



<u>Decision Ref:</u>	2020-0110
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Failure to implement payment terms
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants' complaint is in respect of the interest calculations on their account which is held with the Provider. The complaint is that the Provider is not clear in its communication of the application of interest on the Complainants' loan account.

The Complainants' Case

The Complainants position is that —

- They do not understand the letters that were issued by the Provider relating to interest or what the actual interest rate charged was.
- They are very concerned about the reference to "compounding" in the complaint response letter issued by the Provider.

The Provider's Case

In its response to the complaint the Provider refers to the Letter of Offer issued to the Complainants on 29 June 2009. The Provider states that this application was sanctioned in the names of the Complainants. The Provider submits that this Offer letter confirmed that the Complainants had been sanctioned an overdraft facility as well as a loan of €102,000. The Provider says that the loan was to be repaid at an interest rate of 4.389% - Base Lending rate. The Provider states that as at 23 June 2009 the interest rate was

1.389% per annum, plus 3.000% which was open to a change. The Provider's position is that the terms and conditions of the Letter of Offer were accepted and signed by the Complainants.

The Provider submits that in addition to the above, the Letter of Offer issued to the Complainants dated 29 June 2009 states the following:

"We will not automatically adjust the amount of the instalments if the interest rate rises or falls. This may mean that these instalments may become insufficient to clear the credit facility on schedule. If you want to make an adjustment to keep pace with an interest change, please ask us".

The Provider states that this letter of offer, including all terms and conditions was accepted by the Complainants and the account was duly opened on 03 July 2009.

The Provider submits that having reviewed the account in detail, it is satisfied that the interest charged to the account has been correct.

The Provider advises that this account is now closed since January 2017 and there is no further monies due and owing by the Complainants in respect of this loan account.

As regards the Complainant's complaint that they do not understand the letters that were issued by the Provider relating to interest or what the actual interest rate charge was, the Provider's response is that:

"Letters issued to the Complainants have clearly explained what interest is, how it is applied to the account and what happens to the interest when the account is managed by [the Provider's] Customer Recoveries [in this regard the Provider refers to the letter dated 23 September 2016 provided with complaint form]. When the Complainants took out the Loan, it would have been advised and noted in the Letter of Offer to what interest rate was being charged. All statements issued to the Complainants would have clearly shown the interest been charged".

As regards the Complainant's complaint that they are very concerned about the reference to "compounding" in a complaint response letter issued to them by the Provider, the Provider's response is that:

"The Bank notes the Complainants concerns and this was addressed in our correspondence dated 26 October 2016 provided with complaint form where it was explained what compound interest meant. Once an account is managed by the [Provider's] Customer Recoveries department, interest is no longer charged on quarterly basis. Therefore interest would not be charged on interest, this is called compound interest. To confirm, the Complainants are not being charged interest upon interest, which is referred to as compound interest".

Further submission from the Complainants

3rd August 2017 – The Complainants’ representative’s response to the Provider’s submission:

“This complaint speaks for itself and we submit that the bank documentation is unintelligible to any ordinary person”.

Evidence

General Terms and Conditions

Section V - Interest

Section V sets out the details pertaining to interest under the following headings: “Application”, “Determination of Applicable Interest Rates”, “Variable Interest Rates”, “Market Related Rates and Fixed Interest Rates”, “Basis of Calculation”, “Calculation of Interest”, “Interest Debited to Accounts”, “Compound Interest”, “Surcharge Interest”, an “interest Set-Off on Current Account”.

Correspondence between the parties

29th July 2016 – The Provider to the Complainants’ representative

“As requested please find enclosed loan account statement in respect of the above account number.

The balance as at todays date amounts to ... which is made up of principle of .. and accrued interest of €32,647.62”

3rd August 2016 – The Complainants’ representative to the Provider

“We return your letter and account statement 29th of July 2016. Please let us have a full breakdown from opening balance to date showing all interest and rate of interest”.

11th August 2016 – The Complainants’ representative to the Provider

“We refer to our letter dated the 3rd August and await hearing from you with a full breakdown from opening balance to date showing all interest and rate of interest”.

17th August 2016 – The Provider to the Complainant’s representative

“Please find enclosed statements from the origination of the loan, payment made and interest charged as requested”.

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19th August 2016 – the Complainants’ representative to the Provider:

“Please explain the insertion of the “box” on the top right hand corner of the statement, which states “Balance excludes interest accrued since 16/06/2010 of €32647.62”

On 23rd September 2016 the Provider advised:

“Further to correspondence dated 19th August 2016, we wish to advise that the account was opened 3rd July 2009 and interest was charged to the loan each quarter on a compound interest basis in line with normal banking practice from then until June 2010. Prior to the next scheduled interest charge being applied in September 2010, the account was passed to our team for case management on 16th June 2010. I can confirm that from this date interest was no longer charged to the loan account on a quarterly basis but has accrued at the debit rate of interest and will be payable once the principal balance is paid in full. The accrued interest has been calculated on a simple interest basis which means that we are not charging interest on interest which effectively happens where interest is applied to an account every quarter”.

On 30th September 2016 - the Complainants’ representative advised that it did not understand the explanation of the calculation on the statement sent by the Provider. The Complainants’ representative sought the total liability so that the property could be sold.

On 26th October 2016 - the Provider further explained how interest was being charged and advised what the total liability was at that date. In this letter the Provider stated that:

“As advised [in] letter dated 23 September 2016, the loan account was opened on 3 July 2009 and initially interest was charged quarterly and applied to the account. As an example, I have attached a copy of statement page 2 of the loan account showing the first quarterly application of interest to the account on 16 September 2009.

As noted in [letter of 23 September 2016], this addition of interest to the principal sum of a loan is called compounding. As a result when interest was charged for the following quarter, it was calculated on the principal sum which included the interest charged to the account in September 2009. Compound interest is interest on interest. I have attached a copy of statement page 3 of the loan account showing the application of interest on 16 December 2009.

On 16 June, as [the Complainants] did not maintain the required payments, the Bank deemed this loan a bad debt. Therefore, as part of the Bank’s process, their loan was transferred to Customer Recoveries. Once accounts are with this unit,

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interest is no longer charged to the account on a quarterly basis but continues to accrue.

You will note per [letter of 23 September 2016] that interest is accruing separately, but is not payable or applied to the loan account until the principal amount is paid in full. See the attached loan statement (page 17) which advises that the balance “excludes interest accrued since 16/06/2010 of €15,652.84”. This interest is accruing on a simple interest basis and as interest is not charged on interest (as in compounding) is to [the Complainants’] advantage”.

The last submission from the Complainant’s representative (30 January 2020) was in relation to the Provider’s late submission to this office of the Terms and Conditions attaching to the Complainant’s account. The Provider was initially asked to submit the Terms and Conditions in this office’s “Schedule of Evidence / Information Required” letter of 21 June 2017. The Provider submitted the Terms and Conditions on 22 January 2020 following our further request of 8 January 2020, when preparing the file for adjudication.

30 January 2020 – Complainant’s last submission:

- “1) We will leave it to FSO to comment on the late submission by the bank.*
- 2) We submit that it is ludicrous to expect the ordinary borrower with no financial training to read through and understand such a number of conditions.*

“Regulations” of banks and lending institutions are supposed to protect the consumer. Lengthy conditions do the opposite as it is well known that consumers do not read lengthy conditions”.

The Complaint for Adjudication

The complaint is that the Provider is not clear in its communication of the application of interest on the Complainants’ loan account.

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

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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 18 February 2020, 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.

A correspondence dated 5 March 2020 was received from the Provider, acknowledging receipt of the Preliminary Decision and to advise that the Provider had no further submissions to make.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

Analysis

The General principles set out in the Consumer Protection Code states that a Provider must make full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.

As regards the provision of information the codes require that a regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

The codes also require that a regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following: a) the urgency of the situation; and b) the time necessary for the consumer to absorb and react to the information provided.

The Complainants' representative's submission is that the Provider's documentation is unintelligible to any ordinary person. I accept that there is a level of communication / explanation required from a Provider in relation to concepts such as simple interest, compound interest, surcharge interest etc. Such clear communication / explanation is necessary so that it is easier for a customer to understand and make informed decisions about the products they have entered into.

I consider that the General Terms and Conditions attaching to the Complainants' facilities extensively sets out how the Bank would be applying interest. The Terms and Conditions specifically state that: *"The current interest rate applicable to a facility and the effective date of any interest rate change will be shown on the account statement, if any, next*

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issued after the interest rate change". The Terms and Conditions also state that: "Details of current interest rates are available at all times on request to the Bank".

On balance, I accept that the Provider has reasonably communicated by way of the General Terms and Conditions and in the Complainant's bank statements, such financial concepts for the Complainants' information. The Provider also explained the differing interest rates, when the information was specifically requested by the Complainants' solicitor.

Having regard to all of the above, it is my Legally Binding Decision that the complaint is not upheld.

Conclusion

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

11 March 2020

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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.