



<u>Decision Ref:</u>	2022-0100
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Fees & charges applied
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the application of fees and charges to the Complainant's current account.

The Complainant's Case

In his Complaint Form, the Complainant explains that:

"In September 2004 I took out a mortgage with [the Provider] and entered into an agreement that if my salary was paid into this current account and my mortgage paid out of it that I would pay no bank charges"

On **25 March 2019**, the Complainant says the Provider decided to change his account type and *"cripple me with bank charges of every sort"*. The Complainant says he is extremely annoyed by the Provider's dishonesty and refusal to offer a valid explanation as to why it reneged on the above agreement, which was entered into for the lifetime of the mortgage loan.

In resolution of this complaint, the Complainant states that:

"I want [the Provider] to refund all charges taken wrongfully from my account and restore the agreement that is in place for the life of the mortgage stating that I pay no bank charges."

The Provider's Case

Current Account 591

The Provider advises that the Complainant opened a current account in his sole name on **12 December 2003**. During the account opening process, the Provider says the features and benefits of the account were outlined to the Complainant and he was provided with a copy of the relevant information. The Provider says the terms and conditions provided to the Complainant at the application stage, outlined that the Provider may vary the terms and conditions (including interest, fees and charges) from time to time and would provide notice of any alternations.

The Provider says that 'terms and conditions' are defined under "*Definitions*", which states:

*"**Terms and Conditions**' means these terms and conditions, as amended, extended, supplemented or replaced from time to time."*

The Provider also refers to the following terms and conditions:

"2. Interpretation

(a) These Terms and Conditions apply to the operation of the various current account products offered by the Bank and (unless agreed in writing to the contrary) are deemed to be incorporated in and form part of all agreements between the Bank and its Customers for such current account products.

10. Fees and Charges

(a) Details of the fees and charges which are charged by the Bank on current accounts set out in the Bank's brochure on banking charges as published from time to time which is available on request at any branch of the Bank

(b) Subject to notifying the relevant regulatory authority, the Bank may from time to time alter such fees and charges and introduce new fees and charges.

24. Amendments of these Terms and Conditions

The Bank may vary these Terms and Conditions and the interest and charges applicable on an Account including the interest rate structure from time to time. The Customer will be informed of such variations either directly or by means of notices publicly displayed in all branches of the Bank or published in a national newspaper circulating in the State or published on the Bank's internet site, and any such variation shall be effective ten days after notice of such variation is given as above save in respect of an interest rate change which shall come into effect upon date specified on any publication of such rate change."

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The Provider says that in signing the application, the Complainant confirmed he had received the applicable information booklets detailing Fees and Charges, Current Account General Terms and Conditions, Online Banking Terms and Conditions, Conditions for ATM, Laser Cards incorporating Cheque Guarantee which may be amended from time to time. The Provider says the Complainant confirmed he had read and understood, and had the necessary time to consider and query, the information provided to him in relation to his application.

Under "**Application**", the Provider says the Complainant confirmed in late **2003**, that:

*"I/we hereby apply to [the Provider] (the "**Bank**") for a current account of the type described above (the "**Account**") to be operated in my/our personal capacity and not in relation to my/our trade business or profession.*

I/we agrees that the Bank's Current Account General Terms and Conditions from time to time in force shall govern this Account.

I/we wish to avail of [online banking] facilities in relation to the Account and agree that such facilities shall be subject to the Bank's [...] Online Terms and Condition in force from time to time.

I/we apply for the issue to me/us of [the Provider] ATM(s) / Laser Card(s) incorporating Cheque Guarantee and agree that such cards will be subject to the Bank's terms and conditions applicable to such cards from time to time."

The Provider also refers to the following declaration:

"I/we have received the Bank's current Brochure on Charges and Fees / Current Account General Terms and Conditions [O]nline Terms and Conditions / Terms and Conditions for ATM, Laser Cards incorporating Cheque Guarantee

I/we have read, have had real opportunity of becoming acquainted with, have understood and agree to be bound by the above brochure and terms and conditions."

As noted in the terms and conditions, the Provider says it provided advance notice to the Complainant of possible alterations to the account in the future.

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The Provider says correspondence issued to the Complainant dated **17 July 2017** entitled "*Changes to Maintenance Fee on Loyalty Current Accounts*". The Provider says this letter informed the Complainant of a change to the maintenance fee to come into effect from **25 September 2017**, advised of the alternative options available, fee exemptions and provided a comparison table. The Provider says the letter also refers the Complainants to the "*Terms & Conditions and Personal Business banking charges*" booklet for more information and states:

"If you choose not to close your account within 2 months, you are deemed to have accepted the changes by continuing to use the account as of the effective date of the notified changes".

The Provider says correspondence issued to the Complainant dated **4 December 2018** with information relating to the current account. The Provider says this letter informed the Complainant of changes to come into effect from **31 March 2019**. The letter explained that at present the Provider may agree to pay a Standing Order, Direct Debit, Cheque or Point of Sale transaction, creating an unauthorised overdraft by allowing the account move into a negative balance or beyond the agreed overdraft limit. This, the Provider says, resulted in referral fees and unauthorised overdraft interest being charged. The correspondence stated that from **31 March 2019**, all current accounts would be required to maintain a positive balance or operate within agreed overdraft limits and advised that where sufficient funds were not available, items presented may be rejected. The Provider says the letter also provided details of the charges, advice on how to monitor accounts, and receive a text alert when a certain balance is reached. The Provider says contact telephone numbers were also included should the Complainant have wished to raise any queries.

The Provider says correspondence issued to the Complainant dated **18 January 2019** entitled "*Important Information regarding changes to your Loyalty Current Account*". The Provider says this letter advised the Complainant of changes to his account to come into effect from **25 March 2019**, detailed exemption criteria, provided a comparison table and added that "*If you choose not to close your account within 2 months, you are deemed to have accepted the changes by continuing to use the account from the effective date of the notified changes*". The Provider says that contact telephone numbers were also included should the Complainant have wished to raise any queries. Referring to this letter later in its Complaint Response, the Provider says the letter explained that following a review of current accounts, a decision was made to standardise and simplify legacy accounts and, as a result, the Complainant's Loyalty Current Account would be retired and the account type changed to a Provider 'Current Account3'.

Joint Mortgage Loan Account 248

The Provider says an initial Letter of Approval issued on **5 August 2003** and an amended Letter of Approval issued on **2 September 2003**. The Provider says the current status of this loan account is 'Redeemed/closed 09 June 2008'.

The Provider says Condition D of the Special Conditions to the mortgage loan agreement states:

"PRIOR TO DRAWDOWN OF THE LOAN, THE APPLICANT WILL COMPLETE A VARIABLE DIRECT DEBIT WITH A BANK OR [the Provider] OR A STANDING ORDER DRAWN ON A [Provider] ACCOUNT TO AUTHORISE [the Provider] TO COLLECT THE AGREED MONTHLY INSTALMENT DUE ON THE MORTGAGE LOAN AND ANY INSURANCE OR ASSURANCE INSTALMENTS WHICH HAVE BEEN ARRANGED OR WILL BE ARRANGED BY [the Provider] AT THE REQUEST OF THE APPLICANT."

The Provider says the European Standardised Information Sheet states under "**Obligation to domicile bank account with lender** – *The borrower is not required to domicile his/her bank account and salary with [the Provider].*"

The Provider says the Complainant and the joint borrower signed the Acceptance of Loan Offer on **21 August 2003** declaring that:

"I/We the undersigned accept the above offer on the terms and conditions set out in
(i) The Letter of Approval
(ii) The General Mortgage Loan Approval Conditions
(iii) The [Provider] Mortgage Conditions
Copies of the above which I/We have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan."

The Provider also refers to the following declaration:

"My/Our Solicitor has fully explained the said terms and conditions to me/us."

The Provider says the monthly repayments were deducted from a joint account ending 481 until the loan was redeemed in **June 2008**.

Joint Mortgage Loan Account 036

The Provider says a Letter of Approval issued on **28 April 2008** and the loan was drawn down on **30 May 2008**.

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The Provider refers to Condition 7 of the Special Conditions, as follows:

“Prior to the drawdown of the loan the applicant will complete a variable direct debit mandate with a bank or [the Provider] or a standing order drawn on a [Provider] account to authorise [the Provider] to collect the agreed monthly instalment due on the mortgage loan and any insurance or assurance instalments which have been arranged or will be arranged by [the Provider] at the request of the applicant.”

The Provider says the European Standardised Information Sheet states under **“Obligation to domicile bank account with lender – The borrower is not required to domicile his/her bank account and salary with [the Provider].”**

The Provider says the Complainant and the joint borrower signed the Acceptance of Loan Offer on **6 May 2008** declaring that:

“I/We the undersigned accept the above offer on the terms and conditions set out in

- (i) The Letter of Approval*
- (ii) The General Mortgage Loan Approval Conditions*
- (iii) The [Provider] Mortgage Conditions*

Copies of the above which I/We have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.”

The Provider also refers to the following declaration:

“My/Our Solicitor has fully explained the said terms and conditions to me/us.”

The Provider says that monthly repayments are deducted from the Complainant’s joint account ending 481.

The Provider says it did not enter an agreement with the Complainant regarding the waiver of fees for the life of the mortgage loan. The Provider says the terms and conditions pertaining to the Complainant’s current account informed of the Provider’s right to vary the terms and condition, charges and interest from time to time. The Provider says it wrote to the Complainant in advance of the amendments providing sufficient notice to enable the Complainant to consider the options available.

The Provider says that on **16 July 2019**, it received a complaint from the Complainant and, in response, issued correspondence to the Complainant on **31 July 2019**, informing the Complainant of the reasoning for the account amendments, as follows:

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“The changes recently introduced to your current account are separate from the Terms and Conditions attached to your mortgage account. Please note that the June Quarterly Interest fees €47.94 was a result of the account going over the €2000.00 agreed overdraft limit on 4 occasions between April and June 2019. Kindly note it is the responsibility of the account holder to maintain the account within the relevant Terms & Conditions attached to the account which can be found on our website listed below.

Please note the Bank continues to review our charging structure to ensure we remain competitive within the current market place. As a result of this review, we have amended our Terms & Conditions as applicable. This change allows us to cover the cost of providing the services available to you on your accounts as well as allowing us to improve as your Bank provider.

One of the fee exemptions that were available on your Loyalty Current Account was to hold a [Provider] Mortgage. As part of simplifying our legacy accounts effective from 25th of March 2019, the only exemption criteria to avoid the maintenance fee will be a minimum daily cleared credit balance of €2,500. We have made this change in line with our terms and conditions and provided 2 months’ notice of same As part of these changes the Bank is standardising and simplifying our accounts which includes, changing your account type to the [Provider] Current Account3.”

The Complaint for Adjudication

The complaint is that the Provider broke the terms and conditions of the Complainants’ mortgage loan and current account agreement, by unilaterally changing the terms and conditions of his banking.

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 **24 February 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

Telephone conversations

On **16 July 2019**, the Complainant contacted the Provider to discuss certain charges that had recently been applied to his current account. On initiating telephone contact with the Provider, the Complainant spoke to a number of the Provider's agents. These conversations are set out below.

The Complainant telephoned the Provider on **16 July 2019** in respect of June quarterly fees and June quarterly interest charges totalling almost €70.00 on account 591 charged on **16 July 2019**. The Provider's agent explained that the quarterly interest fee was charged in respect of having an overdraft facility on the account, the Complainant's daily use of the overdraft facility and the fact the Complainant's account had been overdrawn for a number of months.

In respect of the quarterly fee, the Provider's agent explained that this fee applied if a customer did not meet the exemption criteria. The Provider's agent also referred to a letter issued to the Complainant outlining the relevant exemption criteria.

The Complainant then explained that:

"We had an agreement with the bank that if my mortgage was paid out of that account and my wages were paid into that account that we wouldn't have any interest fees. That was what the agreement was."

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The Provider's agent referred again to correspondence issued to customers and, in response, the Complainants contended that the Provider simply decided to break that agreement and start charging fees. Following a further short exchange, the Complainant was transferred to a department within the Provider which dealt with account amendments.

When transferred to the next agent, the Complainant explained the basis of the agreement in place with the Provider. Towards the end of this conversation, the Complainant explained that while his wages were being paid into the current account and the mortgage loan repayments were being made from this account, there would be no interest charges and *"that is what I expect to happen for the life of the mortgage"*.

Shortly after this, the Provider's agent asked if the Complainant would like to be transferred to the 'mortgage team' who would be in a position to give the Complainant more information about this matter.

The Complainant then spoke with a member of the Provider's mortgage team. At the beginning of this conversation the Complainants explained that:

"When I took out my mortgage it was agreed with yourselves that as long as my wages were paid into that account and my mortgage was paid out of that account there would be no interest fees on the account."

I note that the Complainant then referred to a quarterly fee that was charged to his current account. The Provider's agent explained that the fee of €47.95 was charged because of the Complainant being in overdraft. The Complainant referred again to the existence of the above agreement which was to be in place for the life of the mortgage loan agreement. Having placed the Complainant on hold for a couple of minutes, the Provider's agent advised that while he was not doubting what the Complainant was telling him, it was not generally the case that the Provider would offer a credit facility without any interest charges. The Provider's agent asked the Complainant when he was told about the non-application of fees to his current account. The Complainant explained this occurred when the mortgage loan was taken out. The Complainants then confirmed, in response to a question from the Provider's agent, that he was told he would have the overdraft facility on the current account without any interest being charged *"so long as I didn't go over the 2000 overdraft limit"*.

The Provider's agent also referred to correspondence that was issued regarding account types. The Complainant then questioned how the Provider could change an agreement in place on an account without consultation. The Complainant made the point that the Provider could not simply change the agreement that was in place.

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The Complainant indicated that as far as he was concerned, the correspondence issued by the Provider was irrelevant and the Provider could not break the agreement that was in place. Following a further exchange between the parties, it was agreed that the Complainant would be transferred to another of the Provider's agents to discuss the matter further.

When transferred to the next agent, the Complainant stated that someone within the Provider arbitrarily decided to change the agreement in place and started charging fees on his account. The Complainant also stated that he wanted correspondence from the Provider confirming that its conduct was *"fully legal and fully compliant"*. The Provider's agent referred to previous correspondence issued by the Provider regarding account changes. While acknowledging receipt of the Provider's correspondence, the Complainant said he did not believe the correspondence was correct.

I note that the Provider's agent also referred to the account terms and conditions which set out the Provider's entitlement to apply charges to an account. It was then agreed that a formal complaint would be logged. The Complainant also requested confirmation that he was being charged the correct rate of interest on his mortgage loan account as a friend of his had been overcharged €14,000.00 in respect of a mortgage loan. At this point, the Complainant was transferred to another agent in the Provider's mortgage department.

During this conversation, as part of the Provider's account verification process, the Complainant told the Provider's agent that his mortgage loan repayments were made from his current account ending 591. Following the verification process, the Complainant requested confirmation that he was being charged the correct rate of interest on his mortgage loan account.

Analysis

The Complainant's position is that an agreement was entered by him with the Provider at the time of the mortgage loan agreement in **2003** such that if his salary was paid to his current account and his mortgage loan repayments made from this current account, his current account would not be subject to any fees for the lifetime of the mortgage loan. The Provider disputes this and maintains the position that no such agreement was in place.

Having considered the evidence, I note that the details provided by the Complainant regarding this agreement are very general and lack specific details. For instance, the Complainant has not expressly identified the date the agreement was made or the identity of the Provider staff member with whom the agreement was made. In addition, the Complainant has not referred to, identified or provided any documentation to support the existence of this agreement. There also appears to be an inconsistency regarding the timing of the agreement and the opening of the current account in question.

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The Complainant's position is that the agreement was entered at the time of the mortgage loan in **2003**. I note that Letters of Approval issued on **5 August 2003** and **2 September 2003**, with the loan being drawn down on **10 September 2003**. However, the Complainant's current account application is dated **12 December 2003**. If such an agreement was in place, I would expect the opening of the Complainant's current account to have been closer to the dates of the Letters of Approval or the date of drawdown and, at least before the first monthly loan repayment would likely have been due. However, the Complainant's current account was not opened for a number of months after this mortgage loan was drawn down and the first transaction on the account did not take place until **5 January 2004**.

A further inconsistency arises in respect of the precise nature of the agreement the Complainant says was in place regarding the overdraft on his current account. The Complainant's position, as noted above, is that once his salary was paid into the current account and the mortgage loan paid from this account, no fees or charges would apply. However, while speaking with one of the Provider's agents on **16 July 2019**, the Complainant says that interest would not be charged in respect of the overdraft "*so long as I didn't go over the two thousand overdraft limit*". In this respect, I note that the 'Credit Limit' on the Complainant's current account was €2,000.00. This is not necessarily consistent with the particular agreement suggested by the Complainant and is, in fact, consistent with the normal operation of the account as provided for by the 'General Account Terms and Conditions' in place when the account was opened. In particular, section 8(a) and section 8(e) state, as follows:

"(a) [...] Where an overdraft has been granted on an Account, the Account must be operated within the overdraft limit from time to time applicable to the Account.

[...]

(e) Where the debit balance on an Account exceeds the authorised overdraft limit for that Account, unauthorised overdraft interest will be charged on the amount that exceeds the agreed overdraft limit. [...]."

According to the Complainant, repayments in respect of the 2003 mortgage loan agreement were to be made from the current account the subject of this complaint, current account ending 591. During one of the conversations which took place on **16 July 2019**, the Complainant told one of the Provider's agents that his mortgage loan repayments were being made from the current account ending 591. However, in the Provider's Complaint Response, it states that repayments in respect of the 2003 and 2008 mortgage loan agreements were made from a joint account ending 481.

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Having considered the account statements supplied by the Provider, I note that the first transaction on the Complainant's current account ending 591 took place on **5 January 2004**, a number of months after the 2003 mortgage loan had been drawn down. Further to this, it does not appear, contrary to the Complainant's position, that mortgage loan repayments were made from this account. It can be seen from statements for the 2003 mortgage loan account (ending 248) that monthly loan repayments were made from the joint current account ending 481. However, it appears that the Complainant's salary was paid into account ending 591 from **January 2004**.

While the Complainant's salary may have been paid into the current account ending 591, the Complainant has not demonstrated that mortgage loan repayments, whether in respect of the 2003 mortgage loan or the 2008 mortgage loan, were made from this account.

In terms of the mortgage loan agreement entered into in **2003**, I have reviewed both Letters of Approval and the accompanying European Standardised Information Sheets and note that none of these documents contain any reference to free banking facilities or the waiving of fees to the Complainant as part of this mortgage loan agreement or in respect of any of the Complainant's present or future current accounts.

A further mortgage loan agreement was entered into in **2008**. In this respect, I note that there is nothing in the Letter of Approval dated **28 April 2008** or the accompanying European Standardised Information Sheet to suggest that free banking facilities or the waiving of fees was available, or had been available, to the Complainant in respect of his current account as part of this, or the previous, mortgage loan agreement or that any such arrangement was being carried over, and made applicable to, this newer mortgage loan agreement.

In the context of the present complaint, I note that at Special Condition 11 of the 2008 Letter of Approval, it is stated that the funds advanced on foot of this mortgage loan were to be used to discharge the total borrowings outstanding on the 2003 mortgage loan. In this respect, I note that the 2003 mortgage loan appears to have been redeemed during **June 2008**.

The Complainant's position appears to be that the fees agreement, which is the subject of this complaint, was made at the time of the 2003 mortgage loan agreement and was to be in place for the duration of that mortgage loan. However, as noted above, this loan appears to have been redeemed in **June 2008**. Therefore, according to the Complainant's evidence regarding the term/duration of the agreement (the lifetime of the 2003 mortgage loan), the agreement the subject of this complaint ceased to have effect once the 2003 mortgage loan was redeemed.

In such circumstances, if there had been an agreement in place, it would then follow that the agreement ended in **June 2008** and that the Complainant would no longer have been entitled to any form of free banking or waiver of fees after this point in time, unless the agreement was renewed or carried over, or a new agreement was put in place.

On considering the Complainant's current account ending 591, I note that the Complainant signed a 'Personal Current Account Application' dated **12 December 2003** in respect of a 'Loyalty Current A/C'. However, having reviewed the application form, there is nothing to suggest that this account would be subject to free banking or that the Provider was, for any reason, waiving the fees or charges payable in respect of the operation of this account.

I note that the application form has been extensively referenced by the Provider in its Complaint Response set out above. On reviewing the application form, it can be seen at the bottom of the first page (which has been signed by the Complainant) that a number of boxes have been ticked acknowledging receipt of certain terms and conditions and a 'Brochure on Charges and Fees'. Just above the Complainant's signature is the following declaration:

"I/we have read, have had real opportunity of becoming acquainted with, have understood and agree to be bound by the above brochure and terms and conditions."

Thus, not only did the Complainant acknowledge receiving and familiarising himself with the Brochure on Charges and Fees (and the various terms and conditions documentation), he agreed, as part of the operation of the account, that he would be bound by this brochure. This is very much inconsistent with any agreement being in place, along the lines suggested by the Complainant. If the Complainant were to have had a very different fees arrangement, I would expect that he would have sought an acknowledgement or confirmation that his account would be subject to those different terms, consistent with the agreement he says was in place.

In respect of the above-mentioned Brochure on Fees and Charges, the Provider has made available a copy of its 'PERSONAL & BUSINESS BANKING CHARGES' brochure, effective from **1 July 2003**, as being the Brochure on Fees and Charges referenced in the Personal Current Account Application. At page two of this brochure, it states that:

"This brochure provides full details of account and service fees and charges and explains how these charges may affect you."

Further to this, the various terms and conditions referenced in the application form refer to the application of fees and charges. For instance, section 10 of the 'Current Account General Terms and Condition' refers to the above brochure as containing details of the fees and charges charged on current accounts and states at section 10(a) that:

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“Details of the fees and charges which are charged by the Bank on current accounts are set out in the Bank’s brochure on banking charges as published from time to time which is available on request at any branch of the Bank.”

Section 9 of the Provider’s customer service and online banking terms and conditions refer to fees and charges associated with the use of these services, which would be charged to the relevant account; at section 6 of the ‘Terms and Conditions of Use – Bank Cards’ (which appears to be incorporated into the foregoing terms and conditions), it states that fees and charges would be applied to the relevant account in respect of the bank card.

I note that section 10(c) of the above General Terms and Conditions sets out the process to be followed in respect of the waiver of fees and charges, stating that:

“Customers may be eligible to apply to have certain fees and charges waived. The conditions under which fees and charges are waived are available on request at any branch of the Bank.”

In accordance with Section 10(c), it would appear that for any form of waiver regarding fees to apply to the Complainant’s current account, the Complainant would have to *apply* for a waiver. Section 10(c) further indicates that the conditions under which a waiver would apply were available *on request*, which would necessarily entail some form of interaction or discussion, with a branch staff member for instance, about the relevant conditions. However, based on the available evidence, I am not satisfied that any such application, request or discussion took place.

The documentation the Complainant acknowledged as receiving and acquainting himself with, contains references to and expressly states that the Complainant’s current account would be subject to fees and charges, and further set out the process for seeking a waiver of fees and charges. Again, this is not necessarily consistent with any separate agreement being in place as suggested by the Complainant. As stated above, were such an agreement in place, it is reasonable to expect the Complainant, in light of the contrary terms contained in the terms and conditions documentation, to have clarified matters with the Provider. However, there is no evidence that the Complainant sought any clarification or confirmation regarding the application of fees and charges to his current account at the time when it was agreed.

Therefore, having considered the evidence, I am not satisfied that an agreement was made such that the Complainant’s current account would not be subject to any fees or charges for the lifetime of either the 2003 or 2008 mortgage loan agreements.

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Further to this, it is my opinion that the Complainant's current account was subject to the terms and conditions he accepted as part of the account opening process and as set out in the application form in **December 2003**. In this respect, I am satisfied that the Complainant's current account was subject to the various fees and charges set out in the Brochure on Charges and Fees and the relevant terms and conditions.

The fees and charges, together with any exemptions, applicable to the Complainant's account were initially set out in the Brochure on Fee and Charges July 2003. In **October 2021**, the Provider furnished copies of the various brochures/booklets/terms and conditions (referred to below as "brochures") setting out the fees and charges applicable to the Complainant's account between account opening in **December 2003** and the date the complaint was received by this Office in **October 2019**.

On the account opening application form, I note it was agreed by the Complainant that *"the Bank's General Current Account Terms and Conditions from time to time in force shall govern the Account."* At section 2(a) of the 2003 General Terms and Conditions, it is stated that:

"These Terms and Conditions apply to the operation of the various current account products offered by the Bank and (unless agreed in writing to the contrary) are deemed to be incorporated in and form part of all agreements between the Bank and its Customers for such current account products."

At section 1, '**Terms and Conditions**' is defined as meaning:

"these terms and conditions, as amended, extended, supplemented or replaced from time to time;"

At section 10(b) of the General Terms and Conditions, it states that:

"Subject to notifying the relevant regulatory authority, the Bank may from time to time alter such fees and charges and introduce new fees and charges."

At section 24 of the General Terms and Conditions, it states that:

"The Bank may vary these Terms and Conditions and the interest and charges applicable on an Account [...] from time to time."

Accordingly, I am satisfied that the Provider was entitled to introduce changes to the terms and conditions applicable to the Complainant's current account which included changes to the fees and charges that would be applied to the account.

The Brochure on Fees and Charges **July 2003** states at page two that:

“You may be eligible for exemption from certain fees and charges. The qualification criteria for charge exemptions are contained in this brochure.”

In respect of the Loyalty Current Account, pages four and five of this brochure state, as follows:

“Loyalty Current Account

- *Account charges are based on the quarterly average cleared credit balance in your account. [The Provider] charge a quarterly fee of €12. Services provided within this fee include cheque card, replacement cards, quarterly statements and account maintenance fee.*
- *In addition the quarterly fee permits €5 worth of transactions to be made in a quarter without further charge. This is increased to €10 if the average cleared credit balance is between €500 and €999.*
- *If the average cleared credit balance is €1,000 or more then you will enjoy in addition to the above mentioned services, the following free each quarter i.e.*
 - *No quarterly fee, transaction charges and statement charges.*

Loyalty Discounts

Loyalty discounts on account charges are a unique offering on current accounts in this country. The purpose is to reward customer loyalty by reducing or eliminating charges on their Loyalty Current Account based on the balances of their accounts with [the Provider].

You will be eligible for loyalty discounts where you hold qualifying balances on other accounts with [the Provider] or, where you have mandated your salary to be paid directly into your Loyalty Current Account.

Loyalty Discounts will apply as follows:

A 25% discount on the quarterly account fee is applicable for each of the following:-

- *Salary credited to account by mandate*
- *Term loan of €10,000 or more*
- *Savings of €10,000 or more*

FREE BANKING

Free banking is available in the following ways:-

- *Customers who have their salaries paid directly into their Loyalty Current Account qualify for the following free each quarter i.e. – No quarterly fee,*

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transaction charges and statement charges for the first 18 months. Thereafter they will be entitled to loyalty rewards based on the criteria mentioned above, or

- *Loyalty Current Account Customers with an average cleared credit balance of €1,000 or more will enjoy following free each quarter i.e. – No quarterly fee, transaction charges and statement charges, or*
- *Loyalty Current Account Customers with savings and/or borrowings (excluding mortgages) of €100,000 or more will enjoy the following free each quarter i.e. – No quarterly fee, transaction charges and statement charges, or*
- *Loyalty Current Account customers with a [Provider] mortgage will enjoy the following free each quarter i.e. – No quarterly fee, transaction charges, statement charges, standing order and direct debit set up fees.”*

While I am satisfied that the above analysis addresses the suggested fees agreement which the Complainant says was in existence with the Provider, the Brochure on Fees and Charges July 2003 and in effect at the time of the opening of account ending 591 indicates that certain exemptions regarding fees and charges were available to the Complainant. In this respect, I note an exemption was available if a customer's average cleared balance exceeded €1,000.00, if their salary was paid directly to the account or if a customer held a mortgage loan with the Provider. It appears that the Complainant had an average cleared balance in excess of €1,000.00 at various points in time, his salary was also paid to the account and he was a Provider mortgage customer. Accordingly, it would appear that the Complainant was entitled to free banking as set out in the first and/or second and/or fourth bullet points under the heading 'FREE BANKING' – which included no quarterly fee, transaction charges, statement charges, standing order and direct debit set up fees.

It appears that from the effective date of the 'Personal & business banking charges' brochure effective from **1 October 2006**, an exemption based on a Provider mortgage applied only where the *“Loyalty Current Account record is **linked** for the duration of the relevant charging period to their [Provider] mortgage”* [emphasis added] although, the salary and average cleared balance criteria, appear to have remained the same. In a subsequent 'Personal & business banking charges' brochure effective from **15 March 2007**, it states on pages 5/6, as follows:

“ATM/Current Accounts no longer available

Customers, who from our records are non business customers and who hold the following personal Current Accounts for non business purposes - Current Account Plus (effective from 26th August 2006), Loyalty Current Account (excluding Loyalty Accounts which are not designated on statements as Loyalty Current Accounts), [...]

/Cont'd...

(effective from 26th September 2006) - are no longer, from the specified dates, subject to a quarterly account fee, automated or non-automated transaction charges, overdraft set up/renewal fees, standing order and direct debit set up fees, and statement fees (excluding duplicates). [...].”

While an exemption was available to certain Loyalty Current Account customers, it is not clear from the evidence whether the Complainant was one of these customers. I also note that further down the contents of page 6, the fees and charges, and the exemption criteria, applicable to Loyalty Current Accounts were outlined, which appear to be the same as the exemption criteria contained in the Brochure on Fees and Charges October 2006, referred to above.

In a submission dated **6 August 2020**, the Provider advised that for the period **2006 to 2017**, the quarterly fee for maintaining the account and transaction fees were waived. In this respect, I note that the Provider wrote to the Complainant by letter dated **17 July 2017** to advise that it would be reintroducing and increasing the quarterly maintenance fee on his account from **25 September 2017**. The Provider’s entitlement to reintroduce the quarterly maintenance fee is discussed below. However, at this juncture, it would appear to me from the evidence, that the Complainant was entitled to the exemptions on fees and charges generally applicable to Loyalty Current Accounts from account opening in **December 2003 to September 2017**, as set out in the relevant brochure.

I note that the free banking available to the Complainant was not unlimited and was subject to certain qualifications, as set out in the Brochures on Fees and Charges July 2003 and subsequent brochures. In particular, it states on page 2 of the Brochure on Fee and Charges July 2003 that:

“GOVERNMENT GHARGES

Certain Government charges, which the Bank is obliged by law to collect, are debited from your account even if you are eligible for exemption from account charges.

Under current legislation, the following Government charges will apply:

ATM Facility: €10.00 per annum per card.

Cheques: €0.15 stamp duty per cheque, i.e. €3.00 for each book of 20 cheque is issued.

VISA Cards: €40.00 Government duty per annum per account.

Laser Facility: €10.00 per annum per card.”

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Further to this, page 10 provides as table of the exemptions available to a Loyalty Current Account, as follows:

Exemptions	Over 60s & full time students	Salary paid directly to Current Account	Loyalty Current A/C with [Provider] mortgage (effective 26/06/03)	Account balance (excluding mortgages)
Quarterly account fees	✓	✓	✓	✓
Transaction charges	✓	✓	✓	✓
Statement charges (excluding duplicates)	✓	✓	✓	✓
Cheque card charge	✓	✓		
Stopped cheque payments	✓	✓		
Standing order set up fee	✓		✓	
Sweep transfer	✓			
Direct debit set up fee	✓		✓	
Overdraft set up fee	✓			
Overdraft review/renewal fee	✓			
Credit transfer/bill payment	✓			

/Cont'd...

Sale of Euro Bank draft	✓			
Foreign drafts	✓			
Traveller's cheques	✓			
Purchase or sale of foreign notes/cheques	✓			

In a submission dated **6 August 2020**, the Provider set out all of the charges applied to account 591 for the period **December 2003 to April 2019**. These charges comprised the following periodic recurring types:

- quarterly interest charge;
- referral fees;
- overdraft fees;
- Maestro charge;
- debit card charge;
- returned direct debit charge;
- foreign ATM withdrawal fee;
- foreign exchange;
- cheque stamp duty;
- laser card stamp duty;
- laser/ATM card stamp duty;
- debit/ATM card stamp duty; and
- copy statement request.

On reviewing the charges applied to the Complainant's account, it does not appear that a quarterly fee was applied to the account during that period, nor does it appear that any transaction charges, statement charges, standing order or direct debit set up fees were applied – all of these being the fees which the Complainant was exempt from paying.

In a submission dated **6 August 2020**, the Provider advised that for the period **2006 to 2017**, the quarterly fee for maintaining the account and transaction fees was waived. In this respect, I note that fees of this nature do not appear to have been applied to the account during this period nor has the Complainant demonstrated that such fees were applied.

It appears from the Complainant's account statements that 'Quarterly Interest' was applied to the account on a regular basis. The Provider says this is the interest charge arising from the overdrawn balance on the Complainant's account. In this respect, I note the 'Credit Limit' stated on each of the Complainant's account statements is €2,000.00. I also note that section 8(e) of the terms and conditions, cited above, provides for the charging of interest where an account exceeds the authorised overdraft limit. At page 9 of the Brochure on Fee and Charges July 2003, it states as follows:

"UNAUTHORISED OVERDRAFTS

Where an account balance exceeds the authorised credit limit, unauthorised overdraft interest is charged on the amount that exceeds the agreed limit. The rate of unauthorised overdraft interest is 6% greater than the Bank's normal overdraft interest rate. Authorised and unauthorised interest is accrued daily and is charged to accounts quarterly, 14 days after being pre-notified."

A quarterly interest charge is also referenced in subsequent brochures with the only apparent difference being an increase in the interest rate from 6% to 12%. However, it does not appear that any exemption was provided for in the Brochure on Fee and Charges July 2003 or any subsequent brochure.

On reviewing the Complainant's account statements, it appears that at various points between **December 2003** and **October 2019**, the overdrawn balance on the account exceeded the credit limit of €2,000.00. As a result, this would trigger the Provider's entitlement to apply quarterly interest in respect of the overdrawn balance to the account. In these circumstances, I am satisfied that the Provider was entitled to apply quarterly interest to the Complainant's account and I am not satisfied that the Complainant was exempt from this charge.

In respect of referral fees, it states on page 9 of the Brochure on Fees and Charges July 2003, as follows:

"REFERRAL ITEMS

When cheques or debits are presented for payment and there are insufficient cleared funds in an account to meet the debit(s) (at the start of business on the day the item(s) is presented), a referral fee will be applied that day or the next working day.

- Referral fee – one item per day €4.44
- Referral fee – two or more items per day €8.88"

A charge in respect of referral items is also contained in subsequent brochures with the only apparent difference being a change in the charge to €5.00 per item, up to a maximum of €15.00.

It appears the first referral fee was applied to the account on **23 July 2003**. On reviewing the Complainant's account statement, I note the account balance on **22 July 2003** was €232.01, however a cheque in the amount of €2,460.00 was drawn on the account on **23 July 2003**. As a result, there were insufficient funds in the account to meet the cheque amount.

On considering the basis on which the Provider applied referral fees to the Complainant's account, I am satisfied that the Provider was entitled to apply such fees and I am not satisfied that the Complainant was exempt from this charge.

It appears that overdraft fees in the amount of €20.00 were applied to the Complainant's account in **March 2005** and **March 2006**.

At page 9 of the Brochure on Fees and Charges July 2003, it states as follows:

"Overdraft Facility

- *Set up fee* €20.00
- *Annual review/renewal fee* €20.00"

The Brochure on Fees and Charges July 2003 does not provide an exemption for these fees. In particular, I note the table of exemptions on page 10 does not contain a '✓' beside these charges in respect of the salary, Provider mortgage or account balance exemptions. In light of this, I am satisfied that the Provider was entitled to apply overdraft fees to the account in **March 2005** and **March 2006**. It appears that overdraft fees were not applied to the Complainant's account after **March 2006** or following the introduction of the Brochure on Fees and Charges October 2006 which provided an exemption to certain Loyalty Current Accounts in respect of overdraft renewal fees. Separately, however, I note that overdraft facility fees are included in subsequent brochures and increased to €25.00.

A number of Maestro charges (which I understand is a form of debit card) were applied to the Complainant's account between **September 2010** and **February 2011**, and from **February 2011**, it appears a number of debit card charges were applied to the account. It also appears that foreign ATM withdrawal fees were applied to the Complainant's account between **October 2007** and **January 2011**.

In the Provider's submission of **6 August 2021**, when setting out the charges applied to the Complainant's account, it stated in respect of the fees and charges applied to the account between **December 2003** and **March 2019** that part of the fees and charges listed, related to transactions outside of Ireland.

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At page 12 of the 'Personal & business banking charges' brochure effective from **23 August 2010**, it states the following in respect of ATM and debit card transaction charges:

"ATM transactions

- *Euro withdrawals within the EU – Please refer to your account type for the specific charge applicable*
- *ATM transactions are charged on Euro withdrawals outside the EU and on all non Euro withdrawals at 3.5% of the Euro value of the transaction (min. €3.17 & max. €11.43). This fee is always charged by the Bank for this service.*

Debit Card Transactions

- *Debit Card Transactions within the eurozone. No charges apply.*
- *Debit Card Transaction charges will apply on all debit transactions outside the eurozone at 1.75% of the Euro value of the transaction (min. €0.46 and max €11.43). This fee is always applied for this service."*

I note that provisions in similar terms are also contained in subsequent brochures.

On reviewing a number of the Maestro and debit card charges applied to the Complainant's account, these appear to arise immediately following a Sterling point of sale or ATM transaction. Further to this, there does not appear to have been any exemption available to the Complainant in respect of these charges. I am satisfied that the Provider was entitled to apply these charges to the Complainant's account.

In terms of the foreign ATM withdrawal fees, it appears that when these charges were first applied the 'Personal and business banking charges' brochure effective from **14 September 2007** was in effect. On reviewing this brochure, at pages seven and eight it can be seen that Loyalty Current Accounts were subject to ATM withdrawal charges in respect of Euro withdrawals outside the EU and all non-Euro withdrawal. It can also be seen that these charges were not included in any fees or charges exemptions.

I note that similar provisions can be seen on pages seven and twelve of the 'Personal & business banking charges' brochure effective from **9 June 2010**, which was in effect at the time the last foreign ATM withdrawal fee was applied to the Complainant's account on **24 January 2011**. As a result, I am satisfied that the Provider was entitled to apply these charges to the Complainant's account.

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It appears only one foreign exchange fee of €1.25 was charged to the Complainant's account on **12 July 2010**. In the 'International charges' table on page 11 of the 'Personal & business banking charges' effective from **5 November 2009**, a minimum charge of €1.25 is stated as applying to buying and selling non-Euro notes. Further to this, it does not appear that the Complainant was exempt from paying this charge. As a result, I am satisfied that the Provider was entitled to apply this charge to the Complainant's account.

The first returned direct debit charge of €10.00 appears to have been applied to the Complainant's account on **29 February 2012**. I note that at page 11 of the 'Personal & business banking charges' brochure effective from **31 January 2011**, the following charges are set out in respect of unpaid items:

"Unpaid Items

- *Cheque, direct debit or standing order presented on your account* €10.00
- *Cheque lodged to your account* €10.00"

It appears this charge have been repeated in subsequent brochures.

It is not disputed by the Complainant that unpaid direct debits arose on his account. Further to this, the Complainant does not appear to have been exempt from charges arising from unpaid direct debits. In these circumstances, I am satisfied that the Provider was entitled to apply unpaid/returned direct debit charges to the Complainant's account.

A charge of €17.50 was applied to the Complainant's account on **18 March 2009** in respect of an eight-page copy statement. In the 'Personal & business banking charges' brochure effective from **25 February 2009**, it appears that while the Complainant was exempt from statement charges, this did not include duplicate statements. In this respect, I note that at page 10 of the brochure, a charge of €1.00 is stated to apply in respect of monthly statements and €2.50 (per page) in respect of duplicate statements. On considering the manner in which charges were applied to the Complainant's account in respect of copy statements in **March 2009**, it appears that the Provider was entitled to apply a charge of this nature to the Complainant's account.

I note from the Brochure on Fee and Charges July 2003 that the Complainant was not exempt from any 'Government Charges'. These charges were generally in the form of a stamp duty charge. On reviewing subsequent brochures which set out the fees and charges applicable to the Complainant's account, I note that each of these brochures contain sections similar to the 'Government Charges' section contained in the Brochure on Fee and Charges July 2003. In these circumstances, I am satisfied that the Provider was entitled to apply these charges to the Complainant's account.

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I note that by letter dated **17 July 2017**, the Provider wrote to the Complainant to advise that it would be reintroducing and increasing the quarterly maintenance fee on his account from **25 September 2017**, which would be applied at €18.00 per quarter. The letter further advised that there were certain ways to avoid some or all of this fee, and referred the Complainant to the table on the following page.

The 'Table of Maintenance Fees and Transaction Charges' set out the basis on which the Complainant could avoid the maintenance fee (which appears similar to the exemption criteria outlined in previous brochures) and the basis on which a reduction of between 25% and 75% in the maintenance fee could be achieved.

In issuing this letter, it appears the Provider no longer intended to apply the general waiver first introduced for Loyalty Current Accounts in **March 2007**. However, I note that the exemptions available to the Complainant, as outlined in previous brochures, remained in place.

In terms of the Provider's entitlement to reintroduce the quarterly maintenance fee, it appears that the terms and condition applicable to the Complainant's current account during **July 2017** were the 'Terms & Conditions and Personal & Business banking charges' dated **1 June 2016**. In this respect, I note that section 9(b) states, as follows:

"9 FEES AND CHARGES:

[...]

- (b) *Subject to notifying the relevant regulatory authority where applicable, we may from time to time alter such fees and charges and introduce new fees and charges, giving 30 days notice in accordance with these Conditions. Where we alter any fees or charges that are applicable to the services provided under the Payments Services Directive, we will give you at least 2 months notice. [...]"*

While section 9(b) provides a contractual notice requirement that the Provider must adhere to when implementing changes to the fees and charges applicable to the Complainant's account, it is my opinion that any such changes must also be viewed in the context of the **Consumer Protection Code 2012** ("the Code"). In particular, provision 4.2 states that:

*"A **regulated entity** must supply information to a **consumer** on a timely basis. In doing so, the **regulated entity** must have regard to the following:*

- a) the urgency of the situation; and*
- b) the time necessary for the **consumer** to absorb and react to the information provided."*

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In the context of the change to take effect on the Complainant's account in **September 2017**, I am satisfied that the Provider was entitled to reintroduce the quarterly maintenance fee and I accept that a reasonable amount of notice was given to the Complainant.

In his Complaint Form, the Complainant expresses dissatisfaction at the Provider's decision to change his current account type in **March 2019**. In this respect, I note that the Provider wrote to the Complainant by letter dated **18 January 2019**, as follows:

"Following a review of our current accounts, we have decided to standardise and simplify our legacy accounts. As a result, we are writing to inform you of some important changes to your Loyalty Current Account, which will take effect from 25th March 2019. On this date your existing 'Loyalty Current Account' will be retired and your account type will change to the '[Provider] Current Account3'.

There will be no change to your account number, VISA Debit Card and payments to and from your account will not be affected. If you have an overdraft on your account, it will remain in place. There will be no change in the quarterly fee for maintaining your account but the criteria to avoid this fee has changed and is explained below.

Important changes to your account

Please note that the following changes will apply to your account from 25th March:

- ***Quarterly Maintenance Fee Exemption:*** [...]
- ***Overdraft Setup / Renewal Fee:*** [...]
- ***Credit Interest:*** [...]

Please see the comparison table at the end of this letter for full details of the changes being made to your account. There is also a detailed leaflet enclosed to give you a full view of features and benefits of your new [...] account.

What action do you need to take?

There is no need to take any action as a result of this letter. While the exemption on our maintenance fees remain competitive, below are some other options available to you if you are not happy to proceed with the changes outlined above:

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You may choose to close your account or switch providers. If you'd like to switch providers please contact your new bank who can arrange to close your account with [the Provider].

[...] If you choose not to close your account within 2 months, you are deemed to have accepted the changes by continuing to use the account from the effective date of the notified changes. [...]."

On reviewing the 'Account comparison table' enclosed with the Provider's letter, it can be seen that as part of the Complainant's Loyalty Current Account, a number of options to avoid or reduce fees and charges were available, however, under the new account type, it was not possible to avail of any reduction in fees or charges and the only way in which to avoid fees and charges was to maintain a clear credit balance in excess of €2,500.00.

While the Complainant's current account was redesignated by the Provider, the changes brought about by this, appear to relate to a change in the fees and charges applicable to the account and the manner in which credit interest would be earned on account balances.

In terms of the Provider's entitlement to introduce a change to the Complainant's account type, it appears that the terms and condition applicable to the Complainant's current account during **January 2019** were the 'Terms & Conditions' dated **9 August 2017**. In this respect, I note that section 9(b) of these terms and conditions is effectively identical to section 9(b) cited above from the **June 2016** terms and conditions. Section 21 of the **August 2017** terms and conditions also states, as follows:

"21 AMENDMENT OF THESE TERMS AND CONDITIONS (INCLUDING INTERST, FEES AND CHARGES):

[...]

(b) We may vary these Conditions and the interest and charges applicable on an Account including the interest and charges applicable on an Account including the interest rate structure from time to time.

(c) Unless we are permitted by law to give you shorter notice, we will notify you at least two months in advance of any alteration to these Conditions. [...]"

While section 9 and section 21 provide a contractual notice requirement that the Provider is required to follow, when implementing changes to the Complainant's current account, it is my opinion that any such changes must also be viewed in the context of the provision 4.2 of the Code.

In the context of the change which occurred to the Complainant's account type in **March 2019**, I am satisfied that the Provider was entitled to introduce this change and that a reasonable amount of notice was given to the Complainant. I also note that the change to the Complainant's account does not appear to have interfered with the operation of the account or the banking facilities available to the Complainant.

During one of the telephone conversations on **16 July 2019**, it was agreed that a formal complaint would be logged in respect of the agreement the Complainant had in place regarding fees and charges and the changes being introduced by the Provider. The Provider issued a Final Response Letter dated **31 July 2019**.

While the Provider attempted to explain the changes which took place on the Complainant's account and the charges applied, I note that in seeking to explain the contractual basis for this change, the Provider appears to have cited from the incorrect terms and conditions. On the second page of the Final Response Letter, the terms of section 21 cited by the Provider appear to be from the terms and conditions dated **25 March 2019**. However, these terms and conditions post-date, and were not in effect at the time of, the Provider's decision to change the Complainant's account type or its letter of **18 January 2019**. Based on the various versions of the account terms and conditions provided by the Provider, it would appear the relevant terms and conditions were those dated **9 August 2017**.

Further to this, in the course of the telephone conversations which took place on **16 July 2019**, the Complainant explained on several occasions that he had an agreement with the Provider regarding the application of fees and charges to his account. It was also acknowledged in the Final Response Letter that the Complainant considered that matters "*were not in line with the agreement made with the bank when you took out your mortgage.*"

However, on reviewing the Final Response Letter, the Provider does not appear to have investigated the existence or otherwise of this agreement nor did the Final Response Letter respond to or address this aspect of the Complainant's complaint. It is my opinion that the Provider should have investigated this aspect of the complaint and should have provided a response to the Complainant in respect of this agreement and this aspect of his complaint. In my opinion, the Provider's failure to do so was unreasonable within the meaning of **Section 60(2)(b)** of the *Financial Services and Pensions Ombudsman Act 2017*.

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Accordingly, I am not satisfied that the Provider appropriately investigated or responded to the Complainant's formal complaint and for that reason, I consider it appropriate to partially uphold this complaint and to direct pursuant to **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider make a compensatory payment to the Complainant, as directed below.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €500 (five hundred Euro) to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

23 March 2022

PUBLICATION

Complaints about the conduct of financial service providers

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—

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- (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.

Complaints about the conduct of pension providers

Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.