



<u>Decision Ref:</u>	2021-0120
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Arrears handling (non- Mortgage Arrears Resolution Process)
<u>Outcome:</u>	Rejected

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

In 2008, the Complainant took out an interest only tracker mortgage with the Provider of €2,125,000. The loan was secured on the Complainant's Principal Private Residence (PPR) and also two investment properties. In 2011, arrears began to accumulate due to the Complainant's failure to pay the instalments as they fell due.

On **9 December 2011**, the Complainant's loan was moved to the Provider's debt management department. From that date onwards, the entirety of the Complainant's loan was deemed to be in arrears and the Complainant's loan account did not show the interest accumulating. The Provider sent quarterly updates to the Complainant setting out the amount due and owing.

In 2015, the Complainant started to make repayments again but not in the full amount as required by the mortgage agreement. On **24 September 2015**, the Complainant's loan was moved out of the debt management department. On the same date, the sum of accumulated interest being €80,762.75 was applied to the Complainant's account. In October 2016, the Complainant's loan and mortgage was sold to a third party and the Provider's administration of the loan ceased.

The Complainant's Case

The primary complaint made is that the Complainant was given no warning or proper explanation for the sum of €80,762.75 being applied to his account in September 2015.

The Complainant states that this caused great difficult with his dealings with the third party which purchased his loan.

The Complainant states that this sum should be recapitalised instead of showing as arrears of interest. The Complainant states that the first that he knew of the charge was when he received his bank statement in January 2016. He states that he received no communication or notice in respect of it prior to that. He contacted the Provider at that time in order to query the issue, but was told that no one could speak to him. The Complainant states that he had to go to great lengths to try and figure out where the particular charge came from. He states that it should have been far clearer precisely why the charge appeared on his account. The Complainant states that the first time that he received a proper explanation was in December 2018 when he met a representative of the Provider. The Complainant states that the bank statements which the Provider refers to do not set out the interest accrued which had not been expressly charged to his account.

The Complainant also states that the Provider has acted improperly in how it reported the arrears to the Irish Credit Bureau. The Complainant states that he was making payments and that he should not have been reported as being in arrears. The Complainant states that in 2014, 2015 and 2016 the interest was around €700 per month but that he was making payments of approximately €1,600 per month. As it was an interest only loan, the Complainant asserts that the Provider was wrong to report that he was in arrears to the Irish Credit Bureau. The Complainant also takes issue with the loan being described as non-performing when he was making payments.

The Provider's Case

The Provider states that the Complainant fell into arrears in 2011. On **6 October 2011**, the Provider demanded the full sum due and owing of €2,127,096.28. On **9 December 2011**, the Complainant's loan was moved to the Provider's debt collection department. The Provider states that when a customer's loan is move to the debt collection department, then the entirety of the loan is classified as arrears. The Provider states that interest continues to accumulate, but that it is not posted to a customer's account. The Provider notes that in each end of year bank statement, it expressly shows that amount of interest that has accumulated and that the balance showing on that statement does not include interest accrued but not yet charged. On that basis, the Provider states that it did inform the Complainant that interest continued to accrue but was not being posted to the account. Furthermore, the Provider notes that it sent quarterly updates in accordance with the CCMA, which demonstrated that the arrears and interest continued to accumulate. The Provider also states that it sent periodic notices to the Complainant indicating a change in the rate of interest applicable to the Complainant's loan. On **24 September 2015**, the Provider states that it removed the Complainant's loan from its debt collection department as he had started to make regular payments again, which were reducing the arrears. On the same date, the sum of accumulated interest being €80,762.75 was applied to the Complainant's account.

With respect to the Complainant's attempts to ascertain where the charge originated from, the Provider states that **18 October 2016** was the first time which he raised a query in respect of the interest albeit with the Provider's third party representative.

On **21 October 2016**, a follow up call occurred where the Provider's third party representative stated that a full copy of all the Complainant's bank statement would be sent to him. This did not occur, but the Provider states that a full copy of those statements had already been sent to him on **4 October 2016** in respect of a previous query. On **2 March 2017**, the Provider was asked for a breakdown of the figure of €80,762.75. On **7 March 2017**, the Provider states that it sent an explanation to a separate third party representative of the fund that had purchased the loan and mortgage.

With respect to the reporting to the Irish Credit Bureau, the Provider accepts that for a period of time that the Complainant was making payments in excess of the interest payments due on a loan. The Provider states that the Complainant did not pay €93,000 in interest repayments between May 2011 and January 2015. The Provider states that the home loan remained in arrears even though the Complainant started to reduce those arrears. The Provider states that it is obliged to report correct records to the Irish Credit Bureau and that it was, therefore, obliged to inform the Irish Credit Bureau that the Complainant's account was in arrears. The Provider states that it reported that the Complainant was 9 payments in arrears whenever it reported to the Irish Credit Bureau. The Provider states that this is the maximum amount of repayments that can be posted on the Irish Credit Bureau. The Provider states that the Complainant was at all times more than 9 payments in arrears from 2012 onwards until the loan and mortgage were sold at which point the Provider stopped reporting to the Irish Credit Bureau.

The Provider does not accept that it failed in how it calculated or informed the Complainant of the interest that was accumulating. The Provider does not accept that it failed in its customer service handling of the Complainant. The Provider states that the wrong postcode being used could have no bearing on the Complainant receiving documentation.

The Complaints for Adjudication

The complaint for adjudication is that the Provider charged the Complainant the wrong interest rate and communicated poorly in relation to the interest rate and the complaint and that the Provider furnished incorrect information to the Irish Credit Bureau.

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.

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In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 25 May 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 from the Complainant to this Office dated 5 June 2020.
2. E-mail and attachment from the Complainant to this Office dated 8 September 2020.
3. E-mail and attachments from the Provider to this Office dated 21 September 2020.
4. E-mail and attachment from the Complainant to this Office dated 27 September 2020.
5. E-mail and attachments from the Provider to this Office dated 29 September 2020.
6. E-mail and attachment from the Complainant to this Office dated 8 October (received 12 October 2020).

Copies of these submissions were exchanged between the parties.

The Provider, under cover of its e-mail to this Office dated 14 October 2020, advised that it had no further submission to make.

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.

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In my Preliminary Decision I stated:

In relation to the application of interest, there is no doubt that the Complainant was surprised when the sum of €80,762.75 was charged to his account in September 2015.

It is clear from the end of year bank statements furnished by the Provider, however, that interest was accumulating on the loan account but was not being posted on the account for 2012, 2013 and 2014.

Underneath the final balance, each of those statements has the following text:

'The balance at the end of the period to which this statement relates does not include a) interest accrued but not yet charged to your account (to date this amounts to EUR xxxxxxx) ...'

The amounts included are as follows:

- In the 2012 statement, the sum is €33,181.17. In the 2013 statement, the sum is €57,126.57.*
- In the 2014 statement, the sum is €72,074.37.*

In addition to this, in the quarterly CCMA letters, copies of which have been furnished in evidence by the Provider, the total interest accrued figure is constantly increasing as the Complainant failed to make payments. While the Provider did not send a letter to the Complainant expressly indicating that the interest would accumulate but not be posted specifically to the account, it is clear that the Complainant was made aware at all times that his interest figure was increasing.

The annual end of year bank statements and the CCMA letters make it clear that this is the case. The annual end of year bank statements expressly state that the accumulating interest will not be charged to the account. There was no contractual obligation on the Provider to provide a letter setting out that the interest would accumulate in the manner that it did or guaranteeing that the interest would be charged to the account monthly. In respect of the CPC, article 6.5 provides that the Provider must set out, at least annually, a statement containing the amount of interest charged. I accept that the statements of account furnished to the Complainant by the Provider did provide this information.

The Complainant, in his post Preliminary Decision submission dated **8 September 2020**, states:

"The weight given to your preliminary findings to the bank in providing the necessary documentation is almost exclusive.

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Given the bank are relying so heavily on this point and its without doubt and conceded by the bank that the address was wrong, this decision made by the FSPO based on the above fact is now completely and wholly invalid.

...

All of the above is totally reliant on the bank sending me the information - as we have detailed above, the bank were not sending the information to the correct address and have conceded same and have subsequently changed it.

The weight given by the financial services and pensions ombudsman that the information was supplied to me in correspondence and end of year statements has now become the single most important aspect of this entire case.

The decision is overwhelmingly based on this one point.

If for whatever reason the bank were sending the information to the wrong address, then this invalidates the entire decision. Therefore you can not possibly accept the banks "allegedly furnished" me with a statement of account as evidence of the bank adhering to Article 6.5 of the CPC Code

...

The reason as to why the address is incorrect is not relevant here today, the only point that's relevant is did or did they send me statements. As I had the wrong address they did not and therefore they could not possibly be in adherence to the code as set out by the central bank

I'm not privy to how the banks internal admin and data entry process happens only to say clearly a mistake has been made which has been amended (after the fact)

Therefore the financial service and pensions ombudsman cannot possibly deny the complaint having reconsidered the above facts".

The Provider responded to the Complainant's post Preliminary Decision submission on **21 September 2020**.

The Provider details and encloses two items of correspondence from third parties, addressed to the Complainant at Dublin 16, not Dublin 18.

The Provider submits:

"We also enclose a copy of the Complainant's bank statement from [third party bank] dated 11 September 2008 (provided to us by the Complainant as part of the Complainant's home loan application) and a copy of a letter from [an insurance company] dated 3 November 2008 (provided to us by the Complainant in relation to insurance on the relevant property), both reference Dublin 16 as the Complainant's address. It also appears from these that the Complainant was receiving correspondence from third parties with the Dublin 16 reference in the address".

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The Provider also submits in its post Preliminary Decision submission:

“the address of a customer is inputted on our system, all future correspondence is generated with the automatic insertion of that address for that customer.

It is not rechecked, unless flagged as incorrect. Accordingly, the Dublin 16 reference in the address of the Complainant has been used consistently for correspondence from the Provider since 2008, when that address was first used, until corrected in 2016”.

The Provider also states:

“During this time, the Provider has no record of any such correspondence being returned to it undelivered by An Post. We understand that [redacted] road is close to the borderline between Dublin 16 and Dublin 18 which may explain this”

...

The Complainant appears to have been still receiving correspondence at the Dublin 16 address, as he references receipt in his letter of complaint to the Provider dated 3 December 2018 of the annual account statement dated 31 December 2015 in early January 2016”.

The Complainant has rejected the Provider’s statements in his post Preliminary Decision submission dated **27 September 2020**.

The Complainant states:

“The bank states;

‘We submit that all relevant documentation was before the FSPO and considered before coming to his Preliminary Decision’.

The documentation supplied to the FSPO had the correct address updated on it which had been updated just before these proceedings”.

I note that both the Complainant and Provider in later post Preliminary Decision submissions highlight that a Freedom of Information pack was returned to the Provider as ‘not called for’.

The Complainant attached an image of a sales brochure with his post Preliminary Decision submission, which he states was sent to a named individual of the bank:

“... the address is shown correctly and is the first correspondence with the bank in relation to the purchase of the house and loan dispute, which is now the subject of these proceedings”.

This image shows the correct address.

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The Complainant states:

“It was also [Provider’s agent] who were selling or acted as sales agent on the sale of insurance at the time who arranged the insurance with [insurance company] and not me, therefore if they were given the wrong address, it was given to them by the bank”.

It is detailed by the Complainant that:

“The problem of not getting correspondence only became an issue when the Bank blocked access to my online banking. This was done by [named individual in] Debt Management and at the time informed me this was standard procedure.

The bank states nothing was ever returned when in previous correspondence, the bank had already conceded that the freedom of information pack had been returned so both statements can’t be true.”

The Complainant also states:

“The bank states that it was reasonable for the Provider to assume that the address details it was using were correct, however it’s not reasonable to assume it’s correct if the issues was highlighted to the bank, its staff and agents both in writing and verbally countless times over the years and despite that, no action was taken to correct the error until it was too late.”

I note this Office has not been furnished with copies of any correspondence to the Provider specifically requesting a change of address.

In support of his argument the Complainant refers to the fact that the “freedom of information pack” was returned to the Provider. In fact, it would appear that An Post attempted to deliver this pack to the Complainant’s address. On failing to do so and as it was not subsequently collected by the Complainant, it was returned to the Provider. This, in my view, rather than supporting the Complainant’s position, actually supports the Provider’s position. Furthermore, I note the correspondence from other third parties with the same post code appears to have been delivered to the Complainant.

Based on the evidence and submissions before me, including the post Preliminary Decision submissions, I remain of the view that the difference in post code, given that the remainder of the address was correct, did not materially impact on the issues, at the core of this complaint. I am satisfied that statements and correspondences were delivered.

In relation to information furnished to the Irish Credit Bureau, it is clear that the Complainant had accumulated significant arrears. The accounts demonstrate that the arrears started to accumulate in June 2011 and rose significantly until January 2015. I note the Provider states that the Complainant did not make any repayments for nearly four years from May 2011 to January 2015.

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During this period the Complainant missed over €93,000 in interest repayments. While the parties are agreed that the Complainant started to reduce those arrears over time, it does not mean that the account did not remain in arrears.

The information that can be provided to the Irish Credit Bureau is limited. I find that the Provider was entitled to furnish information to the Irish Credit Bureau that the Complainant's account was in arrears and remained in arrears when it did so, notwithstanding the regular payments being made. Any obligation of the Provider ended on **22 October 2016** when the loan was formally sold and transferred to a new third party.

In respect of the customer service handling, this complaint relates only to the conduct of the Provider and not to the Provider's third party representative or the third party representative acting for the purchaser of the loan and mortgage. Therefore it is the conduct of the Provider and not those other entities I am investigating.

The Provider notes that it received a request on **2 March 2017** from the third party representative acting for the purchaser of the loan and mortgage and that it responded on **7 March 2017** with a detailed breakdown of the interest charges. A representative of the Provider met with the Complainant on **7 December 2018** in order to talk through the complaint. The Provider's representative explained at this meeting what happened and why the interest was calculated and charged as it was.

The Provider has only furnished recordings of phone calls from January 2015 to November 2016 between the Complainant and the Provider's third party representative. There is a dispute between the parties as to when the issue of the interest being charged was raised. The Complainant says that it occurred in a phone call in January 2016 while the Provider states that it occurred in October 2016 with the third party representative of the Provider. There does not appear to be any phone call from January 2016, but there are 3 phone calls from October 2016 that relate to the issue of the interest being charged to the Complainant's account.

On **18 October 2016**, the Complainant called the Provider's third party representative querying the interest being charged. The Complainant states that the interest was normally charged monthly on his account. The Provider's third party representative stated that he did not know what had happened, but that he needed to clarify. On **21 October 2016**, the Complainant called the Provider's third party representative again in relation to the previous call to see if any update could be given. The Complainant was told that the individual dealing with him on the previous day was not available. The Complainant was again not given a proper explanation for the arrears being charged. The representative again could not explain why the interest was charged. The Complainant indicated that he needed to know where the arrears charge came from. He asked for it to be resolved urgently.

On **21 October 2016**, the Complainant called the Provider's third party representative looking for previous account statements from the start of his loan. The representative indicated that she would have to contact the Provider directly in order to obtain the relevant statements.

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The representative said that she would obtain the relevant statements from the Provider for the Complainant. On **17 November 2016**, the Complainant called the Provider's third party representative in order to get an update. The representative noted that the loan had been sold to a new entity and that they could not access the relevant information. When the Provider was contacted by the new entity's third party representative on **2 March 2017**, the relevant account information was furnished on **7 March 2017**. Separately the remainder of the phone calls are not relevant to the issues arising in this complaint.

In relation to the customer service handling, it is important to point out that this complaint is against the Provider and not the third party entities. In that regard, I have not been provided with evidence that the Provider has engaged in any customer service failings in how it handled the Complainant's queries.

I accept that the Provider furnished information to the Complainant in line with the CPC that set out the annual interest being charged and the manner in which it was being presented on the account statement.

For the reasons outlined above, 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**

28 April 2021

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

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

