had this sum been credited to their account from the inception of the first direct debit) in the amount of **€103** (rounded).”*

In my opinion, this goodwill gesture offered by the Provider to be a very reasonable sum of compensation for the inconvenience caused to the Complainant arising from the issues raised in this complaint and given the absence of any wrongdoing on its part. In these circumstances, on the basis that this offer remains available to the Complainant for acceptance, I do not consider it necessary or appropriate to uphold any aspect of 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

25 November 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.