



<b><u>Decision Ref:</u></b>	2022-0102
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Variable Mortgage
<b><u>Conduct(s) complained of:</u></b>	Fees & charges applied (mortgage) Failure to provide accurate account/balance information Selling mortgage to t/p provider Failure to release security
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns two loan accounts. One account is in the sole name of the First Complainant (00242\*\*\*), which will be referred to in this decision as '**Account A**' and one which is in the name of the Second Complainant which is a Company, and in respect of which the First Complainant is a personal guarantor (00282\*\*\*) or '**Account B**'.

#### **The Complainants' Case**

The Complainants say that in **December 2016** the Provider sold the Complainants' facilities to a third party entity. The Complainants state that the balances of the two loans that were transferred to the third party, were incorrect.

The Complainants assert that their financial advisors conducted an analysis of the overcharging by the Provider. The Complainants state that the financial advisor arrived at figures of approximately €13,769.73 for **Account A** and €11,880.81 for **Account B**.

The Complainant submits that he is dissatisfied with '*the manner in which [the Provider] handled these two facilities*'.

### **The Provider's Case**

The Provider, in its letter dated **29<sup>th</sup> March 2020**, states that it was very supportive of the Complainants and their business, noting that forbearance was granted a number of times. The Provider states that it would have been justified in calling in the liabilities owed to it and it considers that its actions were reasonable in the circumstances.

The Provider states its confirmation that, with regard to **Account B**, the correct interest was charged from the date of drawdown, to the date the Complainants' facilities were sold and submits;

*"I can confirm that the [Provider] has not incorrectly calculated the margin on your loan facilities and has not overcharged you in this regard".*

### **The Complaint for Adjudication**

The complaint is that the Provider poorly administered and overcharged the Complainants' loan accounts.

The Complainant wants the Provider to:

- Review the level of interest refunded in light of the Complainants' financial advisors' analysis;
- Address the shortcomings in how it dealt with the Complainants' facilities;
- Propose how it will remediate the situation;
- Explain how it arrived at its decision to sell the Complainants' loans to a third party.

### **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 **23 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 submissions from the parties, within the period permitted, the final determination of this office is set out below.

For the purposes of this decision and for ease of reference, I will follow the format adopted by the Provider by addressing the complaint in two parts: Part 1 will deal with **Account A** and Part 2 will address **Account B**.

## **1. Account A**

### **Chronology of Events**

- **2007:** The Complainant was provided with an on-demand loan of €960,000 by the Provider to assist with the purchase and development of a property at [Address]. The interest rate applied to this loan was the Provider's varying 'Cost of Funds' rate plus a margin of 1.5%
- **2009:** The Complainant requested a short-term renewal of interest-only repayments. This request was approved by the Provider pending receipt of a €100,000 lump sum reduction with capital and interest repayments to commence at that point over the remaining term of the loan. This agreement was documented with a signed Facility Letter dated **15<sup>th</sup> December 2009**
- **2010:** The Complainant requested a further period of Interest Only repayments. This request was approved by the Provider. The above-mentioned €100,000 lump sum reduction had not yet been received
- **2011:** On **6<sup>th</sup> October 2011**, a lump sum reduction of €100,000 was received. This reduction was documented in a letter dated **7<sup>th</sup> October 2011**. The letter stated that interest only repayments were to continue until **31<sup>st</sup> May 2012**. The interest payable was at the same rate as stated above (Cost of Funds + 1.5%)
- **2012:** The Provider wrote to the Complainant on **5<sup>th</sup> July 2012** to advise that the Interest Only period had expired. The Complainant sought an extension of the interest-only period which was agreed until **31<sup>st</sup> December 2012**. The margin on the loan was increased to **2.5%** and this was accepted by the Complainant on **26<sup>th</sup> July 2012**.
- **2013:**
  - o Capital and interest repayments had not yet commenced. The Complainant requested an extension of the interest-only period. The Provider agreed to this until **30<sup>th</sup> June 2013**. A letter dated **11<sup>th</sup> March 2013** confirmed that the facility was to be redeemed in full by **31<sup>st</sup> August 2013** from the sale of assets.
  - o The Provider's relationship with the Complainant was transferred to its Specialised Relationship Management in **July 2013**.

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- In **December 2013**, the facility was renewed on an interest-only basis until the end of **February 2014** as the Complainant was confident that the sale deals, which he was awaiting, would conclude during the first quarter of **2014**.
- **2014:**
  - In **February 2014**, the facility was renewed again on a short-term basis to the end of **April 2014** to allow the sales to conclude. The Provider's file records indicate that if the sales did not finalise at that point, Capital and Interest repayments would need to commence because the Provider could not indefinitely extend forbearance without a timescale for repayment.
  - In **October 2014**, the Interest Only arrangement was extended for a further three months and documented within the signed Facility Letter dated **28<sup>th</sup> October 2014**.
  - During **2014**, arrears correspondence was issued to the Complainant.
- **2015:**
  - On **2<sup>nd</sup> February 2015**, the Provider issued a default notice to the Complainant in which the consequences for default were outlined. Such consequences included the Bank's entitlement to declare "*at any time all amounts outstanding under the Loan Agreement(s) immediately due and payable and proceed to enforce our security and/or take legal action if full repayment is not forthcoming*". On the same date, the Provider also issued the Complainant with a letter stating that it was considered that the Complainant was in financial difficulties under the Code of Conduct for Business Lending to Small and Medium Enterprises, regarding the loan account. This letter provided the Complainant with information available in a brochure entitled '*Managing Business Debt*' to help the Complainant deal with his financial difficulties. The Provider advised that the brochure was also available for download from the Provider's web address. An offer of a review, with the purpose of discussing possible alternative repayment arrangements, was provided to the Complainant.
  - In **April 2015**, the Provider agreed to extend the forbearance one final time and documented this within the signed facility letter dated **1<sup>st</sup> April 2015**. Continuation of the facility was granted for three months with an expiry date of **10<sup>th</sup> June 2015**, at which point the facility was to be repaid in full and was "*estimated at €788,487.83*". On **7<sup>th</sup> September 2015**, a further arrears letter issued to the Complainant.
- **2016:**
  - The Complainant was notified by way of letter dated **14<sup>th</sup> October 2016** of the Provider's completion of a review of customer accounts being managed by the Provider's Problem Debt Management Unit ('PDM') which were experiencing financial stress affecting their lending exposures. The Complainant was advised that the outcome of that review was that the Provider intended to transfer the Complainant's facility to a third party ultimately owned by investment funds that are managed by or on behalf of "**the Third Party**". The Provider stated in its letter that it would write to the Complainant again after the date on which the legal ownership of the Complainant's facility had transferred to the third party.

- **2017:**

- The Complainant was notified by way of letter dated **6<sup>th</sup> January 2017** of the completion of the transfer of the Complainant's facility to the third party with effect from **19<sup>th</sup> December 2016**, resulting in the transfer of the legal and beneficial interest in all security and contracts to the third party. The Complainant was advised of the name and contract details for the Relationship Manager with the Provider, regarding the servicing of the Complainant's facility for a number of weeks following the completion date of **19<sup>th</sup> December 2016**. The Complainant was also notified of the identity of and contact details for the Servicing Agent acting for the third party in servicing the facility on expiry of the transitional period.
- The loan sale concluded on **27<sup>th</sup> March 2017** when the administration of the accounts migrated from the Provider's systems to those of the Servicing Agent. The outstanding facility balance which transferred to the third party on that date was **€800,451.85**.

- **2018:**

- On **23<sup>rd</sup> July 2018**, the Provider's Business Lending Interest Rate Review ('BLIRR') team wrote to the Complainant stating that it may have identified an interest overcharge on the Complainant's loan account ("**Account A**").
- On **7<sup>th</sup> December 2018**, the Provider's BLIRR Team wrote to the Complainant enclosing a cheque in the sum of **€7,318.59**, as the calculated interest overcharge together with an added interest payment to compensate the Complainant for the time when this money was not available to him (known as 'Time Value Money').
- In a letter of **19<sup>th</sup> December 2018**, the Complainant wrote to the BLIRR team raising concerns regarding the interest overcharge, together with other issues relating to this account. The Complainant stated that an accountancy firm had performed an "*analysis of overcharging on the account*" and that the calculations produced a '*minimum loss*' of **€13,769.73**. Figures related to this were listed for the years 2012 through to 2017. The Provider submits that it did not receive a breakdown of these figures.

- **2019:**

- On **24<sup>th</sup> January 2019**, the Complainant submitted a complaint via the Provider's online complaint service in respect of both accounts the subject of this dispute. On **30<sup>th</sup> January 2019**, the Provider's BLIRR Team issued a formal response to the Complainant in respect of the interest overcharging issue and informed the Complainant that the Provider's Customer Care Team would write to him separately to address the other concerns raised.
- On **3<sup>rd</sup> April 2019**, the Provider's Customer Care Team issued a Final Response Letter to the Complainant. The complaint was not upheld and the letter referred

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to correspondence issued by the BLIRR Team in respect of the interest overcharging issue. Prior to this, the Provider confirms that an acknowledgement letter, a 20-day holding letter and 40-day Ombudsman referral rights letter was issued to the Complainant within regulatory timeframes.

- The Provider also submits that the Complainants' allegation of interest overcharge of €32,000 on both accounts in dispute, as advised in the complaint dated **24<sup>th</sup> January 2019**, did not fully equate to the 'minimum loss' allegation raised with the BLIRR Team in correspondence of **19<sup>th</sup> December 2018**. In that letter, the Complainants quoted a figure in respect of Account A of **€13,769.73** and quoted the figure of **€11,880.81** in respect of Account B (total €25,650.54). The Provider submits that this difference in figures of alleged overcharging has not been explained or qualified by the Complainants to the Provider.
- On **20<sup>th</sup> September 2019**, the Provider's BLIRR Team wrote to the Complainant and advised that the additional interest it had provided in the refund cheque dated **7<sup>th</sup> December 2018** was incorrect. The Provider's team had re-calculated the amount of remediation due to the Complainant and enclosed a further cheque for **€18.03** which comprised of the amount previously underpaid and an amount in respect of additional interest.

### Evidence

(i) Facility Letter dated **1 April 2015**

#### **"Securitisation"**

*"The Borrower hereby irrevocably and unconditionally consents to the Bank at any time or times hereafter transferring assigning disposing whether absolutely by way of security or otherwise mortgaging or charging or transferring as part of a securitisation scheme or otherwise this first legal mortgage and/or the benefit of the Mortgage and/or collateral or ancillary security (including without limitation any insurance policy or policies or life or endowment insurance) and the monies hereby secured (collectively) "Transfers" and any one a "Transfer") to any third party or body including without prejudice to the generality of the foregoing any subsidiary or associated company of the Bank and to any trustee(s) or administrator(s) under any trust or administrative arrangement or securitisation scheme entered into by the Bank (an "Arrangement") on such terms as the Bank may think fit and to any consequential assurance reassurance release of or enforcement of security under a Transfer and/or Arrangement without any further consent from or notice to the Borrower or any other person whereupon all powers and discretions of the Bank (including without prejudice to the generality of the foregoing the right to determine or vary the current rate of interest from time to time payable or deemed to be payable by the Borrower on the monies hereby secured) shall be exercisable by the transferee or other beneficiary of a Transfer and/or any collateral or ancillary security as aforesaid and the monies hereby secured as aforesaid in any Arrangement without further consent from or notice to the Borrower"*

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(ii) Code of Conduct for Business Lending to Small and Medium Enterprises 2012 (as amended).

The General Principles 1 and 8 of the Code of Conduct state as follows:

*“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

*1. acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*

*...*

*8. Corrects errors and handles complaints speedily, efficiently and fairly”*

Principle 17(a) and (b) state as follows:

*“17. Where a regulated entity is working with a borrower to address the borrower’s financial difficulties in accordance with the policies and procedures established by the regulated entity, a regulated entity must:*

*a. give the borrower reasonable time, from the time a borrower is classified as in financial difficulties, having regard to the circumstances of the case, to resolve the financial difficulties; and*

*b. endeavour to agree an approach with the borrower that will assist the borrower to address the financial difficulties.*

I am satisfied from the parties’ submissions and the timeline of events that the Provider complied with its obligations pursuant to the Consumer Protection Code 2012 (as amended) and the Code of Conduct for Business Lending to Small and Medium Enterprises 2012 (as amended). It is apparent from the chain of correspondence between the Complainant and Provider that the Complainant was alerted by the Provider to the arrears status of his account in a timely manner, he was notified of the default in repayments and provided with information on how to approach the debt. It is also clear from the evidence that the Provider made offers of review and was open to the possibility of discussing alternative repayment arrangements with the Complainant.

By signing the Facility Letter on **22<sup>nd</sup> April 2015**, it is apparent that the Complainant accepted the terms and conditions and consented to the potential transfer of the facility to the new legal and beneficial owner. It follows from these terms and conditions that the Provider was entitled to transfer the loan facility. It is noted from the parties’ submissions that the Provider disposed of its legal and beneficial interest in the facilities to a third party on **19<sup>th</sup> December 2016**, and that the third party has held the relevant interest in the facilities since that date. The letter issued by the Provider on **14<sup>th</sup> October 2016** confirmed that the terms and conditions in respect of the facility were unchanged by the transfer of ownership to the third party.

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In respect of the arrears arising on Account A, the Provider makes submissions in respect of the repayments to the account throughout its term and the interest charged to the account during the period between **2011** to **2018**. Reference is made to the relevant account statements from this period. The First Complainant's repayments to the loan account can be seen within these statements, in addition to the application of the interest amounts.

### **(i) Interest Overcharge Issue**

The Complainant contends that the Provider incorrectly calculated the interest charged on both accounts.

The Provider submits by way of background to this issue that in **April 2012**, the definition of 'Cost of Funds' was changed. Cost of Funds is the variable component of the interest rate charged on certain business lending facilities offered by the Provider. The interest rate on the Complainant's account was therefore increased from **26<sup>th</sup> April 2012** until **20<sup>th</sup> June 2015**, which was the date on which the Provider ceased overcharging interest on the facility. The Provider subsequently identified that this increase was not permitted on some business lending facilities, and that Account A was one such account.

The Provider wrote to the Complainant on **23<sup>rd</sup> July 2018** advising that an interest overcharge on the account may have been identified, and that it was working to identify the level of overcharge in question. The Provider submits that it conducted an interest review of the account and identified the total refund due to the Complainant, comprising interest overcharge and an additional interest payment.

The Provider subsequently wrote to the Complainant on **7<sup>th</sup> December 2018** enclosing a cheque in the sum of **€7,318.59** and a breakdown of this figure, which was calculated as the interest overcharge and an additional interest payment. The Provider also submits that the Complainant was provided with contact details for the relevant BLIRR team and given a schedule of Frequently Asked Questions. The Complainant subsequently wrote to the Provider's BLIRR Team on **19<sup>th</sup> December 2018** querying how the refund was calculated and raising concerns about the management of the account.

The Provider submits that its BLIRR team replied to the Complainant on **30<sup>th</sup> January 2019** with a detailed brochure explaining how the refund was calculated and information on where the schedule of Cost of Funds rates could be viewed. A further cheque payment was issued to the Complainant on **20<sup>th</sup> September 2019** in the amount of €18.03.

It is apparent from the statements submitted in evidence, (and the Provider also confirms) that the account balance which was transferred to the third party in relation to Account A was **€800,451.85**. It appears that the interest overcharge which related to the period of **26<sup>th</sup> April 2012** to **30<sup>th</sup> June 2015** was identified and rectified by the Provider. It is noteworthy that the Provider completed this rectification and issued the Complainant with its refund on **7<sup>th</sup> December 2018**, which was after the facility had legally transferred to the third party in **December 2016**.

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The Provider submits that Account A's loan account balance which transferred to the new owner had a higher element of debit interest due to the fact that the issue had not been identified or rectified at the time of the facility's transfer. It is submitted by the Provider that the correct level of overcharged interest was refunded to the Complainant by cheque, in circumstances where the account was no longer owned by the Provider and, had it been the case that the Complainant's account was still with the Provider, the overcharged amount would simply have been paid directly into the affected account restoring it to the position it would have been in, had the error not occurred.

I am satisfied that the Provider did in fact make an error in its calculation of interest on the Complainant's account, following the change in its definition of Cost of Funds. However, I note that once the error was identified, the Provider clearly informed the Complainant of the error that had occurred, the period of the error, the date on which the error ceased to impact the Complainant and the manner in which the issue was rectified. The Provider sets out a detailed description of the redress model and governance framework it used in dealing with customers affected by the error. The Provider submits that it is fully satisfied that the relevant calculations of interest due to the Complainant were carried out correctly by its BLIRR Team, and cross-checked for accuracy in accordance with the Provider's remediation model, and that the issue has been corrected in full.

#### **(ii) Alternative Payment Arrangements**

I am satisfied that the Provider's obligations under the Code of Conduct for Business Lending to Small and Medium Enterprises 2012 (as amended) were discharged in respect of its repeated engagement with the Complainant to endeavour to resolve his financial difficulties. Documentary evidence of several of the Alternative Repayment Arrangements and correspondence in this regard have been supplied by the Provider as part of this investigation and confirms the Provider's compliance with this aspect of the Code.

In respect of the Complainant's submission in its letter of **19<sup>th</sup> December 2018** that the Provider "*should note that this facility has now been repaid in full*" I accept the Provider's stance that as the ownership of the loan account had passed to the third party at this point, the Provider was not privy to the status or account balance of the loan at that point.

The Complainant submits that "*At no time did [the Provider] ever offer me a viable alternative to these facilities. Both facilities were always paid on time*". I do not accept this statement, as it is clear from the correspondence provided to this Office as part of the complaint investigation that repeated attempts were made by the Provider to engage in respect of what were clear financial difficulties and forbearance measures were offered to the First Complainant on numerous occasions. Each of these alternative facilities are set out in detail within the above chronology of events, and were duly accepted by the Complainant. The assertion that the Provider did not, at any time, offer the Complainant a viable alternative, must in my opinion be rejected.

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It also must be noted that the Complainants' assertion that both facilities were paid on time cannot be accepted and this is not borne out by the evidence. It is immediately apparent from a reading of the statements and correspondence provided that arrears arose on the accounts, at which point the Provider was required to write to the First Complainant to formally advise of his options.

### **(iii) The First Complainant's Calculations**

The Complainant submits that *"In 2016, [the Provider] informed me that they were selling the loan. The loan transferred to [Third Party] in 2016. There are issues around the balance outstanding at transfer. Personal facility - €796,480 was approx. €16k higher than advised"*.

It is apparent from a reading of the statements relevant to Account A that on **14<sup>th</sup> October 2016**, the date on which the Provider advised the Complainant of the forthcoming transfer of ownership, the balance on the account was €795,695.14. The Provider submits that this sum was arrived at, after the application of Debit Interest in the sum of €6,358.66 on **9<sup>th</sup> September 2016**.

The statements also demonstrate that three credits, each in the amount of €2,588.62 were received into Account A in **October, November and December 2016**. The Provider submits that debit interest continued to be applied (legitimately) to the account on a quarterly basis. Such interest was applied to the account on **9<sup>th</sup> December 2016** and **10<sup>th</sup> March 2017** in the amounts of €6,299.66 and €6,222.91 respectively. These transactions altered the outstanding balance on the account, so that when the facility was transferred to the third party's system on **27<sup>th</sup> March 2017**, the balance outstanding was €800,451.85. The Provider confirms that statements reflecting these transactions and the arrival at this balance, would have been supplied to the Complainant annually at a minimum.

In response to where the Complainant may have calculated a suggested balance difference of *"approx. €16k"*, the Provider submits that it is not clear as to where this figure is derived from. It contends that a transfer balance to the third party was not quoted in its correspondence of **14<sup>th</sup> October 2016** and **6<sup>th</sup> January 2017**.

The Provider submits that it could be the case that the Complainant did not factor in the above-mentioned ongoing transactions and debit interest applied to his account from the date of issuing of the Provider's letter on **14<sup>th</sup> October 2016** to the date of the transfer of the facility to the third party's system on **27<sup>th</sup> March 2017**. The difference between those two figures (**€795,695.14** and **€800,451.85**) is **€4,756.71**. The Provider also suggests that the Complainant may have included the overcharged interest refund of **€6,332.86** already issued to him by cheque after the facility transfer completed.

**(iv) Third Party Dealings**

The Complainant submits the following in respect of its dealings with the third party to which his facilities were transferred:

*“There has been no response from [Third Party]. At this juncture I am still unclear as to what is outstanding on these facilities. [Provider] sold the facilities to [Third Party] in December 2016. The amount of the balances at this point is unclear. I want to clear the outstanding balance but I do not know what the balance is.”*

He further states:

*“No statements have been received from [Third Party] or [Agent] their agent. So it is impossible to determine what the actual balances are. We have written to their solicitors about this and asked for these but to date they have not been forthcoming”.*

It is apparent from these submissions that they do not fall within the confines of the present complaint. It has been demonstrated by the documentary evidence supplied, that the legal transfer of the loan account took effect from **19<sup>th</sup> December 2016**. From this date of transfer, the third party acquired the right to charge and receive interest payments in accordance with the loan agreement’s terms and conditions. It therefore follows that from this point, any issues in respect of the Complainant’s dealings with the third party must be addressed by the third party or its agent separately. Any such issues from that time are not a matter for this Provider.

I am satisfied from my consideration of the statements and relevant correspondence that the Provider was sufficiently transparent in respect of the transfer of the Complainant’s facility to the third party. Statements were furnished to the Complainant including the relevant balances while the account was under the ownership of the Provider.

**(v) Management of Account**

The Complainant asserts that the Provider has maladministered his facility. The Provider notes that while the facility was under its legal ownership, the account was reviewed annually at a minimum, by its Relationship Managers. It submits that these reviews demonstrate that the Complainant did not raise any issue or concern in respect of the account management. It submits that if such concerns had been raised to the Provider, it would have dealt with such issues *“as expeditiously as possible in line with its defined processes and in accordance with the governing Code of Conduct”*. It is apparent from the evidence provided that the first mention of the Complainant’s dissatisfaction with the Provider’s administration of the Complainant’s account was in **December 2018** and **January 2019**.

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In respect of the Complainant's assertion that the Provider's failure to offer alternative payment options constituted mismanagement, as outlined above I am satisfied that the Provider engaged on numerous occasions with the Complainant with the purpose of endeavouring to assist him, with the arrears issue.

The Complainant also submits that the transfer of his facility to a third party should be regarded as a failure in the Provider's duties in its management of the facility. The clause permitting the Provider to transfer the facility to another entity is set out above and this was clearly accepted by the Complainant. I am satisfied that the Provider was transparent in its dealings with the Complainant in respect of the facility transfer, which it carried out at its commercial discretion, as it was entitled to.

Neither do I accept the aspect of the complaint pertaining to the issuing of the interest overcharge refund by way of cheque. This payment was issued on **7<sup>th</sup> December 2018**. The Complainant clearly had a discretion to use the cheque to credit the account transferred to the third party to reduce the outstanding balance if he wished to do so. I am satisfied that the Provider could not have done any more in this regard to restore the Complainant to the position he would have been in, had the overcharging error not occurred.

While the Provider is unable to state if the refund cheque was indeed credited to the account now transferred to the third party, the Provider suggests that the overcharged interest amount of €6332.86 ought to be considered by the Complainant when calculating the outstanding facility balance transferred to the third party.

### **Account A – Conclusion**

The Provider has acknowledged that the additional interest paid to the Complainant in **December 2018** and **September 2019** was in excess of the amount of overcharged interest due to be refunded. This payment was issued, it submits, in the interests of fairness and to compensate the Complainant for his loss of funds during the relevant period between **2011** and **2016**. The Provider has apologised for any inconvenience and dissatisfaction caused to the Complainant despite the above-mentioned efforts to explain the matter since **2018**.

It is apparent from the evidence that the transfer of the Complainant's facility to the third party is an ongoing source of dissatisfaction to the Complainant. However, I am satisfied that the Provider was entitled to execute such transfers at its commercial discretion and that it was transparent in its dealings with the Complainant on the matter.

## 2. Account B

### Chronology of Events

- **2008:** On **7<sup>th</sup> January 2008**, the Bank provided **X Ltd** the Second Complainant (also referred to below as the Complainant Company) with an on-demand loan of €1,260,000.00 with capital and interest repayments over a 7-year term and documented within signed facility letter dated **4<sup>th</sup> December 2007**. The interest rate applied was the Provider's 'Cost of Funds' (as discussed above) plus a margin of 1.87%. Proceeds were used to assist with the purchase of a 60% shareholding in **Y Ltd**.
- **2009:** In February 2009, the Provider renewed the X Ltd's facilities
- **2010:** The Provider's records confirm that this facility had been reducing in line with the agreed schedule, with capital and interest payments funded by way of management fee from **Y Ltd** to **X Ltd**. However, upon the economic downturn the monthly repayment of €16,975 was negatively impacting upon Y Ltd's cash flow. Cost cutting measures were implemented by Y Ltd in **2009** and a request was made to reduce the monthly repayment to €10,000 per month, which the Provider acceded to.
  - **June 2010:** Provider extended loan's term by three years and the margin was uplifted by 0.98% increasing the total margin to 2.85%. The facility's terms were documented in the signed Facility Letter of **8<sup>th</sup> June 2010**.
- **2011**
  - **July 2011:** The Provider renewed the company's facilities. Loan repayments of €9,829.14 were missed in June and July and brought up to date on **10<sup>th</sup> August 2011**.
- **2012:**
  - **July 2012:** The Provider renewed the company's facilities. The Provider indicates that its records refer to concerns it had regarding the continuation of missed payments.
- **2013:**
  - **March 2013:** Missed repayments continued on Account B and an arrears position arose on the loan. Costs were still being reviewed and reduced but cash flow difficulties persisted.
  - **X Ltd** requested a 6-month moratorium on capital payments and the Provider acceded to this on the basis that the facility be repaid in full from proceeds arising from two wind energy projects.
  - **July 2013:** Account B was transferred to its Specialised Relationship Management department
  - **October 2013:** The interest only payment period was extended to **January 2014** pending its receipt of the above-mentioned sales proceeds. The Provider was advised that this would take eight weeks and **Accounting Firm Z** had been hired to implement the sale.
  - **December 2013:** The facilities were renewed on an interest only basis until end of **February 2014**, on the basis that X Ltd was confident that the relevant deals would conclude in the first quarter of the following year.

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- **2014:**

- **February 2014:** Facilities were renewed again until the end of **April 2014** to allow the conclusion of the sales. The Provider submits that its records confirm that if the sales did not finalise, then capital and interest repayments would need to commence as the Provider could not indefinitely extend forbearance without a payment timescale.
- **June 2014:** The interest only arrangement was extended to the end of **July 2014**. At **July 2014**, the arrangement was extended to the end of **August 2014**. At this point, a further extension was granted until the end of **January 2015**.
- **24<sup>th</sup> November 2014:** The Complainant was issued with a letter outlining the consequences for the default in repayments, including the Provider's entitlement to declare "*at any time all amounts outstanding under the Loan agreement(s) immediately due and payable and proceed to enforce our security and/or take legal action if full repayment is not forthcoming*".

- **2015:**

- In **March 2015**, the Provider agreed to extend the forbearance measures a final time. The Complainant was advised that if the facility was not repaid at the end of this period, the facility would enter default and be transferred to the Provider's Recoveries Department
- **31<sup>st</sup> July 2015:** the Provider issued the Complainant Company with a letter stating it was considered to be in financial difficulties under the Code of Conduct of Business Lending to Small and Medium Enterprises regarding Account B. The letter enclosed a brochure on 'Managing Business Debt' to help the Complainant deal with the financial difficulties. An offer of review for the purposes of discussing alternative payment arrangements was also furnished to the Complainant.
- **2<sup>nd</sup> October 2015:** The Provider issued the Complainant company with a Reservation of Rights letter (similar to that issued on **24<sup>th</sup> November 2014**) in which the consequences for default were outlined including the Provider's entitlement to declare "*at any time all amounts outstanding under the Loan agreement(s) immediately due and payable and proceed to enforce our security and/or take legal action if full repayment is not forthcoming*".

- **2016:**

- The Complainant was notified by way of letter dated **14<sup>th</sup> October 2016** of the Provider's completion of a review of customer accounts being managed by the Provider's Problem Debt Management Unit ('PDM') which were experiencing financial stress affecting their lending exposures. The Complainant was advised that the outcome of that review was that the Provider intended to transfer the Complainant's facility to a third party "**the Third Party**", ultimately owned by investment funds that are managed by or on the third party's behalf. The Provider stated in its letter that it would write to the Complainant again after the date on which the legal ownership of the Complainant's facility had transferred to the third party.



- **2017:**

- The Complainant Company was notified by way of letter dated **6<sup>th</sup> January 2017** of the completion of the transfer of the Complainant's facility to the third party with effect from **19<sup>th</sup> December 2016**, resulting in the transfer of the legal and beneficial interest in all security and contracts, to the third party.
- The Complainant Company was advised of the name and contact details for the Relationship Manager with the Provider regarding the servicing of the Complainant's facility for a number of weeks following the completion date of **19<sup>th</sup> December 2016**.
- The Complainant was also notified of the identity of and contact details for the Servicing Agent acting for the third party in servicing the facility on expiry of the transitional period.
- The loan sale concluded on **27<sup>th</sup> March 2017** when the administration of the accounts migrated from the Provider's systems to those of the Servicing Agent. The outstanding facility balance which transferred to the third party on that date was **€679,974.40**

- **2018:**

- **23<sup>rd</sup> July 2018:** The Provider's Business Lending Interest Rate Review (BLIRR) Team wrote to the Complainant Company stating that it may have identified an interest overcharge on the Complainant Company's loan Account B.
- **7<sup>th</sup> December 2018:** The Provider's BLIRR Team wrote to the Complainant Company enclosing a cheque in the sum of €1,734.96 calculated as the interest overcharge together with an added interest payment to compensate the Complainant Company for the time when this money was not available to it (Time Value Money as referred to above).
- **19<sup>th</sup> December 2018:** Complainant wrote to the BLIRR Team raising concerns regarding the Interest Overcharge together with other issues relating to Account B. The Complainant stated that **Accounting Firm Q** performed an '*analysis of overcharging*' on the account and that the calculations produced a '*minimum loss*' of **€11,880.81**. Figures related to this were listed for the years **2012 to 2017**, however the Complainant Company did not provide a breakdown of the figures to the Provider.

- **2019:**

- The events occurring in 2019 relate to both accounts and are set out in the chronology above regarding Account A.

Evidence

(i) Facility Letter dated 11<sup>th</sup> March 2013

Clause 11.32 of the Provider's 'General Terms and Conditions for Lending to Business Lending to Companies states as follows:

*"The [Provider] shall have the right to assign, transfer or sub-participate the benefits and/obligations of all or any part of any Facility to another entity without the prior consent of the Borrower and the [Provider] may disclose to a prospective assignee or to any other person who may propose entering into contractual relations with the [Provider] in relation to this Agreement such information about the Borrower as the [Provider] shall consider appropriate".*

(ii) Facility Letter dated 4<sup>th</sup> August 2011

"DEMAND OR NOTICE

*Any demand or notice shall be made in writing signed by an officer of the [Provider] and may be served on the Borrower either by personal delivery or by post to the Borrower at the address last known to the provider and shall be effective notwithstanding that it be returned undelivered and notwithstanding the death of the Borrower*

DEFAULT

*On the occurrence of any of the events specified in the attached schedule, the [Provider] may, by giving notice to the Borrower, cancel any outstanding commitments and treat the borrowings as being repayable on demand without prior notice and may exercise its rights under any security which it holds.*

*Any delay by the [Provider] in giving notice or in exercising its rights hereunder shall not be construed as a waiver by the [Provider] of its rights."*

(iii) Code of Conduct for Business Lending to Small and Medium Enterprises 2012 (as amended).

General Principles 1 and 8 of the Code of Conduct state as follows:

*"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

*1. acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;"*

*...*

*8. corrects errors and handles complaints speedily, efficiently and fairly"*

/Cont'd...

Principle 17(a) and (b) state as follows:

*“17. Where a regulated entity is working with a borrower to address the borrower’s financial difficulties in accordance with the policies and procedures established by the regulated entity, a regulated entity must:*

*a. give the borrower reasonable time, from the time a borrower is classified as in financial difficulties, having regard to the circumstances of the case, to resolve the financial difficulties; and*

*b. endeavour to agree an approach with the borrower that will assist the borrower to address the financial difficulties.”*

(iv) Email from Complainant on 16<sup>th</sup> April 2021 to the FSPO office

The Complainant submits as follows:

*“What you will see is constant harassment for repayments on facilities that had expired. My view of this is that they were extracting anything they could prior to selling the loans off. The behaviour was really appalling, particularly the instance where they took funds from the account without telling us and we were unable to pay salaries”*

(v) Terms and Conditions for Business Lending to Companies

Payments

*“11.4 All payments to be made by the Borrower under this Agreement shall be made to the [Provider] on the due date and if any payments should become due on a day which is not a Business Day the due date for such payment shall be extended to the next Business Day”.*

(vi) The Complainant Company’s submissions of 16<sup>th</sup> April 2021 to the FSPO office

Relevant excerpts from the Complainants’ submissions include the following:

*“...how on earth does a 25 year facility end up as a 3 month facility not 2 years after it was provided, and after 100,000 was paid off the facility...it was very clear from the outset that this was an investment and that despite the facility expiring, [the Provider] continued to take repayments from the loan account up to and including the date on which it was transferred. [The Provider] put me in a position where the loans had to default. You do not take out a loan if you actually have the money to pay for the asset you are acquiring. That is banking 101, or at least that’s what I thought”.*

*“What is also clear from [the Provider’s] response is any evidence of engagement. No statements of means, no account, no financial information of any sort. That clearly demonstrates that they had absolutely no interest whatsoever in engaging with me.”*

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It is apparent from a reading of the documentation that the Directors of the Complainant Company, X Ltd, including the First Complainant, signed the facility letter in respect of Account B on **12<sup>th</sup> March 2013**, thereby accepting the attached terms and conditions. It is therefore clear that the Provider was entitled to sell the loan to the third party. It is noted that loan Account B was transferred to the third party with effect from **19<sup>th</sup> December 2016** thereby releasing the Provider from all legal and beneficial interest in this Account.

In respect of the repayments to Account B and the interest charged to the account during the period **2011** and **2016**, the Provider submitted relevant statements from this period. I am satisfied that these statements demonstrate the capital and interest repayments made to the loan, while it was under the control of the Provider.

In respect of the engagement between the parties with regard to alternative repayment arrangements between **2011** and **2016**, and the contact in general between the parties during this period, a considerable volume of correspondence in this regard has been submitted as part of this complaint investigation. It is apparent from this documentation that numerous forbearance requests were acceded to by the Provider and an offer of review was made inviting discussions about such alternative repayment arrangements when the Complainant Company entered financial difficulty.

#### **(i) Interest Overcharge Issue**

The Complainants contend that the Provider incorrectly calculated the interest charged on both accounts.

The Provider submits by way of background to this issue that in **April 2012**, the definition of 'Cost of Funds' was changed. Cost of Funds is the variable component of the interest rate charged on certain business lending facilities offered by the Provider. The interest rate on the Complainant Company's account was therefore increased from **26<sup>th</sup> April 2012** until **20<sup>th</sup> June 2015**, which was the date on which the Provider ceased overcharging interest on the facility. The Provider subsequently identified that this increase was not permitted on some business lending facilities, and that Account B was one such account.

The Provider wrote to the Complainant on **23<sup>rd</sup> July 2018** advising that an interest overcharge on the account may have been identified, and that it was working to identify the level of overcharge in question. The Provider submits that it conducted an interest review of the account and identified the total refund due to the Complainant Company, comprising interest overcharge and an additional interest payment.

The Provider subsequently wrote to the Complainant Company, on **7<sup>th</sup> December 2018** enclosing a cheque in the sum of **€1,743.96** and a breakdown of this figure, which was calculated as the interest overcharge and an additional interest payment to represent the time value for money the Complainant Company had gone without. The Provider also submits that the Complainant Company was provided with contact details for the relevant BLIRR team and a schedule of Frequently Asked Questions. The Complainant Company subsequently wrote to the Provider's BLIRR Team on **19<sup>th</sup> December 2018** querying how the refund was calculated and raising concerns about the management of the account.

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The Provider submits that its BLIRR team replied to the Complainant Company on **30<sup>th</sup> January 2019** with a detailed brochure explaining how the refund was calculated and information on where the schedule of Cost of Funds rates could be viewed

It is apparent from the statements submitted in evidence (and the Provider confirms) that the account balance which was transferred to the third party in relation to Account B was **€679,974.40**.

It appears that the interest overcharge, which related to the period from **26<sup>th</sup> April 2012** to **10<sup>th</sup> June 2013**, was identified and rectified by the Provider during **2018**. It is noteworthy that the Provider completed this rectification and issued the Complainant with its refund on **7<sup>th</sup> December 2018**, which was after the facility had legally transferred to the third party in **December 2016**

The Provider submits that Account B's loan account balance which transferred to the new owner had a higher element of debit interest, due to the fact that the issue had not been identified or rectified at the time of the facility's transfer. It is submitted by the Provider that the correct level of overcharged interest was refunded to the Complainant by cheque, in circumstances where the account was no longer owned by the Provider and, had it been the case that the Complainant's account was still with the Provider, the overcharged amount would simply have been paid directly into the affected account, restoring it to the position it would have been in had the error not occurred.

The Provider has acknowledged that the additional interest paid to the Complainant Company was in excess of the amount of overcharged interest due to be refunded. This payment was issued, it submits, in the interests of fairness and to compensate the Complainant Company for its loss of funds during the relevant period from **2011** to **2016**. The Provider has apologised for any inconvenience and dissatisfaction caused to the Complainant Company despite the above mentioned efforts to explain the matter since **2018**.

In response to the Complainant's reference to *"the withdrawal of facilities and their replacement with other facilities which I feel placed me under significant financial pressure and were a breach of contract"*, the Provider notes the possibility that the Complainant is referring to the facility which was transferred to a third party on **19<sup>th</sup> December 2016**. It is apparent to me that this transfer was permissible and in accordance with the terms and conditions of the Facility Letter signed by the Complainant Company.

I am satisfied that the Provider did in fact make an error in its calculation of interest on the Complainant Company's account, following the change in its definition of Cost of Funds. However, I note that it is clear what once the error was identified, the Provider clearly informed the Complainant Company of the error that had occurred, the period of the error, the date on which the error ceased to impact the Complainant and the manner in which the issue was rectified.

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The Provider sets out a detailed description of the redress model and governance framework it used in dealing with customers affected by the error. The Provider submits that it is fully satisfied that the relevant calculations of interest due to the Complainant Company were carried out correctly by its BLIRR Team, and cross-checked for accuracy in accordance with the Provider's remediation model, and that the issue has been corrected in full.

### **(ii) Alternative Payment Arrangements**

I am satisfied that the Provider's obligations under the Code of Conduct for Business Lending to Small and Medium Enterprises 2012 (as amended) were discharged in respect of its repeated engagement with the Complainant Company to endeavour to resolve its financial difficulties. Documentary evidence of several of the Alternative Repayment Arrangements and correspondence in this regard has been supplied by the Provider as part of this investigation and confirms the Provider's compliance with this aspect of the Code.

In respect of the Complainants' submission in a letter of **19<sup>th</sup> December 2018** that the Provider "*should note that this facility has now been repaid in full*" I accept the Provider's position that as the ownership of the loan account had passed to the third party at this point, the Provider was not privy to the status or account balance of the loan, at that point.

The Complainant submits that "*At no time did [the Provider] ever offer me a viable alternative to these facilities. Both facilities were always paid on time*". I do not accept this statement, as it is clear from the correspondence provided to this Office as part of the complaint investigation that repeated attempts were made by the Provider to engage in respect of what were clearly financial difficulties and forbearance measures were offered on numerous occasions. Each of these alternative facilities are set out in detail within the above chronology of events, and were duly accepted by the Complainant Company. The assertion that the Provider did not, at any time, offer the Complainant Company a viable alternative must be rejected. It also must be noted that the Complainant's assertion that both facilities were paid on time, cannot be accepted and is not borne out by the evidence. It is immediately apparent from a reading of the statements and correspondence provided that arrears arose on the accounts, at which point the Provider was required to write to the Complainant Company to formally advise of options.

### **(iii) Final Response Letter – Typographical Error**

The Provider makes reference to a typographical error within the Final Response Letter it sent to the Complainant in respect of Account B on **11<sup>th</sup> March 2013**. The letter in question incorrectly referred to 'Terms and Conditions Ref 01/2007' when the Complainant should have been referred to General Terms and Conditions for Business Lending to Companies Ref 04/2012. The Provider apologises to the Complainant for this error. However, the Provider also notes that the Final Response Letter correctly quotes the relevant Section 11.32 and that both versions of the Terms and Conditions include the same such clause. This had been noted from a reading of the copies of each edition supplied by the Provider.

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#### **(iv) The Complainant's Calculations**

The Complainant submits that *"The facility repayments continued until [Provider] sold the facility to [Third Party] in 2016. The balance transferred to [Third Party] did not correspond with the balance per [Provider], €677,931, i.e. approx.. €5k higher than per advised"*.

It is apparent from a reading of the statements relevant to Account B that on **14<sup>th</sup> October 2016**, the date on which the Provider advised the Complainant of the forthcoming transfer, the balance on the account was €673,165.86. The Provider submits that this sum was arrived at after the application of Debit Interest in the sum of €5,995.47 on **9<sup>th</sup> September 2016** and an automated credit of €2,493.00 on **30<sup>th</sup> September 2016**

The statements also demonstrate that three credits, each in the amount of €2,493.00 were received into Account B between **1<sup>st</sup> November and 9<sup>th</sup> December 2016**. The Provider submits that debit interest continued to be applied (legitimately) to the account on a quarterly basis. Such interest was applied to the account on **9<sup>th</sup> December 2016** and **10<sup>th</sup> March 2017** in the amounts of €5929.12 and €5,865.42 respectively. These transactions altered the outstanding balance on the account, so that when the facility was transferred to the third party's system on **27<sup>th</sup> March 2017**, the balance outstanding was €679,974.40. The Provider confirms that statements reflecting these transactions and the arrival at this balance, would have been supplied to the Complainant Company annually at a minimum.

In response to where the Complainant may have calculated a suggested balance difference of approximately €5,000.00, the Provider submits that it is not clear as to where this figure is derived from. It contends that a transfer balance to the third party was not quoted in its correspondence of **14<sup>th</sup> October 2016** and **6<sup>th</sup> January 2017**. As with Account A above, the Provider submits that it could be the case that the Complainant did not factor in the above mentioned ongoing transactions and debit interest applied to Account B from the date of the issuing of the Provider's letter on **14<sup>th</sup> October 2016** to the date of the transfer of the facility to the third party's system on **27<sup>th</sup> March 2017**. The difference between those two figures (**€673,165.86** and **€679,974.40**) is **€6,808.54**. The Provider also suggests that the Complainant Company may have included the overcharged interest refund already issued to it by cheque, after the facility transfer completed.

#### **(v) Third Party Dealings**

The Complainant submits the following in respect of its dealings with the third party to which his facilities were transferred:

*"No statements have been received from [Third Party] or [Servicing Agent]. So it is impossible to determine what the actual balances are. We have written to their solicitor about this and asked for these but to date they have not been forthcoming."*

It is apparent from this assertion that it does not fall within the confines of the present complaint. It has been demonstrated by the documentary evidence supplied that the legal transfer of ownership of the loan account took effect from **19<sup>th</sup> December 2016**.

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From this date of transfer, the third party acquired the right to charge and receive interest payments in accordance with the loan agreement's terms and conditions. It therefore follows that from this point, any issues in respect of the Complainant Company's dealings with the third party need to be addressed to the third party or its agent separately. Any such issues arising from that time are not a matter for this Provider.

**(vi) Management of Account**

The Complainant Company asserts that the Provider has maladministered this facility. The Provider notes that while the facility was under its legal ownership, the account was reviewed annually at a minimum by its Relationship Managers. It submits that these reviews demonstrate that the Complainant Company did not raise any issue or concern in respect of the account management. It submits that if such concerns had been raised with the Provider, it would have dealt with such issues *"as expeditiously as possible in line with its defined processes and in accordance with the governing Code of Conduct"*. It is apparent from the evidence provided that the first mention of the Complainant Company's dissatisfaction with the Provider's administration of the Complainant's account was in **December 2018** and **January 2019**.

The Provider submits that while Account B was under the Provider's legal ownership, it reviewed the account annually at a minimum. It notes in its submissions that the first time the Complainant Company expressed any concern in respect of the management of the account was upon receipt of the letter from Provider's BLIRR Team in **December 2018** at which point two years had elapsed.

I am satisfied from my consideration of the statements and relevant correspondence that the Provider was sufficiently transparent in respect of the transfer of the Complainant's facility to the third party. Statements were furnished to the Complainant including the relevant balances while the account was under the ownership of the Provider.

In respect of the question posed within the Complainants' submissions, *"how on earth does a 25 year facility end up as a 3 month facility not 2 years after it was provided, and after 100,000 was paid off the facility?"*, the Provider acknowledges the reference to a 25-year term in the Provider's Facility Letter of **4<sup>th</sup> August 2011**. The Provider confirms that the purpose of this letter was to agree a 10 month interest only arrangement and it has submitted copies of the relevant extracts of the letter as part of the complaint investigation, set out under 'Evidence' above. The Provider submits that this letter was specifically issued in respect of the interest-only repayment arrangements, and referred to the continuation of such payments on a 3-month basis. The letter also confirms the Provider's rights to transfer the facility to a third party.

In respect of the Complainants' statement that *"despite the facility expiring, [the Provider] continued to take repayments from the loan account up to and including the date on which it was transferred"*, I am satisfied that this is clearly provided for in the wording of the facility letters. Each of these letters which were issued to the Complainants refer to the Provider's ability to request the borrowings under the facility to be payable on demand.

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The section entitled 'Payments' set out above in the Evidence section clearly establishes that repayments of the funds advanced under the facilities continued to be payable to the Provider, during the life of the facility, until such time as the account was transferred to the new owner. Although it may have been frustrating for the Complainants to continue to have repayments debited from the accounts despite notification of the transfer of the facilities, this was a term which had clearly been agreed to, by signing the Facility Letters.

In respect of the Complainants' assertion that the Provider's failure to offer alternative payment options constituted mismanagement, as set out above, I am satisfied that the Provider engaged on numerous occasions with the Complainant Company with the purpose of endeavouring to assist it with the arrears issue.

The Complainant Company also submits that the transfer of his facility to a third party should be regarded as a failure in the Provider's duties in its management of the facility. The clause permitting the Provider to transfer the facility to another entity is set out above and was clearly accepted by the Complainant Company. I am satisfied that the Provider was transparent in its dealings with the Complainant in respect of the facility transfer, which it carried out at its commercial discretion as it is entitled to.

Neither do I accept the aspect of the complaint pertaining to the issuing of the interest overcharge refund by way of cheque. This payment was issued on **7<sup>th</sup> December 2018**. The Complainant Company clearly had a discretion to use the cheque to credit the account transferred to the third party, to reduce the outstanding balance. I am satisfied that the Provider could not have done any more in this regard to restore the Complainant Company to the position it would have been in, had the overcharging error not occurred.

While the Provider is unable to state if the refund cheque was indeed credited to the account transferred to the third party, the Provider suggests that the overcharged interest amount of €1413.40 ought to be considered by the Complainant Company when calculating the outstanding facility balance transferred to the third party.

### **Account B - Conclusion**

Although it is evident that the Complainant Company's Account B was subject to an interest overcharge, it has not been effectively established that the account was overcharged by the amount claimed. Insufficient evidence has been submitted to establish how the Complainant Company arrived at the figures submitted, and although it is stated that the calculations were prepared with the assistance of an accounting firm, adequate evidence of their arrival at the figures in question, have not been provided.

I do not accept the Complainant Company's contentions that Account B was subject to an interest overcharge as suggested. It is apparent that the transfer of the Complainant Company's facility to the third party is an ongoing source of dissatisfaction to the Complainant Company and its directors. However, I am satisfied that the Provider was entitled to execute such transfers at its commercial discretion and that it was transparent in its dealings with the Complainant Company on the matter.

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I must reject the Complainants' claim of overcharging in interest by approximately €32,000 between the two affected accounts. The Complainants have not furnished the Provider with calculations which correspond to this claim. The Complainants' submission that "*I asked [Accounting Firm Q] to analyse the balances on both accounts and they have come back with an overcharge of 32,000 euro*" is not adequate or satisfactory and it does not form a reasonable basis in my opinion, upon which to uphold this complaint.

I am satisfied with the evidence submitted by the Provider in setting out the interest overcharge issue in respect of both accounts and the remediation process it carried out. I accept the calculations as evidenced by the Provider and the chain of correspondence it sets out establishing its repeated efforts to engage with the Complainant despite the fact both accounts were in arrears and repayments were continuously missed. I do not accept the assertion that the Complainants' accounts were mis-managed and I am of the opinion that the Provider has already discharged its obligations under the applicable Codes of Conduct in respect of the complaint. I am satisfied that the regrettable interest overcharge issue was remediated appropriately, and the Provider has apologised to the Complainants for the inconvenience caused.

### **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.**



**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.