



<u>Decision Ref:</u>	2020-0191
<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

This complaint concerns the Provider's calculation of interest on a mortgage loan account held by the Complainant.

The Complainant's Case

The Complainant holds a mortgage account with the Provider, which was inceptioned in 2004 with a third party. The mortgage account fell into arrears and was transferred to the Provider, against which this complaint is made, on 25 August 2014. The Complainant alleges that the Provider is incorrectly applying interest on the arrears sum and has not provided him with an adequate "reconciliation of the account". The Complainant continues to make monthly, and additional, repayments to the mortgage account, but is unhappy with the explanations he has received regarding the calculation of interest on arrears and the end of month balances.

The Complainant has been in correspondence with the Provider since February 2018 regarding his contention that he is being charged "compound interest on arrears". He submits that as the mortgage loan relates to his primary residence, the Provider is incorrectly applying interest on the arrears. The Complainant refers to "Rule 18" of the original financial service provider that governs his mortgage, which states:

"18. Other than in respect of a home loan, additional interest shall be charged by [the third party service provider] and shall be payable by a borrower at the end of each calendar quarter on the total arrears in respect of all payments outstanding and remaining unpaid at the end of each Calendar Quarter (Viz, 31st March, 30th of June, September 30th, 31st of December).

This additional interest shall be calculated by applying to the total arrears outstanding at the end of each calendar quarter by the percentage figure obtained by dividing by four the sum of the published European Central Bank Marginal Lending Facility Rate applicable at the end of the calendar quarter when the additional interest is payable and five per cent (the "maximum rate").

Additional interest on repayments in arrear shall be deemed to be payable without demand on the date upon which the same is imposed.

The Complainant goes on to state that the *"Resolution passed by the [third party provider] on 24th April 2003 and registered with IFSRA on 4th May 2004, precludes any interest charged on arrears for home mortgages"*. The Complainant also says that *"he is having difficulty reconciling the opening balance with the debits and credits made"*.

The Complainant did not receive responses from the Provider over several months in 2018. He asserts that the Provider is incorrect and has failed to give any comprehensive information to address his concerns regarding the arrears, interest applied to the arrears, and reconciliation of account balances. The Complainant was contacted by letter of 30 November 2017 regarding an offer to recapitalise the arrears on the mortgage account under an alternative repayment arrangement (ARA). This offer has not been accepted by the Complainant.

The complaint is that the Provider:

- Is applying compound interest on the Complainant's (home) mortgage account arrears incorrectly, as the Complainant's primary residence *"precludes interest charged on arrears for home mortgages"*;
- Has failed to communicate effectively with the Complainant with regard to giving an explanation as to how the account arrears, and interest on the arrears, were calculated and applied to the Complainant's mortgage loan account;
- Has failed to comprehensively explain/illustrate *"reconciliation of the account balances"* to the Complainant.

The Complainant wants the Provider to:

- Refund arrears of interest charged and make the appropriate adjustments to the mortgage account;
- Cease charging interest on arrears;
- Compensate the Complainant for fees he has incurred in relation to this complaint e.g. solicitor and other costs totalling €4,750.00.

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The Provider's Case

The Provider offers an explanation to the Complainant's issues in its Final Response Letter. It states that it has responded to the Complainant *"on a number of occasions, in an attempt to clarify [the Complainant's] queries"* and that *"interest is broken down into two categories, interest on principal portion of the outstanding balance and interest on the arrears portion of the outstanding balance"*. The Provider does acknowledge that the *"special Resolution No. 18 condition and amendment is in reference to interest charged on arrears on a security other than a Principal Private Residence, which does not apply in [the Complainant's] case as the security is [the Complainant's] PR"*.

The Provider references reconciliation of the account balances being calculated, and in a letter to the Complainant dated 14 February 2018 it stated that *"interest has been applied to the account since inception. [The Provider] can confirm that interest is calculated daily, based on the principal balance of the mortgage and applied to [the Complainant's] account on the last day of every month. Interest on arrears is calculated on a daily basis and is charged to the account when a payment is made."*

Thus the debit interest will vary depending on the number of days in the month". The Provider goes on to explain in its letter dated 25 April 2018 *"Interest on principal is applied to the mortgage monthly and is visible on the statement against each monthly billing date. However, any interest on arrears accrues separately."*

The Provider concludes in its Final Response Letter, that it acknowledges the Complainant was making additional payments, however *"these were not sufficient to clear the arrears"*. The Provider states that an offer to arrange an ARA is still open to the Complainant.

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.

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A Preliminary Decision was issued to the parties on 30 April 2020, outlining my preliminary determination 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.

The Complainant entered into a mortgage loan agreement, with a third party financial service provider, in 2004 to fund the purchase of a principal private residence (PPR). He was advanced €158,400 to be repaid over 30 years. Interest was to be charged at a fixed rate of 2.99% for the first 12 months, with a variable rate thereafter.

A *“Loan Completion Detail Sheet”* dated 15 December 2004 states *“Interest shall be chargeable in each month on the amount of the total indebtedness of the borrower at the close of business on the last day of each month”*.

Rule 18 of the rules of the third party financial service provider that initially held the loan was amended by special resolution on 24 April 2005 and reads as follows:

“Additional Interest on Arrears

18. Other than in respect of a home loan, additional interest shall be charged by the [third party financial service provider] and shall be payable by a borrower at the end of each calendar quarter in respect of all payments outstanding and remanding unpaid at the end of each Calendar Quarter [...] This additional interest shall be calculated by applying the total arrears outstanding at the end of each calendar quarter the percentage figure obtained by dividing by four the sum of the published European Central Bank Marginal Lending Facility Rate applicable at the end of the calendar quarter when the additional interest is payable and five percent (“the maximum rate”).”

The Complainant feels that he is being charged additional interest within the meaning of Rule 18 despite the fact that his mortgage loan is a home loan.

It is worth noting that this special resolution made further changes to the [third party financial service provider] Rules – namely replacing the word “Fines” with “Additional Interest” in other rules.

If the special resolution cited by the Complainant were to be applied to his mortgage, I accept that it could be considered a penalty levied over and above the otherwise applicable rate of interest.

The Complainant is of the belief that he is being charged 'additional interest' within the meaning of Rule 18 despite his loan being a home loan to which Rule 18 does not apply.

The Provider has stated that it is not charging additional interest on the Complainant's arrears and has acknowledged that Rule 18 does not apply as it is a home loan.

I accept that in the case of the Complainant's mortgage loan, the Provider is charging interest on the total outstanding sum in line with its contractual entitlement. The "outstanding sum" constitutes principal plus arrears. The Provider's statements break down this figure into two elements – interest on principal and interest on arrears.

In its final response to the Complainant, the Provider explained that *"In order to ensure transparency, the interest is broken down into two categories, interest on the principal portion of the outstanding balance and interest on the arrears portion of the outstanding balance"*.

The use of the term 'interest on arrears' in the statements issued to the Complainant has contributed to the Complainant's confusion. The Complainant has appeared to take this as 'additional interest' described in Rule 18. This is not the case.

The Provider has tried to break down the interest being charged into two separate sections with the intention to provide better clarity as to what is being charged on the Complainant's loan. I can understand that, given the manner in which Rule 18 was framed, using the term "additional interest" rather than "fines" or "penalties" could cause confusion for the Complainant.

However, I accept that the "interest on arrears" detailed in the statements is not an "additional interest". It is not a fine or penalty interest, it is one part of the interest that forms the total interest applicable to the "outstanding balance" (the other part being interest on the principal amount).

I note that a further factor that causes confusion is the fact that the interest on arrears is only applied to the account in a debit column when a repayment is made.

On the figures presented to me, I can see no evidence of incorrect calculations being applied by the Provider to the Complainant's loan.

I accept that the Provider's responses were sufficiently clear, and the reason the Complainant felt the explanations were unclear was, in my view, because it was difficult for him to reconcile those explanations with the wording of Rule 18. However, I am satisfied that Rule 18 is not being applied to his loan.

I have been furnished with account statements by the Complainant covering the period from 23 August 2014 to 26 February 2018 and by the Provider covering the period from 23 August 2014 to 24 September 2019.

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The statements furnished by the Complainant provide a global figure for the period described as “Interest on Arrears charged during the period of the statement”.

The statements furnished by the Provider itemise “interest on arrears” as a debit whenever a payment is made, and a separate figure below it for “Interest on Arrears accrued but not yet charged”.

The “Interest on Arrears charged during the period of the statement” (in the statements furnished by the Complainant) refers to the same interest that is broken down as “Interest on Arrears” debits and “Interest on Arrears accrued but not yet charged” (in the statements furnished by the Provider).

While I have been provided with no evidence that the actual figures are incorrect, they are nonetheless framed in such a way as to make them very difficult to comprehend. In the Provider’s attempt to make the statement more transparent, it has included too much information without explaining clearly where each figure comes from. Each item that is contained on the statement should be explained in simple English so that the Complainant can satisfy himself that the figures are accurate.

This is a clear failing on the part of the Provider.

This complaint arose due to confusion on the part of the Complainant as to whether the “interest on arrears” detailed in his statements constituted “Additional Interest” (that is a fine or penalty). I accept that the “interest on arrears” is one portion of the interest applicable to the outstanding amount (the other part being interest on the principal amount).

Rule 18 as cited by the Complainant prevents the Provider from charging “Additional Interest”, which in this case would be fines or “penalty interest” for being in arrears. I can find no evidence of any such fine/penalty interest being applied to this account.

Therefore I do not accept that the Provider has wrongfully charged interest.

However, in breaking down the interest sum into two parts, I do appreciate that it can become difficult for the Complainant to do the necessary calculations to assist him understand how he is being charged when he receives a statement.

I believe that in its attempt to provide greater transparency by breaking down the interest figure, the numbers and the underlying calculations have become very difficult to understand and follow.

This represents a failure of the Provider to communicate in a clear and efficient manner with the Complainant.

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For the reasons outlined above, I partially uphold this complaint and direct that the Provider make a payment of €500 to the Complainant for the inconvenience this has caused him.

I also direct, pursuant to **Section 60(4)(a)** of the **Financial Services and Pensions Ombudsman Act, 2017**, that the Provider review the manner in which it presents information in mortgage loan statements to establish whether there is a means by which it can inform customers how interest is charged and applied to the account in a more customer friendly and accessible manner.

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)(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 Complainant in the sum of €500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I further direct the Provider to review the manner in which it presents information in mortgage loan statements to establish whether there is a means by which it can inform customers how interest is charged and applied to the account in a more customer friendly and accessible manner.

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**

22 May 2020

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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.

