



<b><u>Decision Ref:</u></b>	2021-0194
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Maladministration (mortgage) Complaint handling (Consumer Protection Code)
<b><u>Outcome:</u></b>	Rejected

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

The Complainant is a farmer and entered a loan agreement with the Provider in **June 2008** to purchase land. The loan was to be repaid over 20 years by way of a monthly standing order in the amount of €1,236.39. The loan was subject to a variable interest rate. However, monthly repayments remained fixed despite changes in the prevailing interest rate.

**The Complainant's Case**

The Complainant explains that on **11 June 2008** he took out a loan with the Provider in the amount of €165,000 to purchase land. The loan was subject to a 20 year term with the interest rate being the *"Cost of funds plus 2% per annum – variable rate."* The monthly payments were €1,236.39.

Describing his complaint, the Complainant states *"... the bank did not reduce the monthly direct debit for repayment when interest rates reduced."* This was the case despite a dramatic reduction in interest rates to approximately 0.25% plus 2% from **2009/2010** onward. The Complainant paid €1,236.39 per month from **2008** to **2017** until the Complainant's brother contacted the Provider. On **19 July 2017**, repayments reduced to €635.06. It is submitted that the loan is a variable rate loan and repayments should have decreased in line with interest rate decreases. In response to the Provider's position that the loan was repayable by standing order, the Complainant says that the facility letter signed by the Complainant nor the General Terms and Conditions do not say the loan was repayable by standing order.

The Complainant explains he received numerous letters from the Provider about missed payments, “... even though if [the Provider] looked and reviewed [the Complainant’s] loan account they would have seen the loan account was more than up to date.” It is estimated that approximately €46,000 “... has been paid extra to the loan account if the repayment reduced in line with the interest rate reductions.”

The Complainant submits that he was required to meet full monthly repayments, and this severely impacted his business and cashflow. This meant the Complainant ran up large debts with suppliers of feedstuffs and was threatened with legal action. The Complainant was also prevented from expanding his business. Due to the cost of the monthly repayments, some loan repayments were missed over the years and the Complainant incurred penalty interest and overdraft charges because “... my account was nearly always over-drawn as the monthly repayment never reduced when interest rates reduced.”

In a submission dated **4 January 2019**, the Complainant’s representative has asserted a number of breaches of the **Consumer Protection Code 2006** in respect of the loan, and in support of this complaint.

### **The Provider’s Case**

The Provider explains the loan was granted to assist with the purchase of [number redacted] acres of land in [location] and was drawn down on **30 September 2008**. As a concession to the Complainant, the first monthly capital and interest loan repayment of €1,236.39 was not made until **9 January 2009**. The Complainant’s loan is currently being repaid on a capital and interest basis by standing order of €635.06 per month. The agreed interest rate being applied to the loan, as per the accepted facility letter dated **11 June 2008**, is the Provider’s variable cost of funds rate of 0.042% plus a margin of 2% per annum. Interest is charged to the loan on a quarterly basis.

The Provider states that the Complainant’s loan facility was only available for repayment by way of standing order. The Provider acknowledges it is correct to say that the facility letter and the General Terms and Conditions do not specifically reference the repayment mechanism. However, the facility letter clearly specifies a monthly repayment (which provides certainty to the borrower) and not a varying monthly repayment (regardless of any variations in the interest rate) and a standing order achieves this.

The *Repayment* section of the facility letter states: “The loan shall be repaid monthly at €1,236.39 over 20 years commencing 30 July 2008” and the General Terms and Conditions provide at clause 4.6 that: “Repayments: The borrower will punctually pay the repayments specified in the Facility Letter.” The Provider submits that a standing order repayment mechanism achieves the contractual obligation for set monthly repayments and operated from inception without issue. This also gave the Complainant certainty on the monthly repayment amount for cash flow purposes and afforded him the control to contact the Provider if he wished to seek a variation to the amount of the monthly repayment as provided for a clause 9.5 of the General Terms and Conditions.

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On **4 November 2016**, one of the Provider's officials spoke with the Complainant's accountant/brother, who requested that the Provider review the monthly repayments on the loan as interest rates had reduced over the last number of years. The Complainant's accountant asked for the repayments to reflect the reduced Cost of Funds Rate to repay the loan over the original term as the Complainant was finding the current repayment too high with reduced produce prices impacting his income. The Provider explains this request was not actioned at the time and states that it sincerely apologises for this.

In a letter to the Provider dated **18 May 2017**, the Complainant requested that loan repayments be reduced in line with the expiry date of the loan and authorised the Provider to speak with his accountant/brother. The Provider states that between **November 2016** and the letter of **18 May 2017**, it sent three letters to the Complainant and it has no record of receiving a response to these letters. In these letters, the Provider notified the Complainant of missed repayments and raised its concerns. The Provider offered to meet the Complainant, provided phone numbers and offered workable solutions. However, it is acknowledged that if the Provider acted on the Complainant's instruction from **November 2016**, these letters may not have been required. The Provider states that the letters were intended to prompt the Complainant to engage with the Provider so that it could offer assistance.

On **9 June 2017**, the Complainant's accountant contacted the Provider and requested that the standing order be decreased. In **July 2017**, a reduced loan repayment was approved by the Provider where it was agreed that monthly capital and interest repayments would be reduced to €635.06. This would repay the loan in full by the original agreed term. The monthly repayment amount was based on the Cost of Funds Rate prevailing at the time of calculation, **19 July 2017**. This was in keeping with clause 9.5 of the General Terms and Conditions.

The Provider explains the terms of the loan clearly specify a set monthly loan repayment and not a varying monthly repayment irrespective of any variations in the interest rate either up or down. In this regard, the Provider submits it was appropriate for the same monthly repayment to be made. The Provider also submits that the Complainant was free to seek to vary the standing order further to clause 9.5. The Complainant and/or his accountant had the option of requesting a review of the account or a revision of the loan repayment amount at any time. The amount of the loan repayment transactions were detailed in the loan and current account statements issued to the Complainant. In the absence of any such instruction, the contractual monthly repayments remained in place.

The Provider submits that the variable rate cost of funds was correctly applied to the loan since drawdown. Any variation in the cost of funds rate is accounted for in the quarterly interest applied to the loan. The underlying variable rate both increased and decreased over the term of the loan, and, irrespective of the movement in the underlying rate, repayments remained fixed as agreed with the Complainant at the inception of the loan.

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The Provider asserts that if the monthly repayments of €1,236.39 continued without amendment and the Cost of Funds Rate remained, on average, lower than originally envisaged, it would have had a positive effect of shortening the term of the loan, which would be in favour of customers generally as the overall cost of interest on a facility is reduced. It is submitted by the Provider that the management of the Complainant's loan is fully in keeping with the terms and conditions.

It is also noted by the Provider that prior to taking out the loan the subject of this complaint, the Complainant had an earlier loan facility which operated on the same basis of fixed monthly repayments with a variable interest rate, repaid by a standing order which did not fluctuate in line with movement in interest rates.

During the course of the loan the subject of this complaint and prior to **November 2017**, the Provider issued a number of payment/arrears letters. The Provider says that in none of these letters did it threaten to close the Complainant's main operating accounts and the Provider's letters included notices offering assistance. A number of letters issued in **2015** and **2016** stated the possibility of the loan being transferred to the Recoveries Team and the possible withdrawal of credit. The Provider suggests that any account closure correspondence was issued in respect of a dormant account not subject to this complaint.

In terms of notifying the Complainant of variations in interest rate, the Provider refers to clause 4.6 of the General Terms and Conditions, advising that a customer would only be notified of a variation in the repayment amount arising from a movement in interest rates. However, the Provider asserts that variations in interest rates did not affect the repayment amount as it was a set repayment as stated in the facility letter. The Provider explains that whenever the Cost of Funds Rate varied, the correct interest was applied to the loan – monthly repayments remained fixed regardless of interest variations.

Referring to clause 9, the Provider explains that on two occasions since the inception of the loan, the method for calculating the Cost of Funds Rate was amended and these changes were notified to the Complainant on **6 August 2010** and **23 April 2012**. The interest rates were notified to the Complainant as an attachment to each set of account statements issued. All variations to interest rates are also available on the Provider's website as well as in branch.

In relation to the **Consumer Protection Code 2006** and **2012**, the Provider submits that the Complainant does not meet the definition of *Personal Consumer* and as such, the Codes do not apply. Despite this, the Provider states that it has complied with the provisions of the Codes. The Provider has also outlined its compliance with various provisions of the **Code of Conduct for Business Lending to Small and Medium Enterprises 2009** (the **SME Code**) and the **Lending to Small and Medium Sized Enterprises Regulations 2015** (the **SME Regulations**).

It is submitted by the Provider that the Complainant or his advisors have the primary responsibility to raise with the Provider any financial pressures the Complainant may have been experiencing.

The Provider was not aware of any pressure being exerted on the Complainant in relation to external creditors. Had it been aware of this, it suggests that remedial action could have been taken to consider what level of support could have been provided and make any adjustments to ease the financial burden.

The Provider advises that the Complainant's loan and overdraft are not reported to the Irish Credit Bureau and no arrears have been reported to the Central Credit Register to date as monthly repayments have been met since reporting commenced.

The Provider explains that the letter dated **17 November 2017** addressed to its Complaints Department was received on **7 December 2017** and acknowledged on **13 December 2017**. The Complainant attached a letter dated **8 August 2017**. However, the Provider states that it has no record of receiving this letter prior to **7 December 2017**. The Provider advises that while acknowledgement and update letters issued to the Complainant, the Provider's response to the complaint did not issue until **21 May 2018** as the matters raised by the Complainant required an in-depth investigation. However, it is recognised by the Provider that there was a delay in issuing its response. A letter also issued to the Complainant on **6 February 2018** advising him of his right to make a complaint to this Office. Following further correspondence from the Complainant on **29 May 2018**, the complaint was reactivated. This was acknowledged on **22 June 2018** and an update letter was issued on **22 June 2018**. The Provider's response was issued on **24 July 2018**.

### **The Complaints for Adjudication**

The complaints are that the Provider:

Maladministered the Complainant's loan in respect of interest repayments; and

Failed to handle the Complainant's formal complaint in a speedy, efficient or fair manner.

### **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 29 April 2021, 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 Complainant made a submission under cover of his representative's e-mail to this Office dated 4 May 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 6 May 2021 that it had no further submission to make.

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

### ***The Loan Facility***

By letter dated **11 June 2008** (the **Facility Letter**), the Provider advised the Complainant that:

*"The Bank is pleased to offer you the facility below subject to the terms and conditions set out in this Facility letter and subject also to the Bank's Standard Terms & Conditions governing business lending to individuals – Business Banking ..."*

The Facility Letter further outlined the following information:

***Facility:***                      *Committed Loan Facility.*

***Facility Amount:***        *€165,000.00 ...*

***Purpose:***                      *The Facility shall be made available for the purpose of purchase of [number redacted] acres at ...*

***Availability Period:***    *...*

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**Term:** 20 years commencing on the date on which the Facility is first drawn down.

**Repayment:** The loan shall be repaid monthly at €1,236.39 over 20 years commencing 30 July 2008.

**Interest:** The Bank's Cost of Funds Rate varying plus 2.00% per annum currently 6.40% per annum. The debit interest rate in respect of this Facility may be fixed on such terms and for such fixed rate periods as the Bank and the Borrower may agree as per the General Conditions. ..."

The Facility Letter was signed by the Complainant on **20 June 2008**.

### **Terms and Conditions**

Clause 5 of the Provider's *General Terms and Conditions for Business Lending to Individuals* (the **General Terms and Conditions**) deals with a Committed Loan Facility, and states:

#### **"5. Committed Loan Facilities**

##### **Nature and Application**

5.1 A committed loan available to a Borrower in the amount, for the term and purpose and on the specific terms set out in the Facility Letter. A committed loan is available for the term specified in the Facility Letter unless an Event of Default has occurred before then.

5.2 The provisions of Sections 4.3 to 4.8 and Section 8 ... shall apply to a committed loan.

##### **Interest Fees and Charges**

5.3 Interest, fees and charges will accrue and will be calculated and charged in accordance with Section 9 (Interest) and 10 (Fees, Charges and Indemnities) ..."

Clause 4 states:

#### **"4.6 Repayments**

The Borrower will punctually pay the repayments specified in the Facility Letter. Any variations in the amount of such repayments as a result of variation in interest rates will be notified to the Borrower. See Section 9 (Interest) ...

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...

4.8 *Early repayments and prepayments are treated as permanent reductions and may not be redrawn unless otherwise agreed between the Bank and the Borrower. ... Where early repayments and prepayments are treated as permanent reductions, this will shorten the repayment period (where there are scheduled repayments specified in the Facility Letter) but the Borrower must continue to make the repayments specified in the Facility Letter unless otherwise agreed."*

Clause 9 deals with interest and states as follows:

***"Variable Rate Facilities***

9.3 ...

9.4 *Variable Interest Rates are subject to variation at any time whether before or after the Facility is advanced and the Bank will notify the Borrower of all such changes.*

9.5 *Variations in the rate of interest on a Facility may, at the sole discretion of the Bank, be accommodated by way of:*

- (a) *varying the term of the Facility unless the Borrower requests otherwise on or before the final repayment date; or*
- (b) *revising the amount of the payments to be made by the Borrower from time to time during the term of the Facility; or*
- (c) *adjusting the amount payable on the final repayment date; or*
- (d) *such other manner as the Bank may in [its] absolute discretion decide."*

***Correspondence***

In a file note dated **4 November 2016**, it is stated that:

*"Under instructions from [the Complainant] spoke to his accountant who is his brother ... who has asked for the payments to be stretched out to the original term of the loan ie reduce the payments in line with current cof."*

The Complainant wrote to the Provider on **18 May 2017** stating that:

*"I would also like to amend the repayment amounts of 1,236.39 currently on this loan to a different repayment based on the original 20 year term of the original loan.*

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*The monthly direct debit doesn't appear to have reduced when the interest rates were reduced. It has set at 1,236.39 per month since the start of the loan facility."*

The Complainant wrote to the Provider's Complaints Department on **17 November 2017** enclosing a letter dated **8 August 2017**. The November letter states:

*"Please find attached a copy of a letter sent to [the Provider] ... in [location] which has been followed by calls and e-mails to [the Provider's staff member].*

*I wrote requesting confirmation by letter than (sic) the monthly repayments on the above loan had been amended as the monthly repayment of this loan did not reduce when interest rates were reduced. ... Can you advise in writing why the monthly repayments didn't reduce when the interest rates dropped as I have been paying a fixed amount since June 2008 to July 2017 until my brother ... informed you about this. ..."*

The August letter (which the Provider states it has no record of receiving) contains the same request as the November letter. The November letter is stamped as having been received by the Provider on **7 December 2017**. The complaint was acknowledged on **13 December 2017**. The Provider wrote to the Complainant again on **6 February 2018** apologising for the delay in investigating the complaint, advising that the Provider was continuing to gather information. The letter also advised the Complainant of his entitlement to make a complaint to this Office. This was followed by updates on **6 March**, **6 April** and **4 May 2018**, with a Final Response letter issuing on **21 May 2018**. The Final Response letter explained that:

*"... The loan repayments are being paid by way of monthly standing order payments which is why the loan repayments did not reduce in line with interest rates as a standing order is a set payment amount.*

*Loan repayments only reduce automatically in line with interest rates if it is being repaid by direct debit as direct debits fluctuate the repayments in line with interest rates. As the loan repayments were not reviewed until Jul 2017 you were paying the original agreed repayment amount up until the loan was reviewed.*

...

*I would like to recognise the fall down in service you received from the Bank in relation to this issue and that you did not receive a response from [the Provider's staff member] ... despite follow up calls and subsequent emails.*

*My investigation into why you did not receive a response has been inconclusive as [the staff member] has been on long term leave from the Bank so I have been unable to discuss it with him. Given the fall down in service you received I am upholding this aspect of your complaint and please accept our apologies for this. ..."*

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The Complainant's accountant responded to this letter on **29 May 2018**, raising, amongst other matters, the Provider's management of the loan account and the interest applied to the loan.

This letter was acknowledged by the Provider on **22 June 2018**. An update was sent on **29 June 2018** and a Final Response letter was issued on **24 July 2018**. This letter explained that:

*"... There was no annual review date set for this loan agreement as the loan was to be repaid by way of monthly standing order over 20 years. This is why the loan repayments would not have been reviewed until you requested same.*

...

*As the loan repayments didn't reduce in line with interest rates [the Complainant] would have had the benefit of reducing the capital of the loan with the accelerated repayments which in turn has reduced the interest due over the course of the loan.*

*I note from our record that you first requested the loan repayments to be reduced in line with reduced interest rates on the 04/11/2016. The repayments on the loan did not reduce until July 2017 please accept our sincere apologies for this it should not have taken this length of time to complete your request. Given the delay in completing your request we are upholding this aspect of your complaint. ..."*

I find the Provider's reliance on the method of payment as a reason not to alter the payment to be curious and unacceptable.

### **Analysis**

The operation of the Complainant's loan is dictated by the terms agreed between the parties in **June 2008**; this being the Facility Letter and the General Terms and Conditions. The Facility Letter states, in mandatory language, that the loan "... **shall be repaid monthly at €1,236.39** ..." over 20 years. The facility extended on foot of the Facility Letter was a *Committed Loan Facility*. Clause 5.1 of the General Terms and Conditions states that such a facility is made available "... on the specific terms set out in the Facility Letter." Further to this, clause 4.6 imposes an obligation to pay "... the repayments specified in the Facility Letter." Although the Facility Letter states that the interest was a variable rate, it is not expressed in the Facility Letter or the General Terms and Conditions that the monthly repayments were to vary as interest rates varied. Taking this into consideration, I accept that the Terms and Conditions provided for a fixed monthly amount of €1,236.39 with repayments to remain static for the duration of the loan and irrespective of whether repayments were made by direct debit or standing order.

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As the monthly repayments were to remain fixed for the term of the loan, any movements in interest rates would not necessarily alter the repayment amount. Therefore, I do not accept that the Provider failed to comply with the notification requirement contained in clause 4.6. This is only triggered when a variation in interest rates result in a change to the monthly repayment amount. However, this is not to say that the Complainant did not benefit from reductions in interest rates for example.

Clause 9.5 sets out the manner in which variations in interest rates may be accommodated by the Provider. In line with clause 9.5(a), the evidence is that as interest rates fell, a greater proportion of the monthly repayments were allocated towards reducing the principal balance on the Complainant's loan.

The Complainant makes the point that it is not stated in the Facility Letter or the General Terms and Conditions that repayments were to be by way of a standing order. The Provider states this method allowed for fixed payments to be made as opposed to a direct debit method which allows for different amounts to be debited to the loan account each month. Although the payment method was not expressly provided for in the Facility Letter or the General Terms and Conditions, I do not see how this would necessarily affect the express repayment terms of the loan agreement. This point would only appear to be relevant if repayments were to vary in line with movements in interest rates. In any event, the Complainant appears to have accepted this method of payment and there is no evidence that he objected to it. Additionally, the loan accounts statements show that payments were being made by standing order.

It is understandable that the Complainant may have understood that, as the loan was subject to a variable interest rate, his monthly repayments would adjust up or down in line with interest rate fluctuations. However, having considered the Facility Letter and the General Terms and Conditions, I do not accept that the loan was offered or accepted on the basis of varying monthly repayments.

The Complainant believes that the Provider should have reviewed the loan account or should have had a mechanism in place for reviewing loans subject to fixed monthly repayments. I do not accept this position and the Complainant has not pointed to any obligation on the part of the Provider to do so; whether contained in Facility Letter, the General Terms and Conditions, or any codes of conduct or regulations for example. In any event, it was at all times open to the Complainant to conduct his own review or request that the Provider review the monthly repayment amount. I would also note that the Provider issued correspondence to the Complainant in respect of the loan, requesting, for example, that he engage with or contact the Provider.

It was not until **November 2016** that a request to reduce monthly repayments was made. This was not actioned by the Provider, and a further request appears to have been made in **May 2017**. However, the monthly loan repayments did not reduce until **July 2017**. This is quite a lengthy delay and it is disappointing that the Complainant's request was not executed more promptly. It is also not entirely clear why or how this delay occurred.

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Notwithstanding this, the Provider has acknowledged its failure to act on the Complainant's request.

A formal complaint was made by letter dated **17 November 2017**. However, I note it is recorded as received by the Provider on **7 December 2017**. The complaint was acknowledged by the Provider on **13 December 2017** and a Final Response letter issued on **21 May 2018** with a number of update letters following in the intervening period.

It took approximately 6 months to issue a Final Response to this complaint. Having considered the nature of the complaint and while the Provider must be afforded a certain degree of latitude when investigating a complaint, I am satisfied there was an unreasonable delay on the part of the Provider in responding to this complaint.

As part of his complaint, the Complainant referred to a letter sent to the Provider dated **8 August 2017** to which he received no reply. It is unclear whether this letter was received and it bears no date stamp from the Provider. It is also not clear whether the Complainant sought to follow up with the Provider in respect of this letter. The Complainant also expressed his dissatisfaction at the lack of response from certain of the Provider's staff members despite telephone calls and emails.

However, the Complainant has not provided any details in respect of the various telephone calls; in term of when they were made, to whom or the nature of the calls for example. Further to this, the emails referred to have not been furnished either.

The Complainant's accountant responded to the Provider's Final Response letter on **29 May 2018** raising a number of issues. However, this letter does not appear to have been acknowledged by the Provider until **22 June 2018**. It should not have taken this length of time to issue a simple acknowledgement letter and it is reasonable to expect the Provider to issue such correspondence more promptly. A Final Response letter was issued around 40 business days after **29 May 2018** on **24 July 2018**. However, considering the nature of the matters raised by the Complainant's accountant, I am not satisfied there was an unreasonable delay on the part of the Provider in issuing the Final Response letter.

Having considered the Provider's handling of the Complainant's complaints, there were undoubtedly certain unreasonable delays on the part of the Provider. However, I am satisfied that the substance of the complaints was appropriately addressed in the Provider's Final Response letters.

The Complainant has also stated that the Provider failed to comply with the provisions of the applicable Consumer Protections Codes, in particular, in a letter dated **4 January 2019**. The Provider submits that the Codes do not apply in this instance as the Complainant did not meet the definition of *consumer*. While I am satisfied the Complainant does not meet the definition of *consumer* in the 2006 Code, he does satisfy the definition of *customer*. In such circumstances, the 2006 Code applies, but in a very limited capacity.

Further to this, I am satisfied that the Complainant meets the definition of *consumer* as set out in the 2012 Code and the 2015 revision. However, having considered the evidence and submissions of the parties, I am not satisfied that, outside of the matters identified above, the Provider failed to comply with its obligations under the various Codes.

In a submission dated **26 June 2020**, the Complainant's accountant raised a number of further points in respect of (i) certain important information not being included in the Facility Letter; (ii) a delay in activating loan repayments; and (iii) the absence of an internal mechanism for reviewing fixed monthly repayment loans (addressed above).

It is important to note that certain of the issues raised in this letter relate to matters which arose in or around **June 2008** and **January 2009**. **Section 51** of the ***Financial Services and Pensions Ombudsman Act 2017***, sets down certain time limits for the making of complaints. As this complaint was made to this Office in **December 2017**, matters (i) and (ii) would appear to be outside of the prescribed limitation period. For this reason, they have not been investigated and do not form part of this Decision.

### **Goodwill Gesture**

The Provider has acknowledged:

*"... there were shortcomings in our service ... for which we apologise ...*

*Having considered the matters further and noting the length of time it has taken to respond to the Ombudsman, the Bank is willing to increase this offer to €8,000 in full and final settlement of all the issues raised. ..."*

The Provider further increased its offer to €8,200 in a letter dated **15 July 2020**.

While I accept that the Provider acted within the Terms and Conditions of the account, I believe it could have engaged in far better communications and been more proactive and flexible in its dealings with the Complainant as the interest rate reduced and the Complainant's loan entered arrears. I therefore welcome that the Provider has offered a significant goodwill gesture.

I consider this goodwill gesture to be a reasonable sum of compensation for the Provider's failings. In these circumstances, on the basis that this offer remains available to the Complainant, I do not uphold any aspect of this complaint.

### **Conclusion**

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

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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**

16 June 2021

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.**