



<u>Decision Ref:</u>	2020-0440
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Fixed Rate
<u>Conduct(s) complained of:</u>	Fees & charges applied (mortgage) Arrears handling - Mortgage Arrears Resolution Process Application of interest rate Delayed or inadequate communication Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Failure to process instructions in a timely manner Increase in interest rate Failure to process instructions Maladministration Maladministration (mortgage) Classification of borrower as non-cooperating
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant entered into three loan agreements with the Provider between **2003** and **2008**. These loans were secured on the Complainant's apartment. The Complainant began to experience financial difficulties and difficulties making her contracted repayments in respect of each of the loans. The Complainant believes the Provider failed to engage with her in terms of her arrears and finding a sustainable arrangement in respect of the repayment of her loans. The Complainant also believes the Provider charged excessive interest rates on two of her loans and ignored her requests for a reduction in interest rates.

The Complainant's Case

The Complainant has expressed concern about the amount of interest applied to her three mortgage loan accounts while she was in arrears.

The Complainant explains that she entered into the first mortgage loan agreement in **2003** in the amount of €139,500.00. This was followed by top-up loans in **2004** and **2008**. The Complainant states that *"I've paid a lot of money off all 3 accounts before and after my period of arrears and yet I still owe more than I borrowed on all 3 accounts due to the amount of interest applied while I was in arrears."* The Complainant remarks that she borrowed €25,000.00 as part of one of the top-up loans, *"... paid it in full until I got into arrears so it was down to 15k but now, even after paying it in full for over 3 years I still owe 25k."*

The Complainant advises that she made a formal complaint to the Provider but did not receive a response within 40 days. However, the Complainant received a letter from the Provider within 5 days and again after 20 days but she has not had any communication with the Provider since this letter as to how or why her complaint was not resolved within the 40 day period.

A summary of all three accounts was requested from the Provider for the period from which arrears first began to accrue until the end of the arrears period. The Complainant also sought details on the amount of interest charged to each account during this period. The Complainant states that *"I've now sent 4 requests for this information since Jan this year and they won't provide me with it."* The Complainant advises that she does not have access to this information online and as a consequence, she cannot give more specific information on this aspect of her complaint.

The Complainant states the two top-up loans/mortgages were sold to her as top-up loans and both had a high interest rate, *"... one of them close to 7% the other 8%."* The Complainant explains the Provider is now telling her these loans are mortgage loans and she has asked the Provider to investigate why she was given such high interest rates on these accounts if they were mortgage loans: *"[t]he mortgage rate at that time was 4.25%, why was that rate not given to me?"*

Referring to the Code of Conduct of Mortgage Arrears 2013 (**CCMA**), the Complainant submits that interest should not be applied to accounts in arrears if the borrower is co-operating. *"During my arrears period I sent an awful lot of mails and letters literally begging [the Provider] for help in resolving my arrears."* The Complainant states *"[t]here were a lot of phone calls also but I didn't take note of these, it was a very stressful time for me and my family."* The Complainant points out that she explained to the Provider *"time and time again"* that she could meet the repayments under her loans but could not clear the arrears. The Complainant adds that she *"... repeatedly asked them over a 6 years period to capitalize the arrears to enable me to get a clear foot and they refused over and over. I made numerous other suggestions that they could help me with and other than giving me 6 months interest free on the mortgage they refused every single suggestion I made."* An offer of €15,000.00 was also made in respect of one of the top-up loans in full and final settlement *"... which I actually managed to get down to 15k, at this stage due to the amount of interest applied it was back up at 25k."* The Complainant explains that this offer was made to the Provider on three separate occasions but was refused each time. The Complainant feels all of this demonstrates that she was *"... more than co-operating."*

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Standard Financial Statements were completed and returned to the Provider whenever the Complainant was requested to do so and *"... they could clearly see we had more going out than we had coming in."* The Complainant submits that at no stage during this process *"... were they in any way helpful or understanding."* The Complainant states the Provider tried to get her to sell her apartment, give it the proceeds and then pay €350.00 per month for another 8 years. The Complainant refused this request and explained to the Provider that all she was looking for was a recapitalisation of her arrears, *"I wasn't looking for an easy way out."* Again, this was refused.

The Complainant's financial situation improved in **2014** and she began making full repayments to her loan accounts despite the Provider commencing legal proceedings. The Complainant wrote to the Provider and their solicitors explaining that she was making full repayments. The Provider responded by requesting that the Complainant make monthly repayments of €2,600.00. However, eventually in **2015**, the Provider agreed to capitalise the arrears roughly 6 years after the Complainant first requested the Provider to do so.

The Complainant states that without the statements requested from the Provider, she has been unable to determine the exact amount of interest applied to her accounts but *"... if I had to guess I think there is at least 50k added onto my accounts in interest."* The Complainant states that she borrowed €139,500.00 in **2003** and made full repayments for a number of years before falling into arrears and continued to make full repayments for a further 3.5 years after arrears accrued. The Complainant estimates that *"... there's been at least 100k paid off that account alone and yet I still owe 142,000, more than I borrowed in 2003. It's the same for the 2 smaller loans."*

In resolution of this complaint, the Complainant *"... wish[es] for the interest added on my account to be removed according to section 11 of the code of conduct on mortgage arrears. I don't feel interest should have been applied."*

The Complainant delivered a further submission in support of her complaint to this Office having received a Final Response from the Provider. The Complainant explains that she is *deeply unhappy* with the Provider's response because the Provider believes its conduct was in compliance with the CCMA.

The Complainant states that between **2007** and **2015** she made numerous requests for help regarding her arrears. The Complainant feels the suggestions she made were fair and well within the Provider's powers to accept. These requests were either refused or ignored and, in some instances, the Complainant had to make three or more requests just to get a response. In some cases, the Provider never responded. The Complainant states that the Provider *"... fobbed me off from one person to another, each dangling different suggestions in front of me that never materialised until 2015 onwards."*

In terms of the Complainant's classification as *not co-operating* by the Provider, she submits that interest should not be applied to loan accounts of borrowers who are co-operating. The Complainant disagrees with the Provider's definition of *not co-operating* simply because she was not in a payment plan. The Complainant states that *"I may not have been in a repayment plan but I kept in contact with them throughout this whole mess."*

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The Complainant fails to see how she was meant to adhere to a payment plan when the Provider was seeking ridiculous monthly payments of €2,600.00.

The Complainant entered into the mortgage loan agreement in **2003** “... and yet I owe more than I borrowed, the same with the 2 top up loans. According to my original mortgage payment scale I should owe 72k on the mortgage by year 15 yet I owe 142k ...” The Complainant is seeking a review of the interest rates charged by the Provider on the top-up loans as the Complainant is not aware of any mortgage loans with such interest rates at that time. Finally, the Complainant states she also requested that her interest rates be reduced several times but these were ignored. The Complainant submits that she was making full repayments at the time and the Provider “... had no right to keep me from switching to a lower fixed rate.”

The Provider’s Case

Background

The Complainant incepted a mortgage loan on **23 April 2003** (account ending 246). A top-up loan (account ending 798) was entered into in **February 2005**. The Provider explains that the Complainant began to experience financial difficulties in early **2006**. The Complainant was given a mortgage loan (account ending 905) in **June 2006**. The loan was approved and the Provider advanced €25,300.00 to enable the Complainant to put a deposit on a property she wanted to buy. The Complainant advised the Provider the property she wished to buy was worth less than her current property, the mortgaged property. It was the Complainant’s intention to sell the mortgaged property and use the funds to service the loans. The repayments under the mortgage loan account remaining after the sale of the mortgaged property would in turn have been more manageable for the Complainant.

The Provider explains that the Complainant was supposed to repay loan account ending 905 within six months and was given a reduced repayment arrangement during this period. The Complainant failed to repay the loan within the six months and as required by the terms and conditions of the Loan Offer letter dated **26 May 2006**, the loan was registered as a charge against the secured property and the loan term was set at 10 years.

On **15 May 2007**, the Complainant called the Provider and advised there were several interested parties in the mortgaged property. The Complainant then advised the Provider in **October 2007** that she was attempting to refinance. On **29 January 2008**, the Complainant informed the Provider that the purchase of the other property had fallen through and the deposit cheque was returned and as soon as it cleared, she would use it to clear the arrears on her accounts. On **28 March 2008**, the Provider telephoned the Complainant who advised that her car was advertised for sale and she had moved to [location redacted] to rent a property there and also rent out the mortgaged property. The Complainant confirmed her car was sold and the funds were used to reduce the arrears on account ending 246 in **April 2008**. The Provider then capitalised the arrears on account ending 905 in **June 2008** but there were still arrears on account ending 798.

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The Complainant telephoned the Provider on **5 October 2009** to tell the Provider that she could not get anyone to rent the mortgaged property. During this call, the Complainant advised the Provider that she had lost the house deposit when the building company went out of business. The Provider submits that this information varied from the information provided by the Complainant in **January 2008**. The Complainant explained that she did not want her accounts to be in long term arrears again.

On **15 October 2009**, an Income & Expenditure (I&E) form was received from the Complainant and she requested an interest only arrangement. On **28 October 2009**, a letter was issued to the Complainant confirming the arrangement for 3 months on account ending 246. The Provider states that it is unable to locate a copy of this letter. An email was received from the Complainant at the end of **January 2010** seeking an additional 3 month interest only arrangement.

On **16 February 2010**, the Provider's case manager telephoned the Complainant. The case manager asked the Complainant why she had failed to make the agreed repayments or any of the additional payments towards the arrears that she claimed she would make. The Complainant explained that she was under a lot of pressure with Christmas and the Provider accepted this explanation. On **24 February 2010**, the Provider issued another 3 month interest only letter to the Complainant. This agreement was not adhered to.

On **3 November 2010**, the Complainant sent an email to the Provider advising that her situation had deteriorated, and the mortgaged property was currently listed for sale. On **12 November 2010**, the Complainant submitted an I&E form. Based on the initial assessment, the case manager advised the Complainant that she had affordability to make the repayments and the Complainant then advised that she had forgotten to include some expenses when completing the form. The case manager agreed to a 3 month reduced payment arrangement to commence in **December 2010** as the Complainant had the mortgaged property on the market. The Complainant failed to make any of these payments.

On **25 January 2012**, the Provider attempted to telephone the Complainant but there was no answer. The Provider attempted to contact the Complainant again in **June 2012**. The Complainant explained her unfortunate financial situation regarding the rental of the mortgaged property and also how she wanted to address the arrears. The possibility of a term extension was discussed, interest rates on the accounts and the requirement of a Standard Financial Statement (SFS) to be submitted to the Provider. A SFS was received on **25 July 2012** but no supporting documentation or clear proposal was included. A missing documents letter was issued as a result of this and supporting documentation was received in **September 2012** after the Complainant had suggested bankruptcy as an option and again rejected the case manager's suggestion of a term extension. The Provider explains that a term extension was considered to be the most suitable option but it was rejected by the Complainant as she wanted to get her credit rating back on track sooner. The Provider states that it discussed capitalisation of arrears and a term extension on **20 September 2012**.

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On **30 October 2012**, the Provider received a letter from the Complainant offering €15,000.00 in full and final settlement on account ending 905. The Provider attempted to contact the Complainant by telephone to discuss this proposal. The Provider advises that its records indicate that a request was entered on its system for a letter to issue the Complainant to request contact from her. However, it appears this letter did not issue. The Provider attempted to contact the Complainant by telephone on **4 December 2012** but the Complainant was unable to take the call. On **4 and 5 December 2012**, the Provider issued *Pre Not Co-Operating* letters to the Complainant in an effort to get some engagement and on **15 January 2013**, *Not Co-Operating* letters were issued. By **12 February 2013**, the Complainant had failed to respond and the loan accounts were classified as *Not Co-operating*. On **25 March 2013**, the Complainant contacted the Provider advising that she had sent a letter to it some time ago. She also advised that her work number was on a switchboard so she could not get calls and her mobile phone did not have coverage in work. The Complainant agreed to return a SFS and supporting documentation in order for the Provider to properly assess the proposal that was submitted in **October 2012**. A SFS was received two months later on **24 May 2013**.

The Provider reviewed the SFS and determined that a valuation was required in order to complete the assessment. The Provider attempted to call the Complainant but there was no answer.

The Provider states that the Complainant's loan accounts were routed to the legal queues on **6 June 2013** and assessed without the valuation. A letter was issued to the Complainant on **13 June 2013** advising her that the mortgage had been deemed unsustainable. A Mortgage Arrears Resolution Process (**MARP**) appeal letter was received from the Complainant on **24 June 2013**. Due to the Complainant informing the Provider in the appeal letter that her financial circumstances had changed, the appeal was not heard and the case was referred back to the Arrears Support Unit (**ASU**) for another assessment. The Provider explains that a further assessment was completed by the ASU on **4 December 2013** as per the MARP process. The outcome of the assessment was that the Complainant's accounts were still deemed unsustainable and another unsustainable letter was issued to the Complainant on **4 December 2013**.

The Complainant engaged with the Provider and between **January 2014** and **March 2014**, informed the Provider of a number of offers on the mortgaged property. In mid-**March 2013**, the Complainant advised the Provider of an offer on the property and that she wanted to pursue the sale. On **28 March 2014**, the Complainant was sent a Voluntary Sale for Loss Agreement letter. The Complainant was required to return a signed copy of the letter by **18 April 2014**. By **8 September 2014** the letter had not been returned, contractual repayments were not being made and the Complainant had not engaged with the Provider during this period seeking an alternative repayment arrangement.

The Provider states that as a result of this and given that a CCMA mandated unsustainable letter had previously issued, the accounts were routed to the legal queues.

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The Complainant re-engaged with the Provider in **October 2014** advising, by way of email, that her financial circumstances had changed for the better and that she could now make her full contractual repayments. The Complainant contacted her former case manager by email in **January 2015** and informed the case manager that she had *“managed to clear all arrears including credit cards, credit union, family loans etc and the only things we have left to sort out are those arrears with [the Provider].”* The Provider submits that this email shows that the Complainant was prioritising secondary debt over the debt secured against the mortgaged property.

The Complainant submitted a SFS and supporting documentation on **19 January 2015**. The assessment outcome was that a test repayment period of 6 months would take place from **March 2015** to **August 2015** with a view to capitalising the arrears and extending the term with the accounts to remain in the legal queues in the interim. The Provider submits that the Complainant failed to maintain the repayments during the test period resulting in the Civil Bill for Possession issuing to the Complainant on **27 April 2015**. The case was re-assessed by the ASU and completed on **29 May 2015**. The Complainant was approved for capitalisation of arrears and a term extension. On **11 June 2015**, the term extension letter was issued to the Complainant and, signed and returned to the Provider on **20 July 2015**.

Once the Complainant returned to engaging with the Provider and entered into the above agreement, it ceased legal action on **19 November 2015** when the proceedings were struck out of court. The Provider explains that it did this despite the Complainant failing a repayment test period that was approved on **5 February 2015**. The Provider argues that this shows the Provider acted in good faith.

Accumulation of Arrears

The Provider explains that arrears first appeared on account ending 246 in **January 2006** and arrears totalling €6,085.00 were cleared in **April 2008**. There was a brief period of arrears in **October 2008** which were cleared in **November 2008**. There was another brief period of arrears in **December 2008** which were cleared in **January 2009**. Arrears re-commenced in **February 2009** and continued to grow month on month. The Complainant made twenty-five payments between **February 2009** and **July 2015** totalling €18,861.50. The Provider advises that the Complainant should have made payments totalling €53,859.17 during this period. In **July 2015**, arrears of over €34,000.00 were capitalised.

Arrears on account ending 798 began in **May 2006** and were fully cleared in **July 2006**. This account then went into arrears for a brief period in **March 2007** and the account was brought up to date in **May 2007**. The Provider states that the account went into long term arrears in **July 2007** and remained in arrears until **October 2008**. Arrears next appeared on the account in **August 2009** and increased month on month. The Complainant made twenty-two payments totalling €3,289.45 between **August 2009** and **June 2015**. The Complainant should have made payments totalling €9,760.87 during this period. In **July 2015**, arrears of over €6,000.00 were capitalised.

In respect of account ending 905, arrears appeared on the account in **March 2007** and were cleared in **April 2007**. The account went into long term arrears in **June 2007**.

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The account remained in arrears until arrears were capitalised in **June 2008**. The Complainant made four payments between **June 2007** and **June 2008** totalling €1,279.60. The Complainant should have made payments totalling €3,585.91. Arrears next appeared on the account in **July 2009** and increased month on month. The Complainant made fifteen payments €3,819.42 between **July 2009** and **July 2015**. The Complainant should have made payments totalling €25,005.38. Arrears of over €21,000.00 were capitalised in **July 2015**.

The Provider explains that since the arrears on the Complainant's loan accounts have been capitalised, there have been some intermittent short periods with arrears on the loan account.

Classification of Top-Up Loans

Responding to the Complainant's position that loan accounts ending 798 and 905 were sold to her as top-up loans, the Provider states the three loans were secured against the mortgage property. The purpose of the first top-up loan was to facilitate home improvement costs on the mortgaged property.

The purpose of the second top-up loan was to facilitate deposit bridging on a new property. The Provider refers to the documentation provided to the Complainant during the application process, approval and drawdown process, the Loan Offer letters stating that the terms and conditions governing the loan were sufficient to confirm the top-up loans were mortgage accounts.

Dealing with the interest rates associated with these loans, the Provider states the variable interest rates applicable to each loan and accepted by the Complainant reflects the different loan purposes and points in time each loan was drawn down. The Provider also refers to section 2.1 of the *Mortgage Conditions* in respect of this point.

Account Statements

The Provider explains that annual statements issued to the Complainant on all three accounts from inception up to **January 2019**.

The Complainant contacted the Provider on **16 January 2007** querying why she only received two statements and not three. It was confirmed to the Complainant that the third statement was sent separately.

The Provider states that all statements are available to the Complainant to order outside of the annual statements that are issued within the first quarter of each year. The Provider states that it is satisfied that it has complied with the relevant provisions of the Consumer Protection Code 2012 (the **Code**) with regard to issuing statements to the Complainant.

The Provider has furnished a timeline of the dates on which the Complainant sought statements outside of the annual statements. These requests were all made during **2007** and **2012**.

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In relation to the **2012** request, on **13 July 2012**, the case manager called the Complainant and the Complainant advised that she was half way through completing a SFS and requested settlement figures for accounts ending 798 and 905 as there was a possibility that her father was going to give her funds. The case manager advised that she would send statements as the Complainant was confused as to how she still owed the amount originally borrowed. The case manager explained the reason for the accumulation of arrears was because the Complainant had not been making payments but the Complainant still did not understand.

A letter was sent to the Complainant on **13 July 2012** in follow up to this telephone conversation enclosing statements for accounts ending 798 and 905 from inception to date.

On **25 July 2012**, another letter was sent to the Complainant. This letter acknowledged receipt of the SFS. The letter requested that the Complainant submit additional supporting documentation for the assessment to take place. This letter also confirmed that the Provider had issued the statements for accounts ending 798 and 905 on **13 July 2012**.

Attempts to Engage with the Provider

The Provider rejects the allegation that it ignored correspondence from the Complainant on numerous occasions or that it dismissed proposals made by the Complainant to resolve the arrears. The Provider states that it attempted to engage with the Complainant in an effort to resolve the on-going issues in respect of the arrears.

On **2 August 2012**, the Provider received an undated letter from the Complainant in which she claimed that *"the reason I didn't contact [the Provider] for so long was because I felt they just said no to everything I proposed."* The Complainant continued, stating that she had requested numerous different things other than the interest only arrangement she was given. In the SFS that was supplied on **16 July 2012**, the Complainant requested a capitalisation of arrears, to consolidate the accounts and to sell the mortgaged property. The best option at the time was a Voluntary Sale for Loss (VSFL) and the Complainant already had the property on the market. The case manager issued a missing documents letter to the Complainant on **15 August 2012** in response to this letter as the Provider had already issued a missing documents letter on **25 July 2012** and the Complainant again had failed to send in the requested documents.

The Provider states the Complainant advised in the letter received on **2 August 2012** that she could not afford her repayments, *"As you can see from my financial statement that I sent I have a lot more going out than I do coming in"* and a capitalisation of the arrears would have increased her normal monthly repayments. The Provider remarks that as the Complainant was not making payments, the consolidation of the mortgages would have had a similar outcome. The Provider states it rejects the Complainant's assertion that it dismissed her proposals. The Provider believes it has always acted in the best interests of the Complainant and the Provider. The Complainant was continuously failing to make repayments, continuously in arrears and the Provider states that it continuously attempted to resolve the issues but the Complainant failed to adhere, agree or communicate with it and its attempts at resolution.

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The Provider explains that a proposal was received on **30 October 2012** requesting that it accept €15,000.00 in full and final settlement for account ending 905. The balance on this loan was €25,812.05 which was made up of the capital balance of €14,458.86 and arrears of €11,353.37. The Provider attempted to make contact with the Complainant on **6 November 2012** to discuss this proposal, there was no answer and the Provider's agent reached an answering machine. A message was not left as it was inappropriate to do so. The Provider explains that the agent in question left a note for a letter to issue to the Complainant requesting that she contact the Provider; however, it does not appear the letter was sent. The Provider also states that there was no response from the Complainant to the call.

On **4 December 2012**, another of the Provider's agents attempted to contact the Complainant on her mobile phone to advise her that the proposal would not be accepted. The Complainant was unable to take this call. The Provider's agent arranged for *Pre Not Co-Operating* letters to issue to the Complainant. These letters advised the Complainant that she was being considered as pre not co-operating and issued on **4 and 5 December 2012**. The Provider received no response to these calls or letters.

On **15 January 2013**, the Provider attempted to call the Complainant. There was no answer and no reply to the above letters and Not Co-Operating letters were then issued to the Complainant.

On **12 February 2013**, one of the Provider's agents reviewed the Complainant's accounts. There had been no response to its correspondence and no verbal contact from the Complainant since **26 October 2012**.

On **25 March 2013**, the Provider received an inbound call from the Complainant. The Complainant advised that she had sent a letter regarding the settlement of account ending 905. The Provider's agent informed the Complainant that the Provider had tried contacting her in relation to her offer. The Complainant advised the Provider that her work number was on a switchboard and her mobile phone was out of coverage at work. The Complainant returned an SFS on **10 April 2013** to facilitate the assessment of her proposal.

On **10 April 2013**, the Complainant telephoned the Provider to explain that she was still trying to get supporting documents but her home computer was not working. The Provider's agent furnished the account balance and arrears figures for the Complainant to insert into the SFS. The SFS was received on **24 May 2013**. On **30 May 2013**, one of the Provider's agents tried to contact the Complainant to advise her that a valuation was required in order for the assessment to be completed. There was no answer to this call but a message was left.

On **5 June 2013**, the case manager tried to contact the Complainant regarding the valuation. There was no answer but a message was left. The Provider states that the Complainant failed to respond and since there had been only two verbal contacts with the Complainant since **26 October 2013 (March and April 2013)**, it was decided that the case would be transferred to its Recoveries Department.

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The Provider states that it issued a Final Response letter to the Complainant on **17 April 2018** in which it apologised that the Complainant did not receive a response to her proposal from **30 October 2012**. The Provider outlines that it attempted to contact the Complainant on multiple occasions by telephone and written correspondence.

Handling of Arrears

The Provider explains that on submitting proposals, the Complainant either submitted various options/proposals or failed to engage with the Provider to progress the assessment. The Provider states one such example is when the Complainant requested that the mortgages be consolidated, capitalisation of arrears or to sell the property. The Provider states it communicated to the Complainant that the proposed sale of the property was the best suited option based on the assessment as per MARP. The Provider states this occurred in **2010** prior to the Code coming into place. The Provider has also set out a table outlining the proposals received from the Complainant between **September 2007** and **May 2015**.

The Provider submits that it did not reject the Complainant's proposals but rather required more information from the Complainant in order to properly assess the various proposals which the Complainant either failed to provide or failed to communicate with the Provider.

On **27 June 2012**, the case manager telephoned the Complainant. The Complainant was advised there may be scope to increase the term on the loans to 37 years which would have reduced the repayments to a level that was affordable to the Complainant. The Provider explains the Complainant was not initially interested in this proposal but when she understood that she could not afford her normal monthly repayments, let alone her arrears, she agreed to consider it. The case manager requested a SFS be issued to the Complainant to be returned by **13 July 2012**. After the call, the case manager noted that on receipt of the SFS the Provider would assess the case with a view to capitalising the arrears with a term extension after six months. The Provider explains that six months of repayments would show that the Complainant had the affordability to maintain repayments after a capitalising was applied.

On **28 June 2012**, the case manager called the Complainant. The Complainant advised that she was unhappy to proceed with the term extension as her situation may change and she may clear the debt sooner rather than later. The case manager asked the Complainant how she intended to repay the loans and the Complainant then asked for interest only repayments. The case manager advised the Complainant this was a short term measure and her normal monthly repayments across all three accounts was approximately €1,222.00. The case manager also advised the Complainant that she would need to make all of these repayments within the current term to pay off the mortgage but that did not include arrears of approximately €32,000.00. The Complainant advised the Provider that she would have to think about this and revert to the Provider with a proposal, and a SFS was issued to the Complainant.

On **25 July 2013**, the Provider received a SFS with no supporting documentation and no proposal from the Complainants. The Provider states that the Complainant requested settlement figures and statements.

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A letter was sent to the Complainant requesting a proposal and advising that the Provider does not give settlement figures and that statements had already been issued to her.

The Provider received an undated letter from the Complainant on **2 August 2013**. This letter was reviewed on **15 August 2012**. This letter stated that the Complainant had *"a lot more going out than I do coming in so I don't see what I can 'Propose' with?"* The Complainant went on to claim that she decided not to contact the Provider for some time. It was also stated that *"if you have any other proposals that don't involve tying me up in debt until 65 I'll gladly listen and consider."* The Provider submits this shows the Complainant was not interested in a capitalisation of arrears or a term extension. The Complainant went on to advise that she may consider bankruptcy rather than having the debt *"hanging around my neck until I'm 65"*.

On **11 September 2012**, the Complainant telephoned the case manager and made a payment of €1,500.00 towards account ending 246. The Complainant advised that she had submitted supporting documentation to the Provider. The case manager stated this had not been received. The Complainant advised that she had copies of the supporting documents and would send them to the Provider. Referring to the Complainant's offer to pay €770.00 contained in her letter of **2 August 2012**, the Complainant was advised this would not be acceptable as a long term solution and that she must work with the Provider to come to a suitable arrangement. The term extension was discussed again.

Supporting documentation was received on **19 September 2012**. The Provider's decision was that a term extension was the most suitable option which was explained to the Complainant on **20 September 2012**. The Complainant requested time to think about this option. On **26 October 2012**, the Complainant telephoned the case manager and advised that she may be able to get a loan from her father to clear one of the smaller loans. The Complainant stated that she would write to the ASU but would not enter into an arrangement until she confirmed she could get the loan from her father. On **30 October 2012**, the Provider received the letter with the Complainant's offer.

A SFS was received on **22 April 2013** and the Complainant again requested the Provider accept her proposal of €15,000.00. A valuation was required by the Provider and it tried to contact the Complainant on two occasions but the Complainant failed to answer or respond to these calls. On **13 June 2013**, a letter issued to the Complainant advising her that the accounts were deemed unsustainable. The Complainant appealed this decision in **June 2013**.

Based on the appeal letter received from the Complainant, the Mortgage Appeals Office, in **August 2013**, directed the ASU to carry out a re-assessment of the case due to the letter advising that there had been a change in the Complainant's circumstances. A drive-by valuation was completed in **November 2013** and the case was re-assessed. The Provider acknowledges that there was a 3 month delay in organising the valuation and apologises for this. The valuation report was received on **28 November 2013** and the case manager tried to contact the Complainant on the same day to discuss her living status. The Complainant returned the Provider's call later that day.

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On **4 December 2013**, the case manager called the Complainant to advise her the outcome of the assessment was that the most suitable option was a VSFL. The Complainant agreed to put the property on the market and the residual debt was discussed. The VSFL letter was issued to the Complainant on **28 March 2014** and the Complainant began emailing the case manager directly as she had changed her mind regarding the sale of the property and was looking to restructure the loans.

On **15 January 2015**, the Complainant submitted a SFS but did not offer any clear proposal. The case was assessed and the ASU decision was a repayment test period. In **April 2015**, a further SFS was received. On **29 May 2015**, the Provider approved a capitalisation and term extension.

The Provider submits this shows that it considered the Complainant's proposals and tried to work with and assist the Complainant. However, the Provider points out that it is not obliged to accept proposals that are submitted. In the Complainant's case, it attempted to help the Complainant and offered the most suitable options based on the assessments carried out using the information supplied by the Complainant.

Reduced Interest Rates

On **22 March 2016**, the Complainant sent an email to the Provider requesting a reduced interest rate be applied to her top-up loan account ending 905. The Provider explains that this email was not responded to at this time and it is not clear why it was not dealt with. The Provider has apologised for this.

The Provider attempted to call the Complainant on **25 May 2016** to discuss her loan accounts and interest rates. There was no answer and no voicemail available to leave a message. The Provider received interest conversion forms from the Complainant on **31 May 2017** for all three accounts. The interest rates were changed to those requested by the Complainant on **9 June 2017** and were confirmed to be changed from **July 2017** going forward.

On **28 June 2018**, the Complainant submitted three fixed rate conversion forms for the three loan accounts and on **5 July 2018**, the interest rates were changed to those requested by the Complainant.

The Complainant sent a complaint letter to the Provider in **February 2018** in relation to the interest rates that had been applied to the loan accounts while they were in arrears. A Final Response letter issued in **April 2018**.

Following this, a further review was carried out. The Provider became aware that in **August 2018**, after the rates had been converted in **July 2018**, the Complainant's email in **March 2016** had not been responded to or actioned.

In an effort to address this mistake, the Provider decided to backdate the fixed interest rate of 3.5% from **March 2016** to **July 2017**. As a gesture of goodwill, the Provider did this on all three loan accounts.

With respect to loan account ending 246, the adjustment carried out meant that €273.43 was credited to the account and, in addition, the Provider added an interest credit of €398.98 that would have been taken off the capital balance.

In terms of account ending 798, the adjustment resulted in €728.41 being credited to the account together with €992.22 as an interest credit taken off the loan balance and a cheque for €623.41 was issued to the Complainant.

The adjustment for account ending 905 meant it was credited with €639.25 and an additional €884.37 was taken off the loan balance by way of an interest credit and a cheque was issued to the Complainant in the amount of €508.77.

To summarise, the Provider states that in attempting to address its mistake, it has backdated a total of €1,641.09 across all three accounts and has applied interest credits totalling €2,275.57. The Provider also issued two cheques totalling €1,132.18 in an effort to compensate the Complainant for the mistake.

The Provider states that it is satisfied that the interest charged to the Complainant's accounts is and has been correct other than for the period outlined above.

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to respond to and/or delayed in responding to the Complainant's requests for details regarding the amount of interest applied to those accounts;
2. Failed to engage with the Complainant regarding her arrears and/or failed to consider her proposals in respect of the arrears and/or loan accounts;
3. Offered alternative repayments arrangements that were unreasonable and/or unrealistic;
4. Applied unreasonable interest rates to the Complainant's top-up loan accounts;
5. Applied unreasonable interest rates to the arrears that accumulated on the Complainant's loan accounts;
6. Ignored and/or unreasonable refused the Complainant's requests to switch her top-up loans to lower interest rates; and
7. Delayed in investigating and responding to the Complainant's complaint.

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Time Limits for making complaints to the Ombudsman

The ***Financial Services and Pensions Ombudsman Act 2017*** (the **Act**) prescribes time limits within which complaints must be made to this Office. The Complainant made a complaint to this Office by way of Complaint Form submitted online on **4 April 2018**. The conduct giving rise to the complaint relates to the Provider's conduct in respect of three loan accounts. I am satisfied, having regard to the definition of long-term financial service contained in **section 2** of the Act, the conduct complained of in this complaint relates to a long-term financial service.

Therefore, the relevant parts of **section 51** of the Act state as follows:

“(2) A complaint in relation to—

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

(b) conduct referred to in section 44(1)(b), that is subject to the requirements specified in subsection (4),

shall be made to the Ombudsman within whichever of the following periods is the last to expire:

(i) 6 years from the date of the conduct giving rise to the complaint;

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

(iii) such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period.

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

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

(b) the Ombudsman has allowed a longer period under subsection (2)(iii).

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...

(5) For the purposes of subsections (1) and (2)—

(a) conduct that is of a continuing nature is taken to have occurred at the time when it stopped and conduct that consists of a series of acts or omissions is taken to have occurred when the last of those acts or omissions occurred, and

(b) conduct that consists of a single act or omission is taken to have occurred on the date of that act or omission.”

Generally speaking, a complaint must be made to this Office within 6 years from the date of the conduct giving rise to the complaint. The submissions outlined above and the evidence of this complaint demonstrate that certain aspects of the conduct giving rise to this complaint occurred more than 6 years prior to **4 April 2018**. As such, if the conduct complained of occurred prior to this date, it will generally not be subject to investigation or adjudication by this Office. However, if such conduct is of a *continuing nature* or *consists of a series of act or omissions*, the time limit will run from when the conduct stopped or the date on which the act or omission last occurred.

I am satisfied for the purposes of **section 51** of the **Financial Services and Pensions Ombudsman Act 2017**, that the conduct complained of relating to the interest applied and arrears on the loans is of a continuing nature and/or consists of a series or act or omissions and is therefore within the jurisdiction of this Office.

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 2 September 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.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. E-mail, together with attachments, from the Complainant to this Office dated 5 September 2020.
2. E-mail, together with attachment, from the Provider to this Office dated 22 September 2020.
3. E-mail from the Complainant to this Office dated 22 September 2020.
4. E-mail, together with attachment, from the Provider to this Office dated 24 September 2020.
5. E-mail from the Complainant to this Office dated 24 September 2020.
6. E-mail, together with attachment from the Provider to this Office dated 29 September 2020.
7. E-mail from the Complainant to this Office dated 2 October 2020.
8. E-mail, together with attachment, from the Provider to this Office, dated 8 October 2020.

Copies of the above submissions were exchanged between the parties.

Having considered these additional submissions and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

A number of telephone conversations took place between the Complainant and various personnel within the Provider. Recordings of these telephone calls were supplied in evidence by the Provider. The Complainant was offered the opportunity to listen to these recordings. However, the Complainant confirmed in a submission dated **23 January 2020** that she was choosing not to listen to the call recordings furnished by the Provider. This was confirmed again on **28 January 2020**. I have considered the content of these telephone calls and I will set out relevant extracts.

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The Loans

The Complainant received a *Loan Offer* letter dated **2 January 2003** in respect of a *Repayment Home Loan* of €139,500.00 to facilitate the purchase of the mortgaged property (account ending 246). The interest rate in respect of this loan is states as:

<i>“Interest Rate: Discount Year 1 After 1 year</i>	<i>3.35% (See Important Note) Variable Base Rate”</i>
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On **23 February 2005**, the Provider advised the Complainant that it had approved a *Loans for Living* loan of €21,200.00 (account ending 798). The interest rate is described as *Variable 5.90%*. The letter also states:

“Interest Rate

*The rate of interest applicable to the loan will be the rate prevailing on the date the loan is issued. **The rate of interest quoted on this loan offer letter is the relevant rate prevailing at today’s date, and may change before the loan is issued.** [The Provider] reserves the absolute right to increase or decrease the rate of interest at its discretion. ...*

How Interest is Charged

Interest accrues daily from the date on which the loan is issued. ... If unpaid, it will be added to the loan balance which may extend the term of the loan. The amount of interest charged each month is based on the total balance outstanding on the last day of the preceding month - including capital, interest or insurance arrears or any prepayments (credits) - and the prevailing interest rate.”

A similarly worded provision can also be seen in clause 4 of the *General Conditions for Home Loans* created on **21 November 2005**.

The Provider advised the Complainant of the approval of a *Deposit Bridging Secured Loan* of €25,300.00 on **26 May 2006** (account ending 905). The interest rate is described as *Variable 5.75%*. This letter also contains the same *Interest Rate* and *How Interest is Charged* provisions outlined above. It is also a condition of this loan that:

“3. If your loan is not paid off within 6 months from the date of drawdown, please note [the Provider] will register this loan against the title deeds of the above property.”

Engagement between the Parties

The Provider wrote to the Complainant on **28 June 2012** following a telephone conversation that day.

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The letter set out various information in respect of each of the loan accounts and advised the Complainant that in order for the Provider to assess her situation, she would need to complete and return the enclosed SFS by **13 July 2012**.

The Provider wrote to the Complainant on **13 July 2012** enclosing statements in respect of the two top-up loans. This letter also contained information on the arrears and total debt outstanding on all three loans.

The Provider received a letter from the Complainant on **16 July 2012** enclosing a completed SFS. In this letter the Complainant speaks about her personal and financial circumstances. In particular, the Complainant states:

"... Each month I pretty much do an eenie meenie mo situation to see who isn't getting paid that month. ...

The proposal made to me by [the Provider] to extend my mortgage and loans out to 37 years is not an option I will be agreeing to. I borrowed the bridging loan for an assumed period of 6 months and even then wasn't able to afford the initial repayments ...

The arrears on the mortgage and loans have built up because I simply don't have the means to pay everything I'm responsible for paying. Unfortunately for [the Provider] I need to look after certain things before I pay any loan off. ...

I am however eager to come to some sort of arrangement with [the Provider] that keeps us both happy. I have contacted [the Provider] previously with different options but was turned down on most of those occasions so I pretty much gave up asking for help and buried my head in the sand so I'm glad that finally [the Provider] have at least agreed to help me sort out some sort of arrangement ..."

In this letter, the Complainant also asked for the total amounts paid on the top-up loans and a settlement figure for those loans.

At section C of the **July 2012** SFS, the Complainant wrote, in response to a question asking what steps the borrower has taken to reduce monthly expenditure:

"Re-structured my [financial services provider] & credit card loans.

*Borrowed from dad to pay off high interest car loan.
..."*

In terms of any steps the Complainant proposed to take to reduce monthly expenditure, the Complainant states:

"I hope to re-structure three loans in such a way that keeps [the Provider] happy but is also constructive to me and my family."

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The Provider wrote to the Complainant on **25 July 2012** acknowledging receipt of her SFS and advised the Complainant that in order to progress its review of the SFS certain supporting documentation was required. In terms of the Complainant's request for settlement figures, the letter states that *"... as previously advised we do not issue settlement figures, I require from you your proposal regarding the payment of this debt."* The Provider repeated its request for supporting documentation by letter dated **15 August 2012**.

The Provider received a letter from the Complainant on **2 August 2012** wherein the Complainant states:

"If I'm honest I don't have any other proposal for you. As you can see from my financial statement that I sent in I have a lot more going out than I do coming in so I don't see what I can 'propose' with?? Maybe you can see something I'm missing?"

The reason I didn't contact [the Provider] for so long was because I felt they just said no to everything I proposed, this is exactly what happened last time I tried to sort this out. I asked for numerous different things and the only thing I was given was 6 months Interest only which wasn't really any help to me when I had no one in the apartment. I went through [third party] and done everything they suggested but again I was simply told no to all of them so I'm not going to put myself through this game again ...

If you have any proposals that don't involve tying me up in debt until I'm 65 I'll gladly listen and consider. ..."

During a telephone conversation on **11 September 2012**, the Complainant advised the Provider's agent that she had sent supporting documentation on **24 August 2012**. This was not received by the Provider and the Complainant agreed to send them again. The Provider's agent advised the Complainant that settlement figures could not be provided and the Complainant would have to furnish a proposal as to what was and was not feasible for her together with supporting documentation. The Complainant was also advised that the Provider would not necessarily suggest proposals rather, this was a matter for the Complainant and any proposal made would be assessed by the Provider. The need for a long term proposal was emphasised, particularly as the Complainant was not willing to accept a term extension. The parties also discussed the possibility of the Complainant paying €15,000.00 towards one of the loans. However, the Provider advised the Complainant that this proposal was too vague and more detail was required. I note the Complainant mentioned the possibility of a loan from her father was as *just a bit of an off-hand chat*.

The Complainant provided the supporting documentation under cover of letter received by the Provider on **17 September 2012**. In the cover letter the Complainant asks *"Is it possible to add the smaller loan onto the mortgage in order to reduce interest rate??"*

On **20 September 2012**, one of the Provider's agent discussed ways in which the Complainant could make her loans more feasible. The Provider's agent, while recognising the Complainant's reluctance to agree to a term extension, suggested a partial term extension and a reduction in interest rates.

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Capitalisation of arrears was also suggested as an option, however, the Complainant indicated that she did not understand what this meant. As the bridging loan had only four years remaining on its term, a term extension was suggested in order to bring its term in line with the terms of the other two loans. The Provider's agent advised this would have the effect of reducing monthly repayments. The Provider agents advised that he was trying to bring the terms of the loans in line with one another in the context of duration and interest rate.

The Complainant also questioned the level of interest she was paying on the bridging loan. The Provider's agent explained and discussed the possibility of capitalising the arrears on the loans. Both parties also acknowledged that interest only repayments would not address the arrears. The call concluded with the Complainant confirming with the Provider's agent that the agent would look into a reduction in interest rates. He also informed the Complainant that if she wanted a term extension she should put this in writing.

Following this, on **26 October 2012**, the Complainant indicated that she would not be interested in a term extension of the bridging loan based on the current interest being applied but that the Provider still had to revert to her on an interest rate reduction. The parties also discussed the need to come to an arrangement in terms of repayments and stabilising the arrears. The Complainant further indicated that she would like to clear one of the loans to put her in a better position to address the remaining loans. The Complainant was advised that any settlement offers would need to be put in writing and an arrangement would need to be entered into in terms of monthly repayments.

A letter was received from the Complainant on **30 October 2012** which contained an offer of €15,000.00 to clear the bridging loan (account ending 905) in its entirety.

The next point of contact between the parties appears to have been a telephone conversation which took place between the Complainant and the Provider on **25 March 2013**. The Complainant contacted the Provider in respect of an arrears letter she had received. The Provider's agent enquired into her present situation and the Complainant explained that she had tenants back in the mortgaged property. The Complainant mentioned reducing her interest rates and that the Provider was to revert to her. She explained that she had sent a proposal to the Provider before Christmas, possibly in November and had not heard back from the Provider.

The Provider's agent advised that the Provider tried to contact the Complainant on her work number but could not get through on that line. The Complainant said as this was her work number it was on a switchboard. The Provider's agent advised that contact was also attempted on the Complainant's mobile number. The Complainant responded saying that she had no coverage while in work. The Provider's agent asked if the offer was still available. This Complainant answered saying she thought it was. The Provider's agent advised the Complainant that she would have to send her proposal to be assessed again.

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The Complainant also gave the Provider her extension number in her place of work. The Complainant expressed the view that she thought the Provider would have issued a letter to her and that she tried to follow up regarding the interest rates but was unable to speak to the relevant person within the Provider.

It was explained to the Complainant that a SFS would be required to which the Complainant replied that she had sent one in July. The Provider's agent stated that an up to date SFS and supporting documentation was needed. The Complainant then mentioned *incorporating* her arrears if she made 6 months repayments.

The Provider's agent clarified that supporting documentation was needed before the first or second week of April and the Provider could re-assess the Complaint's proposal.

The Complainant queried if anyone had followed up regarding the interest rates and reducing them to the same rate as the mortgage loan. The Provider's agent explained that the Complainant was to revert with her decision on the possible term extension after discussing it with her partner first. The Complainant stated that she was waiting for the Provider to contact her regarding its decision on the interest rates to inform her decision on the term extension. It was explained to the Complainant that the Provider would need to hear from the Complainant on the term extension before it could advise on an interest rate reduction. The Provider's agent acknowledged that confusion had arisen on these issues and that the interest rate reduction request had not been put forward as the Provider was waiting to hear from the Complainant. The Complainant stated that she could call the Provider again to discuss these matters but she would send a SFS to the Provider first.

A further telephone conversation took place on **10 April 2013**. The Complainants advised the Provider's agent that she was still in the process of completing the SFS and gathering account statements.

The Complainant indicated that she was waiting to hear from the Provider regarding the settlement figure offered. The Complainant was asked to resubmit her offer and that a SFS was required to assess any proposal. The Provider's agent advised that once the SFS was received it would look at everything. The Complainant indicated that she would do her best to submit the SFS by the end of the week.

A SFS dated **11 April 2013** was submitted by the Complainant on **19 April 2013** in respect of the above proposal. I note at section C of the SFS, the Complainant states:

"Re structured [financial services provider] loan managed to get a settlement figure on my credit card credit card has now been cleared ..."

The Provider wrote to the Complainant on **13 June 2013** advising that it had reviewed her SFS and expressed the view that the contractual loan repayments were unsustainable. As such, the Provider advised the only course of action was a disposal of the mortgaged property whether by voluntary surrender, trading down or voluntary sale.

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The Complainant wrote to the Provider by letter received on **24 June 2013** to notify the Provider of her wish to appeal its decision. I note one of the reasons advanced was the Complainant's settlement offer in respect of the bridging loan and the Provider's failure to respond to it. The Complainant received updates regarding her appeal on **3 July 2013** and **2 August 2013**.

In light of the new information contained in the Complainant's letter in respect of her financial circumstances, the Provider appears to have directed that it be re-assessed by the ASU on **1 August 2013**.

During a telephone conversation on **28 November 2013**, the Complainant and the Provider's agent discussed the properties owned by the Complainant and a copy of the rental agreement for the mortgaged property was also sought by the Provider. The Provider's agent said he would look into the Complainant's situation and "... try do whatever we can." The Provider's *Case Assessment Summary* dated **28 November 2013** indicates that an assessment was carried out by the Provider and concluded that a VSFL was the most appropriate option for the Complainant.

A further telephone conversation took place on **4 December 2013**. The Provider's agent advised the Complainant that her SFS was being reviewed. However, the Provider's position was the same as previously indicated: that the loans were affordable and they could not be put into a restructure agreement based on the Complainant's current financial circumstances, and that the mortgaged property would need to be put up for sale. The Provider's agent indicated that the Provider could work with the Complainant regarding the residual debt and she should pay whatever she could afford for the time being. The Complainant stated that if she had a better indication as to what the position would be regarding the residual debt, she would be better able to make a decision as to whether to sell her apartment. The Provider's agent told the Complainant that if a sales offer was sent to it then it would be able to have a discussion with the Complainant in terms of the residual debt. The Provider's agent informed the Complainant that there would be an agreement in place before the property would be sold – it wouldn't just sell the property and then seek to deal with the residual debt.

The Complainant was again advised to pay what she could in the meantime as this would avoid the Provider taking legal action. The Provider's agent acknowledged that the parties would have to be realistic with respect to what the Complainant could afford regarding the residual debt.

The Provider wrote to the Complainant on **4 December 2013** declining her request for an alternative repayment arrangement as her loans were deemed unsustainable. The three options proposed by the Provider were trading down, voluntary sale and voluntary surrender. A letter was sent to the Complainant on **29 January 2014** acknowledging the Complainant's co-operation by marketing the mortgaged property for sale. This letter also referred to the anticipated residual debt following the sale and how this would be dealt with. The Provider wrote to the Complainant's solicitors on **25 March 2014** as it had been informed by the Complainant of a recent offer on the mortgaged property of €115,000.00.

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In order for the Provider to assess the offer it requested that a valuation be carried out. A valuation report dated **19 March 2014** was sent to the Provider on **25 March 2014**. The Provider communicated its approval of the sale to the Complainant on **28 March 2014**.

In a series of emails between the Complainant and one of the Provider's case managers beginning with the Complainant's email of **28 March 2014**, the Complainant proposed that the rent from the mortgaged property be paid towards the loans, arrears be capitalised and that €1,245.00 be deducted at source from the Complainant's wages.

In a response of the same date, the case manager stated:

"1. ... The only grounds for reassessment would be if your circumstances changed. I am happy to sit down with you and outline so you [know] how we derived this decision if you wish?

2. ...

With regards to retaining the property for the future, that option is only available to you if you start making full capital and interest repayments of E1245 p/m. Given that [the Provider] have not received a payment since 07/2013 I'm presuming this is not possible. ...

3..."

The case manager wrote to the Complainant on **31 March 2014** advising as follows:

"... If you are interested in holding onto the property what I would look at doing is this – and this is subject to approval so do not take this as an offer from [the Provider]

- Extend the term of all 3 of your mortgages to 25 years from now, bringing you up to the age of 65.*
- The total monthly repayment would be c. E1,200*
- You said you could let the property for E950*

- That leaves you with E250 to pay to the mortgage from your personal resources and cover your insurance / other property costs*

...

If you want to go this route I need you to start making this level of repayment As Soon As Possible.

But before you decide to reject the offer on the table, bear in mind that I have to see this level of repayment coming into the account before I can make any application to my credit department & it would be subject to credit approval.

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However, if I could see E1,200 coming into the account for 3 months I would be happy to recommend what I have outlined above."

The Complainant responded the same day informing the case manager that the only way she would agree to extend the term of the bridging loan would be if it was consolidated onto the mortgage loan at the lower rate of interest. The Complainant agreed to begin paying €1,245.00 per month and indicated that she would instruct an estate agent to let the property as soon as possible.

The Complainant also asked the case manager to consider capitalising the arrears and consolidating the three loans. On **1 April 2014**, the case manager advised the Complainant that consolidation is not something the Provider was in a position to do because, for policy reasons, an audit trail was required for each loan. It was also confirmed that if a term extension was sought, capitalisation of arrears would also be applied for. The case manager indicated that he would see what he could do regarding the interest rate. The Complainant responded stating that she would:

"... agree to extend the mortgage on the loan ending 798 to 25 years on the condition that the arrears from both are amalgamated into the mortgage but I can't agree to a 25 yr term on the loan ending In 905, thats an Increase of 17/18 years at a very high interest rate, its just too much.

Is there anything else we can do with this loan to sort it out? ..."

The Provider advised the Complainant by letters dated **8 September 2014** that, in response to her request for alternative repayment plans in respect of each of her loan accounts, it was not in a position to offer any alternative arrangements as her loans were unsustainable. The next communication from the Complainant appears to have been on **2 October 2014** where she advised the case manager that she would be left on a higher salary in her job and she should be able to pay €1,245.00 per month. The Provider responded on **3 October 2014** as follows:

"... in the past 2 years you have made total payment of E2350 to your mortgage. I engaged with you earlier in the year with a view to getting the property sold and putting a repayment plan in place - you declined the Banks proposal and you haven't made any payment to the account since.

The account has since moved to the Banks Legal department. ..."

While some telephone conversations took place in the intervening period, the Complainant next wrote to the Provider on **5 January 2015**, having received a letter from the Provider's solicitors, indicating her wish to engage with Provider and furnish a SFS. The Complainant also requested that the Provider refrain from continuing with any legal proceedings. Prior to this, a telephone conversation took place between the Complainant and the Provider on **2 January 2015**, the Complainant indicated that her circumstances had changed. The Provider's agent advised her to submit a SFS and supporting documentation.

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As the Complainant's file was with the Provider's legal team/solicitors, the Complainant was advised to obtain independent financial and legal advice and pay as much as possible toward her loans. The Provider's agent also advised her of organisations which could assist her.

The Complainant wrote to the Provider by way of letter received on **15 January 2015** enclosing a SFS dated **10 January 2015**. In the cover letter the Complainant explains a number of matters relating to her personal and financial circumstances and indicated that she wanted to put a repayment plan in place as she was in a position to afford the current monthly repayments.

An assessment was carried out by the Provider on **3 February 2015**. I note the case assessment document furnished by the Provider is not particularly clear. However, it appears the recommendation made on foot of this assessment was to offer to capitalise the arrears on all three loan accounts pending completion of a test period of capital and interest revised payments.

The Provider wrote to the Complainant on **5 February 2015** advising that she was outside the protections of MARP. The letters also advised that following an assessment of the additional financial information furnished by the Complainant, the Provider was able to re-assess the Complainant's financial circumstances and re-examine the individual merits of her case. The Provider believed there was capacity to enter into a long term solution in respect of the loan accounts, however, in order for the Complainant to avail of this, the Provider required her to adhere to the proposed interim repayment arrangement totalling €2,230.00 in respect of all three loan accounts for a period of 6 months; from **March 2015 to August 2015**.

By letter received on **19 February 2015**, the Complainant, while considering monthly repayments of €2,400.00 to be harsh, stated that she would be willing to adhere to the arrangement. Towards the end of this letter, the Complainant requested that the Provider also consider capitalising the arrears.

The Complainant notified the Provider by letter received on **14 April 2015**, that she would not be in a position to make the repayments required under the interim arrangement primarily due to incorrectly filling in her previous SFS. A further SFS dated **10 April 2015** was also furnished.

On **26 May 2015**, the Complainant discussed over the telephone with the Provider, the interim arrangement and the reasons for incorrectly completing a previous SFS. The Complainant also indicated that she wished to have her arrears capitalised. The Provider's agent advised the Complainant that proof of income (payslips) were not accompanied with her recent SFS and asked that these be furnished. The Complainant emailed the ASU on **27 May 2015** with her payslips to accompany the SFS and request that it be submitted for re-assessment. The Complainant also advised the ASU that she had made seven payments of €1,250.00 with an eight one due in the next couple of days. An assessment was carried out by the Provider on **29 May 2015**.

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On **11 June 2015**, the Provider wrote to the Complainant in respect of the three loan accounts offering term extensions and to capitalise the arrears. This letter also set out the outstanding balance including arrears on each loan account and their respective interest rates. This offer was accepted by the Complainant on **7 July 2015**.

Arrears Correspondence

The Provider began to write to the Complainant on a monthly basis in **2009** in respect of the arrears on her loan accounts. I note this and subsequent arrears correspondence sets out, amongst other arrears information, the additional interest arising from the arrears and to be applied to the respective loan accounts the following month, the accumulated additional interest applied to the loan accounts arising from arrears, and the applicable interest rates.

The Provider wrote to the Complainant in respect of loan account ending 246 on **25 January 2012** regarding the arrears. The letter expressed that it was vital for the Complainant to contact the Provider to discuss her arrears. It advised that the Complainant was currently considered a *non co-operating* borrower as she had failed to make repayments as per the agreed repayment arrangement and had not made contact with or responded to the Provider for over 3 months.

The Provider wrote to the Complainant on **4 December 2012** in respect of account ending 246 and **5 December 2012** in respect of accounts ending 798 and 905, advising her that it had not received a reply to its calls or correspondence and the arrears balances continued to increase. The letter also advised the Complainant of the arrears on both accounts and the need to clear the arrears, to contact the Provider to discuss the arrears and to co-operate with the Provider. A SFS was also enclosed with these letters.

The Provider wrote to the Complainant in respect of all three loan accounts on **15 January 2013**, in almost identical terms to those contained in the letter of **25 January 2013**.

Interest Rates

The Provider furnished the Complainant with notifications regarding upward and downward adjustments to the interest rates applicable to her loan accounts. These notifications list the existing interest rate, the new interest rate, effective date, existing repayments and new repayments.

The Complainant emailed the Provider regarding the interest rates being applied to her accounts on **23 January 2018**:

“Hi, I’m writing to request information relating to interest applied to my mortgage accounts while I was in arrears. I’ve always been concerned about the amount of interest that was applied to my accounts during this period but until now was more concerned about getting back on my feet which I’ve managed to do.

...

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Can you send me data showing how the interest was applied to my accounts, when it was applied and the total of how much was applied before the arrears were capitalised. ...”

Interest Rate Conversion

The Complainant has furnished a letter which she submits was sent to the Provider on **15 January 2016** requesting a reduction in the interest rate being applied to account ending 798.

The Complainant emailed the ASU on **22 March 2016**, requesting a reduction in the interest rate on the bridging loan (account ending 905). The Complainant appears to have sent a follow-up email to this on **2 November 2016**.

The Complainant completed a *Home Loan Rate Conversion Form Variable Rate to Fixed Rate* in respect of each loan account on **31 May 2017** and **28 June 2018**.

The Provider wrote to the Complainant on **8 June 2017** and **4 July 2018** advising her of conversions in her interest rates to a fixed rate on account ending 246. Similar letters were sent to the Complainant on the same dates in respect of account ending 798 and on **9 June 2017** and **4 July 2018** in respect of account ending 905.

The Provider wrote to the Complainant on **27 September 2018** in respect of accounts ending 246 and 798 and on **1 October 2018** in respect of account ending 905. These letters advised that the fixed interest rate of 3.5% had been backdated to these accounts for the period **March 2016 to July 2017**. This involved adjustments on each account. In respect of account ending 246, the account was credited with €273.43 together with an interest credit of €398.98. In respect of account ending 798, €728.41 was credited to the account together with an interest credit of €992.22 and a cheque for €623.41 was also issued to the Complainant. Finally, the adjustment on account ending 905 involved the account being credited with €639.25 together with an interest credit of €884.37 and a cheque for €508.77 was also issued to the Complainant.

Complaint to the Provider

The Complainant made a complaint to the Provider which was received on **14 February 2018** regarding the interest charged in respect of her arrears, the offers made by the Complainant, and why the interest rates charged to her two top-up loans was higher than the interest rate on the mortgage loan.

A Final Response letter was issued on **17 April 2018** which included a breakdown of the interest applied to each of the accounts since inception.

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Cost of Credit

In response to a query from the Complainant dated **21 February 2020** "... regarding the total cost of all 3 mortgages from when they were taken out to the new date of 2044"; the Provider advised in a submission to this Office dated **4 March 2020** that this query had been referred to the relevant section for response directly to the Complainant.

It appears there was difficulty understanding the information prepared by the Provider and in a submission dated **9 April 2020**, the Provider furnished a document detailing the cost of credit to the Complainant in respect of the three loans. Following this, some further queries were raised by the Complainant regarding the cost of credit. These were addressed by the Provider.

The First Complaint

The Complainant appears to have first sought details regarding the amount of interest charged on her accounts in **January 2018** as can be seen from her email to the Provider dated **23 January 2018**. This is also evident from the Complainant's submission that "*I've now sent 4 requests for this information since Jan this year and they won't provide me with it.*"

In its *Detailed Timeline of Events*, the Provider states as follows:

"09/02/2018 – Outbound call made by the ASU to the Complainant. There was no answer and a voicemail was left. The Call was to explain to the Complainant the interest that was applied to the accounts and to advise that the Bank could not issue a specific letter to the Complainant outlining when interest was charged and how much interest was applied. (Call not available). The Bank notes that it subsequently provided these calculations to the Complainant in April 2018 and apologies for not providing same when first requested."

The Complainant raised a complaint with the Provider on **14 February 2018**, among the issues identified was the interest charged to each of the loan accounts. The Provider issued a Final Response on **17 April 2018** addressing this aspect of the complaint and enclosed a detailed breakdown of the interest charged to each loan since their inception.

The Complainant has not provided specific details as to when each of the four requests were made prior making her complaint to this Office in **April 2018**. However, at least two requests were made, the first in **January 2018** and the second in **February 2018**.

The first attempt by the Provider to respond to the Complainant's query was an unsuccessful telephone call on **9 February 2018**, over two weeks after her initial request. However, a voicemail was left but the call was not returned by the Complainant. It was not until the Complainant made a formal complaint that her request was responded to. Taking the foregoing into consideration, I accept that the Provider failed to respond to the Complainant's request within a reasonable length of time.

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The Second and Third Complaints

The Complainant states that the Provider failed to engage with her regarding her arrears and/or failed to consider her proposals in respect of the arrears and/or loan accounts. She believes this resulted in the Provider's failure to capitalise the arrears sooner and/or caused the Complainant to remain in arrears longer than was necessary.

The Complainant also believes the alternative repayments arrangements offered by the Provider were unreasonable and/or unrealistic.

It is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the re-negotiation of the commercial terms of a mortgage loan or an alternative repayment arrangement which is a matter for the Provider and the Complainant and does not involve this Office whose role is an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant.

The correspondence and telephone communications/attempted telephone communications demonstrate that the Provider endeavoured to engage with the Complainant regarding her arrears and the sustainability of her loans with the Provider. The evidence indicates the Complainant did not always respond to or significantly delayed in responding to the Provider, whether to its telephone calls or written correspondence. The Complainant states in her submissions that *"[t]here were a lot of phone calls also but I didn't take note of these ..."*

It is also clear the Complainant was prioritising secondary debt and was unable to make regular payments towards her loans. This can be seen from the number of missed payments over protracted periods of time. Furthermore, in a letter dated **16 July 2012**, the Complainant wrote:

"... Each month I pretty much do an eenie meenie mo situation to see who isn't getting paid that month. ..."

In an email from the Complainant dated **28 March 2014**, the Complainant states:

"... As you seen from the FIS statement I've gotten rid of the credit cards and credit union loans and will continue to chip away at the rest ..."

In a letter received on **15 January 2015**, the Complainant writes:

"... We cleared off all arrears/loans/credit cards etc and the only outstanding things left to sort is those with [the Provider] ..."

There was also a delay on the part of the Complainant in returning SFSs and failing to provide or delaying in providing supporting documentation.

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A proposal was made by the Complainant on **30 October 2012** in respect of the bridging loan. The Provider advises that it attempted to contact the Complainant by telephone in respect of this offer on **6 November 2012** and **4 December 2012**. While these attempts were unsuccessful, no attempts were made by the Complainant to return these calls or follow up with the Provider.

The Provider states that a letter was supposed to issue to the Complainant following the **November 2012** call, however, this never transpired. Notwithstanding this, the Complainant does not appear to have followed up on her offer until **25 March 2013**. Taking these matters into consideration, I accept that the Provider made reasonable attempts to engage with the Complainant in respect of this offer.

It appears the telephone conversation between the parties on **20 September 2012** was one of the first occasions on which capitalisation of arrears was discussed. This is because, during this conversation, the Complainant stated that she did not understand what capitalisation of arrears meant. This was discussed on several occasions subsequent to this.

On **20 October 2012**, the Complainant indicated that she would not be amenable to a term extension based on the current interest rates.

The evidence demonstrates that the Provider discussed various options with the Complainant. While the Complainant was not agreeable to them, this does not necessarily mean the Provider failed in any particular respect. The Provider assessed the Complainant's case based on the information available to it and the information provided by the Complainant. Having done so, the Provider ultimately formed the opinion that the only option for the Complainant was to sell the mortgaged property. This decision was reached during **2013**, however, the Provider continued to engage with the Complainant subsequent to this, assessed her financial position a number of times, and considered her requests for alternative arrangements. While the Provider offered a term extension and capitalisation of arrears in **June 2015**, this does not mean its previous decisions regarding the Complainant were unreasonable. It is important to note that the Complainant's financial position had changed significantly between **2013** and **2015**.

I have not been provided with evidence that the Provider failed to engage with the Complainant regarding her arrears and/or failed to consider her proposals in respect of the arrears and/or loan accounts. Nor does the evidence support the argument that the Provider offered alternative repayments arrangements that were unreasonable and/or unrealistic.

The Fourth Complaint

The Complainant entered into two loan agreements with the Provider in **February 2005** and **May 2006**. The Complainant questions that if these loans are actually mortgage loans, why the interest rates applied to these loans were so high, when compared to the interest rate on the loan used to finance the purchase of the secured property.

While all three loans the subject of this complaint were secured on the Complainant's property, the name or label ascribed to a loan is not strictly relevant; whether it is called a loan for living, a bridging loan, a top-up loan or a mortgage loan. This does not necessarily have a bearing on the interest rate charged. It is the substance of the agreement, and the terms and conditions on which the loan is advanced that determines the nature of the loan.

The Complainant entered into loan agreements in respect of the loans advanced in **2005** and **2006**. The loan documentation clearly sets out the interest rate applicable to each loan and how interest would be charged. The Complainant accepted those terms by entering each of the loan agreements and drawing down the funds. Furthermore, it is not disputed by the Complainant that she was not provided with copies of the loan documentation.

The Complainant was not obliged to enter into these agreements and, for all intents and purposes, appears to have done so voluntarily and in full knowledge or awareness of the various terms and conditions. If the Complainant was dissatisfied with the interest rates and the terms on which interest would be applied to those loans, she could have opted not to enter into the loan agreements.

The Complainant has been provided with annual account statements and notifications regarding changes in the relevant interest rates. The Provider has also supplied the Complainant with breakdowns of the amount of interest charged to her account and the applicable interest rates. However, the Complainant has not established the manner in which the Provider applied the incorrect or wrong interest rates to these accounts.

I have been furnished with no evidence that the Provider applied an unreasonable or incorrect interest rate to the loan agreements entered into in **February 2005** and **May 2006**.

The Fifth Complaint

The Complainant maintains that the Provider applied unreasonable interest/interest rates to the arrears which accumulated on the loan accounts. The Complainant also submits, referring to the CCMA, that as she was co-operating with the Provider, interest should not have been applied to her arrears.

Arrears first began to accrue on the Complainant's loan accounts at various points during **2009**.

The CCMA first came into effect in **2009** and a number of iterations have been issued by the Central Bank of Ireland since then. However, I do not believe that the CCMA prohibits the Provider from charging interest on arrears and the Complainant has not identified any provision in the CCMA preventing the Provider from doing so.

From **2011**, the CCMA prevented a lender from imposing charges or surcharge interest on a mortgage loan where a borrower was co-operating reasonably and honestly with a lender in a MARP process (clause 9). The 2013 CCMA contains a similar prohibition where a borrower is not co-operating (clause 11).

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The Provider advises that it does not necessarily charge interest on arrears and explains:

“If a borrower fails to make a contractual repayment then the overall balance does not reduce and the Bank calculates interest using this balance. If a Borrower does not make their contractual repayments for long periods of time when the overall balance will increase as interest is being charged using the overall balance.”

I accept that the Provider was nonetheless entitled to charge interest on the Complainant’s accumulated loan balances which would necessarily include arrears or missed payments, irrespective of whether the Complainant was co-operating with the Provider. Further to this, the Complainant has not demonstrated that the Provider applied charges or surcharge interest to her loan accounts while they were in arrears. Therefore, it is not necessary for me to consider whether, in the context of this aspect of the complaint, the Complainant was co-operating with the Provider. However, it is worth noting that the 2011 and 2013 CCMA’s expressly define the term *not co-operating* and it is this definition that is relevant to the Provider’s conduct and not necessarily the Complainant’s understanding of *not co-operating*.

The evidence in this complaint, does not demonstrate that the Provider was not entitled to charge interest on arrears. Furthermore, the Complainant has not demonstrated that the Provider applied interest to her accounts in a manner inconsistent with either the terms and conditions of the loan, or the CCMA.

The Sixth Complaint

The Complainant appears to have first made a request for reduced interest rates in a letter to the Provider dated **29 October 2008**. The next request appears to have been made during a telephone conversation on **20 September 2012**. This call concluded with the Complainant confirming with the Provider’s agent that he would look into a reduction in interest rates. On **26 October 2012**, the Complainant advised the Provider’s agent that she had still not heard from the Provider regarding a reduction in the interest rates.

During a subsequent telephone call on **25 March 2013**, the Complainant queried whether anyone within the Provider had followed up on her request in terms of reducing the interest rates on the top-up loans to the same rate as the mortgage loan. At this point in the conversation, the Provider’s agent clarified that before the Provider would be in a position to do this, the Complainant was to revert regarding the possibility of the previously discussed term extension which she was to discuss with her partner. The Complainant advised the Provider’s agent that she was waiting for the Provider to revert to her regarding a reduction in interest rates in order to inform her decision on the term extension. The Provider’s agent informed the Complainant that it would need a decision from the Complainant on the term extension before it could advise on a possible reduction in interest rates. The Provider’s agent acknowledged there was some confusion between the parties on these matters and told the Complainant that a proposal regarding a reduction in interest rates had not been put forward as a decision on the term extension was outstanding. The Complainant stated that she would contact the Provider again to discuss these matters.

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The interest rates on the top-up loans was again discussed in email correspondence between the parties in **March** and **April 2014**. I note the Provider's case manager indicated that he would see what he could do regarding the interest rates.

There appears to have been confusion between the parties surrounding the Complainant's request: the Provider appears to have been of the view that the request would not be considered until the Complainant responded to the proposed term extension on the loans; while the Complainant required a response to her request before she would make a decision on the term extension. This confusion was not clarified for some six months. Further to this, while there is a long history of communication between the parties to this complaint, there were also a number of points during this history where the Complainant did not engage with or respond to the Provider. This is clear from the gaps in communication surrounding the Complainant's requests for reduced interest rates on her top-up loans. It is also not entirely clear from the evidence what exactly happened in terms of the Complainant's request for a reduction in interest rate. After **April 2014**, communications seem to have changed focus towards discussions around the sale of the mortgaged property, restructuring, and affordability.

In light of the foregoing, I accept there were delays on the part of both the Provider and the Complainant in pursuing and/or following up on the Complainant's request for a reduction in interest rates. There was also confusion surrounding who was to respond first. In these circumstances, it is not clear whether the Provider's case manager followed up on his commitment regarding the Complainant's request in **April 2014**. The case manager should have done so but there is no evidence to suggest that he did. I do not consider this to be reasonable conduct on the part of the Provider.

Separately, the Complainant made a request to the Provider by email dated **15 January 2016** in respect of a reduction in the interest rate on account ending 798. The Complainant emailed the ASU on **22 March 2016**, requesting a reduction in the interest rate on account ending 905. Some months later, the Complainant appears to have sent a followed up to the second request by email dated **2 November 2016**.

The Provider explains that it attempted to call the Complainant on **25 May 2016** to discuss her loan accounts and interest rates. However, there was no answer and no voicemail facility available to leave a message. The Provider also explains it was not until **August 2018**, after the rates had been converted in **July 2018**, that it became aware of the Complainant's email in **March 2016** had not been responded to or actioned.

While the Provider has addressed the **March 2016** request, it does not appear to have addressed or received the **January 2016** request. I would note this letter does not contain the Provider's address nor is the date contained on the letter. However, this letter begins with "*Dear [Provider]*" and has the date of sending written in manuscript on the top left corner. In light of these factors, I am unable to determine whether this letter was in fact sent. Furthermore, there is no telephone or written correspondence to show that the Complainant sought to follow up on this particular request.

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Therefore, I accept that the Provider failed to action the Complainant's requests for a reduced interest rate in **March 2016** and this has been acknowledged by the Provider.

In an effort to address its oversight regarding the **March 2016** request, the Provider has backdated the fixed interest rate of 3.5% from **March 2016** to **July 2017** on all three loan accounts. This resulted in interest adjustments on each account, interest credits and refunds on two accounts.

The Seventh Complaint

The Complainant made a complaint to the Provider on **14 February 2018**. While the Provider does not appear to have furnished the letters issued to the Complainant regarding her complaint prior to the Final Response letter, the Complainant accepts that she received 5 day and 20 day letters from the Provider updating her regarding the status of her complaint. In an email to this Office dated **11 April 2018**, the Complainant states: "... they responded with (sic) 5 days and again at 20 days but did not resolve the issue within 40 days ..." The Provider issued a Final Response letter to the Complainant on **17 April 2018**.

Section 10.9(d) of the **Consumer Protection Code 2012**, states that a regulated entity "... must attempt to investigate and resolve a complaint within 40 business days of having received the complaint ..." The Provider issued a Final Response letter to the Complainant within approximately 9 weeks of receiving her complaint. This equates to roughly 44 business days. Therefore, I am not satisfied the Provider unreasonably delayed in investigating and/or responding to the Complainant's complaint.

Goodwill Gesture

In relation to the Provider's failure to respond to or action the Complainant's request in **March 2016**, "[t]he Bank acknowledged above that it has never actually apologised for this service failing and the Bank would like to offer an apology at this stage and would also like to formally offer compensation in the amount of €1,000."

The Provider also acknowledged that it gave incorrect information to the Complainant in its Final Response letter regarding the charging of interest on arrears. The Provider states:

"This is factually incorrect information as the Bank does not charge interest on arrears. The Bank calculates the interest charged using the overall balance. If a borrower fails to make a contractual repayment then the overall balance does not reduce and the Bank calculates interest using this balance. If a Borrower does not make their contractual repayments for long periods of time when the overall balance will increase as interest is being charged using the overall balance. The Bank understands that one of the Complainant's main issues with her account was the interest charged. The Bank understands that the information given as part of the final response letter did not help to clarify the charging of interest for the Complainant. The Bank sincerely apologises for this mis-information and in recognition of this, we would like to formally offer compensation in the amount of €500."

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In addition to the foregoing, the Provider acknowledged that during its investigation of this complaint, it has identified a number of service failings together with missing documentation and call recordings that it should have been able to provide. The Provider also acknowledges that its submission in response to this complaint was not furnished to this Office within the appropriate timeframe. In recognition of these issues, the Provider has apologised and offered to compensate the Complainant:

“The Bank would like to make a further offer of €2,500 to the Complainant in addition to the two amounts specified above (€1,000 and €500) making a total offer to the Complainant of €4,000”.

In a submission dated **9 April 2020**, the Provider states:

“It has come to our attention as part of [the cost of credit request], that when the revised Letters of Agreement issued to [the Complainant] on 11 June 2015, that the figures entered as being the ‘Total Cost of Credit’ were in fact the figures that represented the total amounts repayable to the Bank. We apologise unreservedly for the confusion that this has caused ... We would also like to increase our original Gesture of Goodwill of €4,000 to an amount of €7,000. This increase of €3,000 on the Bank’s original offer of €4,000 is in recognition of the above mentioned error and any confusion this may have caused. This offer of €7,000 is in full and final settlement of the Complainant’s complaint.”

During the exchange of post Preliminary Decision submissions, the Complainant highlighted the inability of the Provider to respond or acknowledge a letter, which the Complainant submitted was sent to the Provider in **October 2008**.

The Provider in response detailed that:

“[the Provider] have checked the systems available to that unit, in order to try to locate the letter dated 29 October 2008 that was provided in the Investigation file by the FSPO to the Bank. Unfortunately we have been unable to locate any record of this being received in the ASU. As there was no record on the ASU systems, the letter was not referred to in the Bank’s Investigation response file that was submitted by the Bank to the FSPO. However, we acknowledge that as this letter was included in the Investigation file, we should have addressed this in our response submission. We would like to apologise for not doing so and for any confusion or inconvenience that this may have caused to the Complainant. In recognition of this, the Bank wishes to offer an additional €500 making a revised settlement offer of €7,500 in total, in full and final settlement of this dispute”.

I acknowledge that in addition to the increased offer, the Provider requested additional information from the Complainant to conduct an additional search for the correspondence in question. While the Complainant provided additional details, the Provider remained unable to locate the original correspondence.

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I consider this offer of €7,500 by the Provider to be a reasonable sum of compensation in respect of the issues outlined above, and those acknowledged by the Provider. In these circumstances, on the basis that this offer remains available to the Complainant, I do not uphold this complaint.

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

2 December 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**

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.