



<u>Decision Ref:</u>	2021-0337
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Increase in interest rate Maladministration
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to a mortgage account and a personal insolvency application entered into by the Complainants with the Provider.

The Complainants' Case

The Complainants submit that following their Personal Insolvency Application in **July 2016** an agreement was put in place with the Provider whereby the Complainants would pay €1,222 per month to the Provider at a reduced interest rate for 5 years.

By way of letter to the Provider dated **25 September 2018**, the Complainants submit that the First Complainant applied for a further education loan in **March 2018**, in order to continue studying for a qualification. The Complainants state:

“We only found out in March 2018 that on application for an education loan that our credit rating had not been updated. This affected our application and we were turned down for a loan”.

The Complainants contacted the Provider to seek a resolution. They state:

“My agreement was in place 15 months at this stage and we made regular payment on the 25th of each month of 1222 euros. Every time we called we got a different person and no one could find the agreement.

Finally we made progress and got someone in the insolvency department who found the agreement and the regular payments and would amend the credit rating but were told it would take at least a month if not longer. We were elated...finally someone who knows what they are doing but alas..."

"I am very frustrated and have had to postpone my studies twice as this incorrect information has affected my credit rating"

The Complainants state:

"We still haven't received a solution from [the Provider] and I'm getting quite frustrated at the continued letters asking for more time. I called twice to the number enclosed and was waiting 15 mins to get an operator to get a call back and they never returned my calls. I'm frustrated beyond belief."

By way of email dated **3 February 2020**, the Complainants declined an offer of €4,000 made by the Provider.

In response to the Provider's submissions to this Office, the Complainants sent an email to this Office dated **20 August 2020** requesting the Provider's notes in regards to their restructure arrangement and the capitalisation of arrears. The Complainants also asked *"how & why [the Provider] capitalised the arrears & the time frame for this action."* The Complainants stated that *"this action or lack of action is intrinsically linked to our credit ratings within the complaint period"*.

The Complainants sent a further email to this Office dated **31 August 2020** after reviewing the Provider's submissions and asked the Provider to explain the following:

- Why and how the Alternative Forbearance Arrangement was incorrectly broken by the Provider and when this error was conveyed to the Complainants;
- Provide further details of the arrears' adjustment in the amount of €49,834.89 which was applied to the Complainants' mortgage account and indicate when and how this was communicated and explained to the Complainants; and
- Explain how the interest adjustments applied to the mortgage in the amounts of €105.32 and €393.10 for the months of **April** and **May 2018** were communicated to the Complainants.

The Complainants sent a further email to this Office dated **6 October 2020** stating that they were *"very disappointed with the vague reply & failure of [the Provider] to provide any details to these questions. I wish for the record to note we are far from happy & deem their replies a complete failure to uncover their action. To use the term "Banking Error" in a formal request for clarity, I find almost contempt & wish these notes to be include for Adjudication"*.

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Ultimately the Complainants want the Provider to rectify their credit ratings.

The Provider's Case

The Provider, in its Final Response Letter dated **9 January 2019**, states its understanding of the complaint is that the Complainants believe that their credit rating has been affected by the Provider and in particular has not been cleared as agreed. The Provider states that the *"the details of this repayment plan are as follow; applied for 72 months @0.50% Interest Rate from 25 December 2016 to 25 November 2022 with monthly repayments of €1221.99"*.

The Provider goes on to state that *"as you are in a reduced repayment agreed with the Bank your credit rating with the Irish Credit Bureau will show as "M" for Moratorium"* and that it has *"also liaised with our Personal Insolvency team who have advised; the Bank has done exactly what the Personal Insolvency Agreement outcome was."* The Provider states that if the Complainants are unhappy with their personal insolvency agreement they can contact the Insolvency Service of Ireland to discuss further options or the Complainants can advise the Provider that it no longer requires the forbearance on their account and full capital and interest repayments can be resumed. The Provider states that if full capital and interest repayments were to resume, the Complainants' credit file with the Irish Credit Bureau will then update to show that the Complainants are not in a personal insolvency deal.

At that time, the Provider apologised *"for the length of time it has taken to issue you a response to this complaint. To acknowledge the fall down in service, I would like to offer you a goodwill gesture of €75"*.

By way of email to this Office dated **3 February 2020**, the Provider made a formal offer of redress to the Complainants in the sum of €4,000 and stated that this offer would remain open and in place for acceptance by the Complainants.

The Provider made submissions to this Office dated **12 August 2020**. In these submissions, the Provider accepts that the Alternative Forbearance Arrangement entered into between the Complainants and the Provider was incorrectly broken by the Provider and the Complainants' mortgage was placed back on the tracker rate of ECB plus 1.15% on **26 April 2018**. The Provider states that the Alternative Forbearance Arrangement was placed back onto the Complainants' mortgage in **June 2018** and the Economic Concession rate of 0.5% was reapplied to the mortgage account. The Provider states that the Economic Concession rate is currently still in place on the mortgage account. The Provider states that while there is an Alternative Forbearance Arrangement in place on the mortgage account and the mortgage payments under the arrangement are being met in full, the Complainants' credit rating with the Irish Credit Bureau will reflect as an "M" meaning a moratorium is applied to the Complainants' account on account of the fact that both the Complainants and the Provider have agreed to suspend all or part of the payment for a particular period. The Provider states that it can find no evidence that there was a requirement for the Provider to clear the Complainants' credit rating with the ICB after the initial 12 months of the Personal Insolvency Arrangement.

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The Provider states that as a result of its error in breaking the Alternative Forbearance Arrangement, the Complainants' ICB illustrated an arrears balance for the months of **April** and **May 2018**.

The Provider states that it subsequently requested with the ICB that this be amended in **October 2018**. The Provider wishes to stress that prior to the personal insolvency arrangement being put in place by the parties, the Complainants were in arrears and the Provider was obliged to report this to the ICB.

The Provider states that it is not in a position to "clear" the Complainants' credit rating as there is an Alternative Forbearance Arrangement on the mortgage account and this needs to be reflected accordingly.

The Provider also notes that it would normally capitalise arrears 30 days after the successful completion of the Personal Insolvency Agreement, even though this was not stipulated in the Complainants' agreement. The Provider notes that in fact it capitalised the arrears more than 30 days after the expiry of the 12 month personal insolvency arrangement. The Provider accepts that the Complainants received differing advice regarding the capitalisation of the arrears when contacting the Provider and states that it has taken this into account in its offer of compensation.

The Provider acknowledges that a complaint was raised on **25 September 2018** and an acknowledgment letter was issued on **9 October 2018** to confirm that a complaint had been raised and that the matter was being reviewed on behalf of the Complainants. The Provider accepts that the acknowledgment letter was issued outside of the 5 business days stipulated under the **Consumer Protection Code 2012 (as amended)**. The Provider also apologises for not calling back the Complainants on two occasions when they rang the Complaints Handling Centre.

The Provider states in the Final Response Letter that the Complainants seem to be confused concerning the parameters of the Personal Insolvency Arrangement entered into by them and that their elected Personal Insolvency Practitioner is the appropriate person to guide them through this process.

In my Preliminary Decision I stated that in its Final Response Letter, the Provider reiterates its offer of compensation for the Complainants in the amount of €4,000, however this was an error. What should have been stated is that in its Formal Response to this office, the Provider reiterates its offer of compensation for the Complainants in the amount of €4,000.

By way of email dated **29 September 2020**, the Provider responded to the correspondence of the **31 August 2020** from the Complainants. The Provider stated that the Alternative Forbearance Arrangement was incorrectly broken by the Provider on **26 April 2018** as the expected payment was illustrating as a higher amount than the required payment of €1221.99 and therefore it appeared that the payment had been under paid. The Provider stated that this was due to an error.

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The Provider stated that to remedy this, the arrangement was placed back into the Complainants' mortgage in **June 2018** and the concession rate of 0.5% was re-applied to the mortgage account. In respect of the query raised regarding the arrears adjustment amount of €49,834.89, the Provider referred to the response provided in its submissions to the Office dated **12 August 2020**.

The Provider states that due to the error with the Alternative Forbearance Arrangement, the Complainants were charged interest in **May** and **June 2018** on the rate of European Central Bank (ECB) rate plus 1.15%, instead of the Concession rate of 0.5%. The Provider states that the adjustments credited to the mortgage for the amounts of €105.32 and €393.10 put the mortgage back in the same position it would have been in had the interest rate charged been 0.5%.

The Provider states that these adjustments were credited to the mortgage account after the complaint was escalated to this Office on **14 February 2019**.

The Complaints for Adjudication

The complaint for adjudication is that the Provider has:

- Incorrectly reported the Complainants' Irish Credit Bureau (ICB) record;
- Not rectified the Complainants' Irish Credit Bureau (ICB) record;
- Proffered poor customer service throughout.

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 Complainants were 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 3 February 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, further submissions were received by this Office, copies of which were exchanged between the parties.

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

In my Preliminary Decision I had quoted from the Complainants' submission and detailed how the Complainants have stated *"We still haven't received a solution from [the Provider] and I'm getting quite frustrated at the continued letters asking for more time. I called twice to the number enclosed and was waiting 15 mins to get an operator to get a callback and they never returned my calls. I'm frustrated beyond belief"*.

The Complainants have, as part of their post Preliminary Decision submission, stated that the above statement *"incorrectly addresses the frustrating effort on our behalf to contact the [Provider] regarding the mortgage arrangements, I have enclosed copies of the correspondence with [the Provider] and the correspondence with our PIP with [the Provider] which should outline the weeks of phone calls and correspondence we made to the creditor in order to get them to reply to our questions. This resulted in both [of the Complainants] taking days away from work to resolve these issues"*.

The Complainants have also, as part of their post Preliminary Decision submission, detailed recent communications between the Provider and themselves. The Complainants state that they *"received a call from [the Provider's] arrears department requesting [the Complainants] set up a direct debit for my account so they can sell the non-performing loan! I would like to point out that we pay our mortgage every month and it's not in arrears, I have explained this to the bank and still, this harassment is happening"*.

I note the response given by the Provider in its post Preliminary Decision submission that *"in relation to the referenced correspondence and they have outlined that while there currently remains an active Alternative Forbearance Arrangement in place on the Mortgage, the monthly payments are being made manually (i.e. there is no active Direct Debit Mandate). When a payment is paid manually, the payment is not always credited to the Mortgage account on the due date and this can result in arrears appearing on the account, between the due date and the date that the payment is applied to the Mortgage. Where there is a delay in the manual payment being applied to the Mortgage there is a risk that the Alternative Forbearance Arrangement can be broken"*.

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It should be noted that these issues have not formed part of the complaint which has been investigated and adjudicated by this office, which as detailed above is that the Provider has:

- Incorrectly reported the Complainants' Irish Credit Bureau (ICB) record;
- Not rectified the Complainants' Irish Credit Bureau (ICB) record;
- Proffered poor customer service throughout

I note that the Complainants' mortgage was on a tracker rate of the European Central Base rate plus 1.15% when the mortgage was transferred to the Economic Concession rate of 0.5% in **November 2016**. This amendment was made as part of the initial 12 month arrangement agreed under the Personal Insolvency Arrangement (PIA), whereby the Complainants were to make payments of €1,221.99 for a period of 12 months and thereafter the mortgage would avail of the Economic Concession rate for a further 5 years.

I note that the Provider accepts that it incorrectly broke the Alternative Forbearance Arrangement on **26 April 2018** and I note that this resulted in:

- The Complainants' ICB record for **April and May 2018** being incorrectly recorded;
- The Complainants' mortgage account being placed back on the tracker rate ECB plus 1.15% as opposed to the Economic Concession rate of 0.5%;
- The arrears due prior to the Alternative Repayment Arrangement became due and owing on the Complainants' mortgage account; and
- The Complainants were charged interest in **May and June 2018** on the rate of European Central Bank (ECB) rate plus 1.15%, instead of the European Concession rate of 0.5%. This amounted to incorrect charges of €105.32 and €393.10.

I note that to rectify these issues the Provider took the following steps:

- An arrears adjustment was applied to the mortgage account on **1 August 2018** which placed the arrears balance to zero;
- An interest adjustment of €105.32 and €393.10 was applied to the mortgage account on **29 November 2019** which remedied the position regarding interest accrued when the alternative arrangement was removed from the mortgage account in **April 2018**;
- Amended the ICB credit rating in **October 2018** to reflect the moratorium should have applied for **April and May 2018**.

While I accept that the accuracy of the Complainants' credit rating is extremely important and that an incorrect credit rating can have significant negative effects on a person, I note that the Provider corrected the credit rating within 6 months of the mistake happening and also note that as the Complainants had been in arrears prior to the moratorium, the incorrect recording of the credit rating for such a short period was unlikely to have a substantive effect on the Complainants' rating. I have been provided with no evidence to support the contention of the First Complainant that she was refused an educational grant through any fault of the Provider. I also note that any financial loss accruing to the Complainants as a result of the Provider's error was rectified on **29 November 2019** when the Provider reimbursed the Complainants for the additional interest charged over the two month period.

I note that the Provider accepts that a complaint was raised on **25 September 2018** and an acknowledgment letter was only issued on **9 October 2018**, outside of the 5 business days stipulated under provision 10.9(a) of the **Consumer Protection Code 2012 (as amended)**. I also note that the Complainants first raised their complaint on **28 September 2018** and did not receive a Final Response Letter from the Provider until **9 January 2019** and that this is in contravention of provision 10.9(d) that the Provider *"must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint"*.

I further note that the Provider did not call back the Complainants on two occasions when they rang the Complaints Handling Centre and this in breach of provision 2.1 of the CPC to act *"professionally"*.

While the failings of the Provider are unacceptable, I believe the offer of €4,000 compensation is reasonable in all the circumstances.

For the reasons outlined in this Decision and on the basis that the Provider's offer remains available to the Complainants 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 September 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.