



<u>Decision Ref:</u>	2022-0222
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Fees & charges applied Delayed or inadequate communication Failure to advise on key product/service features
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns three accounts that the Complainant holds with the Provider.

The Complainant's Case

The Complainant's accounts with the Provider include:

- a) a 5-year term loan account that was issued to the Complainant on **13 December 2007** in the sum of **€14,000**,
- b) a current account which the Complainant opened on **10 April 2002**, and which has an overdraft limit of **€2,000**, and
- c) a credit card account opened by the Complainant on **11 September 2006** which has an agreed credit limit of **€2,000**.

The Complainant submits that he moved abroad in **February 2012**, and later that year while holidaying in Ireland, he visited a branch of the Provider in **October 2012** to update its records to reflect his new address abroad. The Complainant contends that he supplied the Provider with proof of his new address, including a utility bill, his visa and his Social Security number. The Complainant submits that the Provider informed him by email on **19 December 2012** that its head office would contact him in relation to the change of address. The Complainant submits that the Provider subsequently failed to contact him, as promised.

The Complainant submits that he returned to Ireland again in **2014** at which point he contacted the Provider, and he states that the Provider informed him at the time, that it had lost his proof of address documentation, that he had supplied in **2012**.

The Complainant submits that he re-supplied the Provider with these details in order to change the address details on the three accounts in question. The Complainant submits that he contacted the Provider again in **2015** and that it was aware of his change of address since **2012**. The Complainant contends that when he contacted the Provider in **2014** and **2015**, it had agreed with him that it would correspond with him through his new address abroad, but that it failed to do so.

In an email to the Provider dated **26 January 2016**, the Complainant submits that he returned to Ireland on holidays in **2013**, and that he visited the Provider's branch at which point he was informed by the Provider to complete a customer change of address form. The Complainant submits that he filled out the form and supplied the Provider with his then current address abroad and a contact telephone number. He says that he did not hear back from the Provider. The Complainant submits that he received a letter from a credit servicing company to his address abroad, which informed him that he owed **€1,100** on the term loan account. The Complainant submits that he explained to the credit servicing company what had occurred, and it stated it would get back to him, but it failed to do so. The Complainant submits that upon contacting the Provider at a later date, he was informed that the amount of the term loan account has increased to **€1,800**. The Complainant submits that the Provider incorrectly applied three interest rate increases, to his fixed rate term loan account.

The Complainant submits that the Provider has continued to charge late fees and interest on the three accounts in question without his knowledge since **2012** and he contends that this was done, despite the Provider acknowledging that he contacted the branch on three separate occasions to update his address, but the address remained unchanged. The Complainant submits that as the Provider failed to update his address details since **2012**, he did not receive any information from it, including bank statements, which would inform him of the situation in relation to the three accounts.

The Complainant submits that he contacted the Provider in **June 2017** to offer a payment in full and final settlement of the three accounts in question. The Complainant submits that the Provider refused to accept this offer of settlement.

The Complainant submits that in **March 2019** he returned to Ireland to live and that he applied for a mortgage loan account. The Complainant says that his mortgage loan applications were declined, due to his credit rating with the Irish Credit Bureau (**ICB**). The Complainant contends that he was unaware of any issues with his credit rating and submits that the Provider failed to inform him of this, through his correct address.

The Complainant submits that the Provider had been charging him ridiculously high interest and penalties on the account since **October 2012**. The Complainant submits that the Provider failed to contact him through his correct address, and he is objecting to paying all of the fees and interest incurred on the account since late **2012** and being reported negatively to the ICB. The Complainant submits that when he contacted it in **March 2019**, the Provider acknowledged that it had his correct foreign address, and that it failed to update its database to reflect his correct details.

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The Complainant submits that he is exhausted with dealing with the Provider and he wishes for the matter to be settled. The Complainant states that the Provider has refused to deal with the complaint in a timely fashion and that it has continually delayed in its response to the complaint.

The Complainant contends that the matter has cost him a significant sum of money, including the cost of flights to Ireland and valuation fees. The Complainant contends that this matter has also had a negative impact on his business. He says that he has been unable to access credit due to his credit history and that he has had to borrow from his elderly mother.

In response to the Provider's submissions, the Complainant argues that he provided copies of his water bill on four occasions to the Provider and was repeatedly told he would be called on his US mobile, but he was not. He questions how the credit service company had his USA address. He submits that while he did receive mail through his old next-door neighbour, she moved at some point, so this was no longer possible. He accepts that up to **April 2016** when the letters were received by him, he called the Provider and got verbal updates on the increasing balances, but he always requested that correspondence be sent to the US address.

The Complainant declined the Provider's offer of **€1,500** in recognition of its lapse in service in respect of the amendment of his correspondence address.

The Complainant wants the Provider to compensate him in the sum of **€15,000** for the inconvenience that this matter has caused him and he seeks to have his financial information removed from the ICB.

The Provider's Case

In respect of the term loan, the Provider says that the Complainant made 59 of the 60 payments due and made his last repayment on **7 November 2012**. It submits that the outstanding balance in the amount of **€1,823.48** was written off on **23 December 2019** and that the interest accruing was suspended in **August 2015**.

In respect of the current account, the Provider submits that the last transaction completed by the Complainant was on **9 April 2013** and the balance outstanding at the time was €2,000.07. It submits that the overdraft of €2,000 was removed from the account on **13 May 2014**. The Provider argues that the outstanding amount of **€5,487.97** was written off on **23 December 2019**, the interest accruing having been suspended in **May 2017**.

In respect of the credit card account, the Provider submits that the last payment made to the credit card was in **October 2012** and the account has been in arrears since **5 December 2012**. The Provider submits that the outstanding balance in the amount of **€4,067.91** was written off on **19 February 2020**, while the interest accruing on the account was suspended in **October 2017**.

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The Provider says that during a telephone call on **15 August 2013**, the Complainant advised its agent that he was residing in the US and verbally provided his American address. The Provider submits that the agent advised that this information would be added to the Provider's records and that correspondence would issue to this address. The Provider accepts that this did not happen.

The Provider submits that during subsequent telephone conversations dated **8 January 2014**, **13 January 2014** and **5 June 2014**, the Complainant provided his American address. It submits that during the telephone call of **5 June 2014**, its agent queried whether a written request to amend the address been submitted because the address had not been formally amended on the Provider's systems. The Complainant stated that he had done this several times. The Provider submits that the Complainant advised that he was aware that correspondence was being issued to Irish address as correspondence had been forwarded to him.

The Provider offers its apologies that its agents did not inform the Complainant that his address could not be amended on the basis of his verbal notification and he was not told of the Provider's requirements to amend the address. It accepts that this resulted in correspondence regarding the account continuing to issue to the Complainant's old Irish address held on the system.

The Provider submits that correspondence dated **7 April 2016** was issued to the Complainant at his US address, informing the Complainant of the requirements to enable it to amend the correspondence address. In this letter, it submits that it advised the Complainant that the Provider requires written confirmation of a change of address request, along with verification of identity and address, and it included details of the acceptable documentation. The Provider submits that this correspondence in **2016**, was issued on a one-off basis to the Complainant's American address and that this was made clear in the letter. The Provider submits that the Complainant did not provide the required documentation to enable the amendment of the address.

The Provider submits that it was first informed of the Complainant's American address during the phone calls dated **15 August 2013**, **8 January 2014**, **13 January 2014** and **5 June 2014**. It submits that, regrettably, the Complainant was not informed of the requirement to submit a written confirmation together with supporting documentation to enable the Provider to amend the correspondence address.

The Provider submits that an active account may be suspended by it, to prevent further interest charges accruing on the arrears balance outstanding. It submits that the Complainant's current account was suspended on **23 May 2017** with the balance outstanding of **€5,487.97**. It submits that it would not advise customers with accounts in serious arrears of this decision, and rather it is an internal decision and it prevents further interest accruing on the account. The Provider sets out a similar position in respect of cancellation of the Complainant's credit card.

The Provider submits that there was no discussion during telephone calls with the Complainant in **2013 and 2014** that interest and charges were accruing on the Complainant's three accounts. It submits that correspondence issued to the Complainant regarding the arrears on the accounts and advised that his credit rating may be affected and of the balances outstanding. It submits that this correspondence was issued to the Complainant's Irish address.

Notwithstanding that the correspondence was issued to the Irish address, the Provider submits that the Complainant acknowledged that he was in receipt of the correspondence and was aware of the interest and charges accruing, during telephone calls dated **23 April 2013, 1 May 2013, 15 August 2013, 8 January 2014, 15 January 2014, 15 April 2014, 5 June 2014 and 25 January 2016**.

The Provider further argues that in email correspondence between **18 December and 19 December 2012**, the Complainant acknowledged that there was a balance owing on the credit card, and he refused to pay the interest and charges that were accruing.

The Provider submits that the Complainant acknowledged that correspondence was being forwarded to him and that he was fully aware that interest and charges were accruing on the three accounts as the Complainant contacted both the Provider and the credit servicing company, on receipt of the correspondence.

The Provider submits that the terms and conditions of the relevant accounts advised the Complainant of the interest and charges applicable, in addition to the correspondence sent to him.

The Provider submits that it has no record of sending an email dated **19 December 2012** to the Complainant in which a change of address was mentioned. It submits that it has no record of the email submitted in evidence by the Complainant, though it has records of all other emails sent and received on **18 and 19 December 2012**.

The Provider submits that it is no record of receiving any proof of address from the Complainant.

The Provider submits that the terms and conditions of the accounts all provide for its entitlement to report the conduct of the accounts, to credit reference agencies. It further submits that correspondence issued to the Complainant regarding the arrears on the accounts, which advised that his credit rating may be affected. It submits that the Complainant acknowledged that correspondence had been forwarded to him in the United States. The Provider argues that it is satisfied that it correctly reported the Complainant's credit history to the ICB, in relation to the three accounts from **2012**. The Provider submits that its records indicate that the Complainant was aware of the outstanding debt and acknowledged it when he contacted the Provider and the credit servicing company, on receipt of correspondence which was being forwarded to him.

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The Provider does not accept that the Complainant was not receiving statements in relation to the three accounts since **2012**, such that he was unaware of the status of the accounts. The Provider submits that its records indicate that the Complainant was aware of the outstanding debt and acknowledged it when he contacted the Provider and the credit servicing firm on receipt of correspondence. The Provider highlights correspondence sent to the Complainant in respect of outstanding debts and a number of telephone calls in which the accounts and the correspondence were discussed.

The Provider argues that the Complainant called it on **13 June 2017** stating that he wished to agree a settlement in respect of his credit card and current account. During the call, the Provider submits that the Complainant advised that he was willing to pay the balance owed in **2012**, over a period of three months but if the Provider would not agree to that, he would not pay anything. The Provider argues that its agent advised that he would need to contact the relevant department and the Complainant would be required to complete a Statement of Means to assess the request. The Provider submits that the Complainant advised he was not willing to complete this documentation and it was therefore not possible to progress the request for assessment.

The Provider submits that it was the Complainant himself who provided his US address to the third-party servicing company, and not the Provider.

The Provider has submitted a timeline of its response to four separate complaints received from the Complainant since **2012**, including its response to the present complaint which was received on **27 March 2019**.

The Provider highlights the fact that the Complainant has acknowledged on several occasions that he was receiving the Provider's correspondence through a third party. The Provider appreciates, however, that when the Complainant provided his American address during telephone calls, the agents he spoke to did not advise him of the requirement to submit proof of address in writing to enable the Provider to amend his correspondence address. In view of this, the Provider offers a gesture in the amount of €1,500 to the Complainant together with its apologies, which offer remains open for acceptance.

The Complaint for Adjudication

The complaint is that the Provider mal-administered the Complainant's three accounts including its failure to amend the Complainant's contact details, the wrongful application of interest and penalties on all three accounts since **2012**, and its wrongful reporting to the ICB in respect of the Complainant's accounts. The Complainant also says that the Provider has failed to deal with the complaint in a timely manner.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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 **2 March 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

It should be noted that certain aspects of the complaint submitted by the Complainant, fall outside the six-year time limit set out in **Section 51** of the ***Financial Services and Pensions Ombudsman act 2017*** (the **2017 Act**). The Complainant has argued that his term loan was a fixed interest rate loan and that he was misled by the Provider that it was fully repaid in **2011**.

The present complaint was made to this Office in **June 2019**. A complaint had been raised by the Complainant with the Provider, seven years previously in **2012**, in respect of this issue. I note that final response letters were issued to him by the Provider in **August and September 2012** which rejected his complaint and highlighted his entitlement to complain to the Financial Services Ombudsman. As this occurred more than six years before the present complaint was made to this Office in **2019**, this aspect of the complaint was not made within the statutory time limits, and such a complaint now falls outside the jurisdiction of this Office. This was clarified to the Complainant by letter dated **18 September 2020**.

I note that certain aspects of the Complainant's submissions in the course of the adjudication of the complaint, also raise issues that occurred more than six years before the complaint was made to this Office. For example, he has argued that he attempted to pay some or all of the balances outstanding on his credit card and/or current account by way of foreign cheques and debit and credit card payments in **2012**, but he says that this was refused by the Provider.

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As these matters also occurred before **June 2013**, they do not form part of this complaint investigation as they fall outside the time limits prescribed by **Section 51** of the 2017 Act.

Term Loan

I note that the Complainant agreed a “*Consumer Term Loan Variable Rate*” on **13 December 2007**. The credit advanced was in the sum of **€14,000** for a 60-month period.

The loan document indicated that the amount of each repayment would be €287.90 and that it was a variable rate term loan, then currently at 8.6% interest per annum. I note that the loan document also provided for the period of the agreement, the number of repayment instalments, the amount of each such payment, the total amount repayable, the cost of credit, and the APR may increase or decrease at the Provider’s discretion pursuant to General Conditions 5 and 7.

General Condition 5 provides as follows:

“(a) The rate of interest applicable to the Loan will be at the interest rate specified in the Schedule, as varied from time to time at our absolute discretion. You will repay the Loan with interest thereon at such rate by monthly periodic instalments in amounts which, over the Period of Agreement, will be sufficient to discharge in full the Loan together with such interest...”

(b) Interest will accrue and be calculated on the daily balance outstanding and a 365 day a year or 366 day in a leap year and will be payable as well after judgement as before. Interest will be debited to your account at monthly or at such other periodic rests as we in our absolute discretion shall decide. This means that if you do not pay the instalments on time the unpaid interest will be capitalised and you will pay interest on interest.

....

(d) In the event of any variation in the interest rate applicable to the Loan, we shall give notice of such variation to you by:

- (i) advertisement published in at least one national newspaper, or*
- (ii) a statement addressed to you. As a result of any change in the interest rate we may vary the amount of the instalments or the Period of Agreement or both.”*

The Provider has submitted evidence of three interest rate increases that occurred during the term of the Complainant’s loan, two in **2008** and one in **2010**. I accept that in accordance with General Condition 5, the Provider was entitled to vary the amount of the instalments or the period of the agreement. The amount of the monthly instalments was not changed, during the term of the loan in the present case, so the increased interest rate varied the period of the agreement, insofar as a balance was scheduled to remain after the payment of the 60th instalment (if this last instalment had been paid).

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The term loan was undoubtedly subject to a variable interest rate and not a fixed one. I am satisfied that the Provider advertised the interest rate increases as they occurred, and it has submitted advertisements in evidence in support of this. As a result, the Complainant was contractually obliged to repay the amount outstanding on his term loan from **December 2012** to include the final contractual instalment of €287.90, separate from the extra interest that had arisen due to the interest rate increases over the 60-month term, of approximately €868.97.

I note from its final response letter from **October 2019**, that the Provider has subsequently reviewed its variable rate term loans from the period in question and has compensated customers if the period/term of their loan was extended due to interest rate increases. The compensation paid by the Provider mirrors what would have been paid by a customer if they had opted to increase their monthly payments each time, to match each interest rate increase. I note that the Complainant's loan was included in this review and his term loan account was credited accordingly. This issue falls outside of the present complaint, but it is noted for completeness, by way of background.

I have examined an account statement in respect of the term loan which shows that the sum of €14,000 was drawn down on **13 December 2007**. The first repayment was made on **14 January 2008** in the sum of €287.90. I note that the Complainant made 59 individual payments of €287.90 to the account, with the final lodgement occurring on **7 November 2012**. It is clear to me, therefore, that (apart from the separate issue that arose in respect of the variable interest rate applicable to the account) the Complainant failed to pay the final instalment of the 5-year loan.

Accordingly, given the evidence available, I do not accept that there is any basis to the Complainant's arguments, made repeatedly during calls to the Provider over the years, that he had repaid the loan in full in **2011**, and that the Provider had somehow incorrectly come back to him four months later, to notify him that there was an additional balance due.

I note from the account statement that interest including penalty interest was applied to the account from **December 2012** onwards, on a monthly basis. The balance of the account was €1,148.97 as of **7 November 2012** and had increased to €1,823.48 at the time when the account was closed on **28 August 2015** due to the application of interest, including penalty interest. According to the statement, the account balance was written off on **23 December 2019**.

I note that letters were sent to the Complainant every three months from **January 2013**, setting out the arrears on the account and the applicable interest rate, which was 11.4% or 12% in respect of arrears. These letters were addressed to the Complainant's Irish address.

From **October 2015** onward (ie after the account was closed) the letters indicated that the interest rate was 0%. I note that each letter notified the Complainant that missed payments may be recorded on his ICB profile, and may affect his future ability to borrow.

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The Complainant was not however living at this Irish address from **2012** onwards, and he informed the Provider of a new US address on several occasions from **2012** onwards. It is nevertheless clear from recordings of telephone calls over the years, that he was in receipt of some or all of this correspondence. These issues are discussed further below.

Credit Card Account

I note that the Complainant applied for a credit card in an application form dated **4 September 2006**.

I note that the application contained an authorisation for the Provider to *“provide information concerning this application and the conduct of the Account to credit reference agencies”*. The recommended limit on the application was €1,500 though it appears that the credit limit was increased to €2,000 at some point thereafter.

Section 10 of the terms and conditions applicable to the credit card set out in detail the method by which interest and balances would be calculated.

A credit card statement was issued to the Complainant’s Irish address dated **18 December 2012**, showing a balance of **-€1,921.67** and a credit limit of €2,000.

I have reviewed an email exchange between the Complainant and a branch representative from **18 and 19 December 2012**. In the course of those emails, the branch representative stated that

“[a]s discussed, it is not possible to make one-off payments to your credit card using another credit card. It is however possible to switch to full balance and close the card.”

In response, the Complainant stated that *“until that facility is offered, I cannot pay you”* and stated that he had tried transferring from a credit card. He requested that the representative inform *“head office to hold of interest/fees payment till the facility is offered”*.

The representative asked if the Complainant would withdraw cash from his alternative credit card to lodge to his credit card account with the Provider. He also confirmed that interest and fees would continue to be charged per the terms and conditions of the account. In response, the Complainant confirmed that he would not withdraw cash as there was a fee associated with this and he would not pay any interest or fees to the Provider. He stated that he had contacted the Provider in **October**, in relation to the issue and it had failed to get back to him.

The representative apologised for not returning a call from the Complainant on **15 November 2012** but stated that this did not change his obligation to pay his credit card bill as normal. The representative indicated that the facility to pay by way of another credit card would still have been unavailable at that time.

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I note that the Complainant stated that he would pay what he owed on the credit card from **15 November 2012** and “*not one brass cent more*”. The Provider’s representative stated that he could not offer him any acknowledgement regarding a reduced amount of interest payable and told the Complainant that it was the means by which he proposed to pay, that was restricting the Provider from offering further payment options, other than the ones he had previously outlined.

I am satisfied as the basis of this email exchange that the Complainant was aware in **December 2012** that he had a balance on his credit card account that had to be repaid and that interest and fees were accruing in accordance with the terms and conditions of the card. The Provider was clear that its policy was that a customer could not repay a credit card balance, using another credit card. The Complainant’s frustration with this policy, did not in any way affect his obligation to pay what was due and owing on his credit card account and further, that frustration did not prevent the application of interest and fees, as provided for in his contract with the Provider.

I am conscious that the Complainant has suggested that he also attempted to pay the balance using a US cheque or debit card at this time but was not allowed to do so. This aspect of the complaint falls outside of the statutory time limits for complaints to this Office, though I note that contemporaneous records, refer only to the Complainant’s attempt to pay the balance, by credit card.

I note that from **January 2013** onwards, letters were sent every three months to the Complainant’s Irish address identifying the arrears amount and the applicable interest rate of 14.9% purchase rate and 22.5% cash rate. These rates were amended from time to time and by **25 March 2019**, there was a total balance outstanding of **-€4,067.91**. Each letter notified the Complainant that missed payments would be recorded on his ICB profile and may affect his future ability to borrow. Each letter also notified the Complainant that a fee of **€7.50** would apply where the balance exceeded the credit limit and a fee of **€7.50** would also apply where the minimum payment due was not received by the due date specified.

As discussed in more detail below, even though this correspondence was sent to the Complainant’s Irish address, it is clear from his phone calls with the Provider over the years, that he was in receipt of the correspondence.

Current Account

Clause 3 of the terms and conditions applicable to the Complainant’s current account provides the basis on which the Provider can report the status of the account to credit rating agencies as follows:

“Provided the Customer has given consent, the Bank may make such enquiries about the Customer as it from time to time considers appropriate and may provide information provided by the Customer in the application for the Account and any information relating to the conduct of the Account to credit reference agencies.”

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The terms and conditions of the Complainant's current account provide as follows:

"8(e) Where the debit balance of the Account exceeds the authorised overdraft limit for that Account, unauthorised overdraft interest will be charged on the amount that exceeds the agreed overdraft limit. Where there is a debit balance on an Account for which no overdraft been authorised, unauthorised overdraft interest will be charged on such balance.

(f) The rate of unauthorised overdraft interest is 6% greater than the [Provider's] normal overdraft interest rate applicable to the Account.

(g) Unauthorised overdraft interest is accrued daily and is charged to accounts quarterly, 14 days after being pre-notified."

By letter to the Complainant's Irish address dated **16 April 2013**, the Complainant was notified of an account balance on his current account of -€2,015.53. It notified him that his credit limit was €2,000 and there was an unauthorised balance of €15.33.

From **May 2013**, letters were sent every three months to the Complainant's Irish address identifying the unauthorised balance on the overdraft, the current interest rate of 14% (later rising to 15%) and an interest rate applicable to unauthorised balances of 12% over the current interest rate (ie 26% and later 27% on unauthorised balances). By **8 August 2017** when interest was removed from the account, the total balance was **-€5,487.97**. I note that the account was written off in **December 2019**.

Change of Address

The Complainant has submitted into evidence an email dated **19 December 2012**, whereby the branch representative who had been dealing with the Complainant wrote to him as follows:

"As discussed, it is not possible to make payments using your USA credit card using another credit card (sic). Head office will contact you regarding change of address, customer complaints".

The Complainant has submitted that he had provided the representative in question with his US address and with a water bill, US visa and his social security number. He submits that there was no follow up from the Provider after this email.

The Provider submits that it has no record of receipt of these documents. It further submits that it has no record of sending the email in question. The Provider submits that the representative in question retained emails from the relevant period and forwarded a copy of all of these emails, which are otherwise identical to those submitted by the Complainant. The Provider submits, however, that the record does not include the email submitted by the Complainant which refers to the change of address. This lack of alignment between the parties' email records is surprising.

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I am satisfied based on the email submitted by the Complainant dated **19 December 2012** that he requested that the Provider update his correspondence address in **December 2012**. He is clear in his recollection of providing a water bill as proof of address. Despite the fact that the Provider cannot locate a record of this, I am satisfied that the email from **19 December 2012** establishes that the change of address was discussed at the time and that there was no follow up with the Complainant, as there ought to have been. The Provider has a case to answer to the Complainant in that regard.

The Provider submits that the Complainant contacted it on **15 August 2013** and advised that he had received a letter that morning. The Provider submits that the Complainant advised that he would not be paying any interest that had accrued from **October 2012**. The Provider submits that during this call, the Complainant provided his US address verbally and its agent confirmed to him that the address would be added to its records and correspondence would issue to his US address. While a number of call recordings has been supplied in respect of this complaint, there appears to be no record of a recording from **15 August 2013** but the Provider's account of what happened is depicted in its contemporaneous systems notes.

It is not in dispute that the Provider did not update the correspondence address associated with the Complainant's account at this time, despite the assurance of the Provider's agent that it would do so. The Provider has acknowledged this and agrees that its agent ought to have informed the Complainant that he would have to submit a written request for a change of address, for this request to be facilitated. In the meantime, correspondence continued to be sent to the Complainant's old Irish address.

A third-party credit servicing company wrote to the Complainant at his Irish address by letter dated **17 January 2014** and advised that his credit card balance was €2,326.82. By letters dated **20 February 2014 and 8 May 2014**, the credit servicing company wrote to the Complainant's US address with updated balance information. The Provider submits that the Complainant provided his US address directly to the third-party company in **January 2014** and again in **May 2014**.

The Provider submits that the Complainant telephoned the Provider on **5 June 2014** and called out his US address. According to the Provider, its agent advised that she could see the US address noted in the comments section, but the system had not been updated. She enquired whether he sent his American address in writing to the Provider's group collections. The Provider submits that the Complainant stated that he had done this numerous times.

The Provider submits that the Complainant discussed the outstanding balance of the accounts with the agent and disputed the applicability of interest and disputed the balance of the term loan. The Provider submits that the Complainant confirmed that he knew the people who were living at his old address where the post was being sent and that he stated that they scanned letters from the Provider, and sent them to him. The Provider has not submitted a recording this call recording, but system notes from the date, records this account.

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By email dated **26 January 2016**, the Complainant wrote to the Provider stating that he had submitted a customer change of address form in **2013**. He stated that in **2015**, he got a letter from the credit service company at his US address stating that he owed more than €1,100 on his loan account and they were to get back to him, but never did. He stated that he was at home on vacation in **January 2016** and was informed that the balance had increased to €1,800.

I note that a letter dated **7 April 2016** was issued, addressed to the Complainant's US address, which was a final response letter to an earlier **January 2016** complaint. The Provider stated that the US address was used as a "*once off*" and that future correspondence regarding the account would be issued to the address the Provider had on file for the Complainant. The letter stated that if the Complainant wished to proceed with a request to amend his address, the Provider required written confirmation of this, along with verification of his identity and of his new address, in order to comply with regulatory requirements. The Provider set out a list of acceptable proof of identification and acceptable proof of address. It also indicated that other documents could also be considered. The letter outlined the documentary requirements, where identity and address verification were posted to the Provider.

On the basis of the above, I am satisfied that the Complainant requested on multiple occasions between **December 2012 and January 2016**, that the Provider send correspondence to his US address. He submits that he provided a copy of a utility bill to the branch **2012 and 2014**. It is clear from call recordings and call notes from **2013 and 2014** that the Provider was made aware of the Complainant's US address and that this address was included in the notes associated with his accounts. The Provider has accepted that its agent mistakenly informed the Complainant on **15 August 2013** that future correspondence would issue to his US address, but this was incorrect. It has also accepted that during calls on **8 January 2014, 13 January 2014 and 5 June 2014** the Complainant provided his US address but was not informed of the appropriate procedure for the amendment of this correspondence address on its records.

I note from the call recording from **13 January 2014** that the agent confirmed that the US address appeared on her screen, and the Complainant questioned why he was not receiving correspondence at his US address and became aggressive with the agent, whose questions he did not answer. The Complainant would not allow the agent to speak, and she terminated the call after several warnings to him.

I also note that the Provider has suggested that its agents queried with the Complainant whether he had made a written request to update the correspondence address, during the **5 June 2014** call, and he confirmed that he had done so.

It was not until its letter of **April 2016** that the Provider clearly notified the Complainant of the steps required to update his address. Prior to that, the Complainant was assured that the correspondence issue would be rectified by the Provider, but it never was.

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In the letter of **7 April 2016**, however, I am satisfied that the Provider:

- was clear in respect of the steps required from the Complainant to amend the correspondence address,
- was clear in respect of the documentation that the Complainant was required to submit, and
- was clear that future correspondence would not issue to the US address until the Complainant submitted the required documentation.

I appreciate that the Provider has regulatory obligations in this regard, but it is very disappointing that this information was not supplied to the Complainant in a clear way, in the three year period from **December 2012 and January 2016**

The evidence demonstrates, and indeed it appears to not be in dispute, that the Complainant did not take any steps to amend the correspondence address after receipt of the **April 2016** letter. While I appreciate that he may at this point, have been frustrated by the Provider's previous failure to change the address, it was incumbent on him at this point, to submit the documentation required by the Provider to amend the correspondence address, if he wished to put that change of address into effect.

I accept that the Provider's conduct fell far short of acceptable customer service in its failure to either amend the Complainant's correspondence address between **December 2012 and April 2016** or to properly notify the Complainant of the steps required to be taken, to amend the correspondence address. I take the view however that from **April 2016**, the situation had been made very clear to the Complainant, but he did not take the required steps outlined to him, in the Provider's letter.

Acknowledgment of Arrears from 2013

I have already outlined above my view that the Complainant was aware in **December 2012** of the balance due and owing on his three accounts. I appreciate that he disputed the balance on the term loan and he was of the view that no interest should arise on the other two accounts, due to the fact that he attempted to pay the balances of each in **late 2012**, but he was nevertheless aware of the existence of the balances and he was equally aware of the Provider's position that the full balances were repayable.

I am conscious that from **late 2012** onwards, correspondence in respect of the balances of the accounts was being sent by the Provider to the Complainant's old Irish address and not to his new US address. In other circumstances, this might have resulted in a customer being unaware of rapidly increasing overdue balances. It is clear, however, that the Complainant was aware of the overdue balances and the fact that interest was accruing, because the relevant correspondence was being forwarded to him. He committed on numerous occasions to paying the balances due from the credit card and the overdraft on the current account, as they stood in **November 2012**, but never did so.

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The Provider submits that the Complainant contacted it on **23 April 2013** to advise that he would not pay the interest on his credit card, since he offered to pay it with another credit card. The Provider submits that he indicated that he had received a couple of letters and would not be paying the term loan. The Provider submits that the Complainant requested that the overdraft and credit card be converted into a new personal loan for the amount owed in **2012** and he was advised that he would have to contact the branch to discuss this. The Provider states that the Complainant declined to do so. While several call recordings have been provided in evidence in respect of this complaint, there appears to be no record of a recording from **23 April 2013**.

The Provider submits that the Complainant made contact by phone on **1 May 2013** and **15 August 2013** and advised that he had received letters that morning, with outstanding balance information in respect of his current account and credit card. The Provider submits that the Complainant advised that he would not pay any interest that had accrued on the accounts, after **October 2012**. There do not appear to be records of these call recordings, but there are systems notes available in respect of the **15 August 2013** call which note this.

I note from the call recording of **13 January 2014** that on this occasion, the Complainant stated that he would not pay the balance of his credit card or overdraft until the Provider acknowledged that he did not owe any money on the term loan, which he claimed to have repaid early in **December 2011**. The agent confirmed the balance outstanding on the term loan and, as referenced above, this call was terminated by the Provider, due to the aggression displayed by the Complainant.

I note from the call recording from **15 January 2014** (labelled **14 January 2014**) that the Complainant stated that correspondence was being sent to his old Irish address and that he knew the people living there, who opened his correspondence for him and scanned it over to him. The agent confirmed that the US address was in the notes. He requested that a senior manager return his call the following day, after 2pm on his US number, which he provided. The Complainant claimed that he had been promised a call back during his previous call on **13 January 2014**. (I note that this had initially been discussed, but I do not agree that this commitment was made to the Complainant, considering the way the phone call had ended.)

During the **15 January 2014** call, the Complainant stated his position that he did not owe any money on the term loan and that he was happy to settle the other two accounts but without payment of interest. The Complainant stated that he was not living in Ireland, and he did not care what the Provider did or what it registered against him. He stated that the Provider would not get a "*brass penny off me*" unless it engaged with him respectfully, and that any order that the Provider got against him would not apply in the US. He stated that the ball was in his court. The Complainant requested a write off, of the term loan balance and that the interest be written off on the other two accounts. By this point, the Complainant was raising his voice to the Provider's agent, and the call was again terminated.

I note that a third-party credit servicing company wrote to the Complainant's Irish address in early **2014** in respect of his term loan balance and credit card. The Provider has submitted that the Complainant called the third-party company on **29 January 2014** and provided his US address.

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I note that subsequently, correspondence issued from the third-party company to the US address. The Provider further submits that the Complainant telephoned the company on **21 March 2014** and advised that he was living in the US. He contacted the company again on **24 March 2014** and the Provider says that, during that call, the Complainant informed the credit servicing company that he had three accounts with the Provider. It submits that he advised that he would clear the other two accounts, but not the term loan, as he said that it had been paid in full.

The Provider submits that the Complainant contacted it on **15 April 2014**, again advising that he had paid off the term loan and that he received letters from the third-party service provider in respect of the term loan and credit card. The Provider submits that the Complainant stated that he had been getting letters from the Provider and that he would pay the balance that he owed on his current account and credit card, as that balance stood in **2012**. This Office has not been supplied with a recording of this call, but this account of events is recorded in system notes.

The Provider submits that during a call on **5 June 2014**, the Complainant advised that he was unhappy that he was still receiving correspondence in respect of the term loan which he claimed to have repaid. He stated again that he was happy to pay the balance on the credit card and current account from **2012**. The Provider submits that its agent queried if the Complainant had sent in his change of address to the Provider's group collections. The Provider submits that the Complainant stated that he had done this numerous times. I have not been supplied with a recording of this call, but this account of events is recorded in system notes.

Some 18 months later, the Complainant called the Provider on **25 January 2016** and stated that he was home on holiday from America. He stated that he had come home to a lot of letters. He argued that he had paid off the term loan in **2011** and that he had an email from **2009** where the Provider confirmed he was on a fixed rate. The Complainant argued that the Provider had told him on several occasions in **2013 and 2014**, that it would contact him in respect of the debts that he was disputing, but it had never followed up. The Provider's agent suggested that he make a complaint and asked that he forward the emails he had referenced, and the agent provided his email address for this purpose.

The Complainant sent an email to the Provider on **26 January 2016** with details of why he refuted the balance on the term loan, but he did not submit the email from **2009** that he mentioned during the call. Instead, he forwarded an email chain from **December 2012** in which he argued that he had repaid the term loan in full. A final response letter issued from the Provider on **7 April 2016**, rejecting his complaint and outlining, amongst other things, the steps required to amend his correspondence address.

During a call the following year, on **13 June 2017**, the Complainant advised the Provider that he was considering moving back to Ireland if he could agree settlements with certain identified banks. He claimed to have already settled a number of outstanding debts with other banks.

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The Complainant set out his dispute of the various debts owing to the Provider. He argued that he was happy to clear what was owed on the credit card and current account, as those balances had stood in **2012**, but not the present balances and that he disputed any balance whatsoever in respect of the term loan.

The Complainant stated that he had received advice that the Provider could not do anything to him in the US, as it is outside the EU. The agent explained that she could not make any decision over the phone in respect of a settlement and the Complainant would have to fill out a Statement of Means. The Complainant refused to do this. The Complainant asked that the Provider call him if it wanted some of its money back and repeatedly spoke over the agent. He made it clear that he would not pay any of the fees or interest that had been applied.

Approximately 2 years later, the Complainant contacted the Provider by telephone on **26 March 2019** and queried the balances of the three accounts. It was explained that the balances had increased due to the accrual of interest. The Complainant questioned why the Provider had not written to him in America and stated that the letters were going out to his old Irish address. The Complainant asked if the Provider would give him a mortgage facility, if he cleared the arrears on the three accounts in full. The agent advised that she was not sure and that she could organise a branch appointment for him to discuss the three accounts.

The Complainant accepted that he never followed up in respect of the **2016** complaint. He expressed his shock that the overdue balances were coming up on his credit record. The Complainant indicated that he was willing to pay what he had owed as at **2012** but claimed that he had not received any notification after that, and that the Provider had his US address at all times. The agent recommended that he follow up with the branch and that if the branch had been at fault in respect of failing to change the correspondence address, the Provider may have to contact the ICB.

I note that the Complainant had a meeting with the branch manager on **27 March 2019** and a complaint was logged. By email dated **23 April 2019**, the Complainant indicated that he would pay the balance outstanding on his credit card and his overdraft as of **November 2012**, once he received the balance information in writing. The Complainant submitted that he had repaid the term loan in full in **2011**. As set out above however, the evidence indicates that the Complainant was mistaken in his belief in that regard, and that this was not in fact the case.

By letter dated **23 April 2019**, the Provider wrote to the Complainant at his request, with outstanding balance information in respect of the three accounts as of **12 November 2012**. The figures were as follows:

- €1,148.98 term account
- €2,009.32 current account
- €1,891.67 credit card.

The Provider clarified that these figures were not redemption figures and that the balances confirmed as outstanding in **November 2012** had since increased.

The Complainant did not make any payment to the Provider.

It is apparent to me from the evidence of the various conversations and communications between the Complainant and the Provider that, despite the Provider's error (in either failing to amend the Complainant's correspondence address or to inform him between **December 2012** and **April 2016**, of the appropriate steps he would need to take, to do so) the Complainant was in receipt of some or all of the arrears notifications being sent to him by the Provider. I am therefore satisfied that the Complainant was at all times on clear notice that each of the three accounts was in arrears, and that interest was accruing on those balances.

The reasons why the Complainant decided not to pay the balances due and owing on those accounts are known only to him, though he suggested on multiple occasions during phone conversations with the Provider that he was only willing to pay the balances of the credit card and current account as they stood in **late 2012** and would not pay anything towards the term loan. He also suggested on several occasions that he did not care whether the Provider registered a judgment against him, as he lived in the US and he not within the EU.

The Complainant has argued that he was under the impression at some point that the accounts were cleared and closed, as he did not receive further correspondence from the Provider. In my view, at no time was any impression given to the Complainant by the Provider that it would write off or agree a settlement of his liabilities - until it actually did write off those balances, in **December 2019 and February 2020**. I am satisfied that until that point, the Provider was clear that it expected full payment from the Complainant. Further, I note that the Complainant failed to follow up with the Provider in **2016** to amend his correspondence address, but he was aware at that time of his outstanding liabilities.

Insofar as the Complainant has suggested that he was in some way unaware of the outstanding balances on his accounts, due to the Provider's errors in respect of the amendment of his correspondence address, I do not accept this. The Complainant disputed certain aspects of the debts claimed by the Provider but the evidence shows that he was aware, at all material times, of the outstanding balances and despite several commitments to pay part of the debt, he failed to make any payment to the Provider after **November 2012**.

Reports to Credit Rating Agencies

I note that the terms and conditions applicable to each of the three accounts entitle the Provider to submit information to credit rating agencies.

I am satisfied that each of the Complainant's three accounts was in default since **late 2012 or early 2013** and that the Complainant was aware of this.

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I appreciate that the Complainant has continually disputed liability in respect of the term loan balance, but he was aware from **December 2012**, that there was a balance on the loan account. I note from the evidence that he did not pay the final instalment on his term loan, nor did he pay the additional interest that accrued, in light of an increase in the applicable interest rate over the term of the loan (though I note that owing to particular reasons, the Provider has compensated customers, including the Complainant, where the period/term of their loan was extended due to interest rate increases.)

In respect of the overdraft and the credit card, and while he had disputed his obligation to pay the interest and fees applicable to account balances, after **2012**, he has never disputed the balance on either account as of **November 2012**.

I am satisfied that each of the accounts has been in arrears for many years and that it was appropriate for the Provider to report these arrears, to the ICB.

The Provider submits that it had a practice of retaining ICB profile information for 24 months. In a submission on **25 January 2021**, the Provider stated that the following profile appeared in respect of the term account:

555555555555555555555555555555

It is submitted that a numeric value represented the number of payments in arrears at the time i.e. 1 equalled 1 payment in arrears, so 5 equalled 5 payments in arrears.

The Provider submitted that the following profile was showing in respect to the credit card:

KKKKKKKKKKKKKKKKKKKKKKKKKK

It submitted that K represents that the credit card has been revoked.

The Provider has explained that overdrafts on current accounts were not reported to the ICB.

The ICB ceased operations on **1 October 2021**, and in that context, it deleted all such arrears records, which are no longer available to be accessed by financial institutions. The Provider has a statutory obligation however to make reports to the Central Credit Register (CCR). Since **June 2017**, loans included on the CCR include credit cards, overdrafts and personal loans where these are for more than €500. Detailed information is provided in respect of each loan to include the outstanding balance.

The Provider has submitted a CCR record from **29 February 2020** in respect of the Complainant's current account. The record indicates that the account was closed on **19 February 2020** and that the outstanding balance was zero. The record also states that a credit card was revoked, which I accept is an accurate record.

Response to the Complaint

A complaint was made to the Provider in this matter in branch on **27 March 2019** and was logged by the Provider. An acknowledgement was issued to the Complainant on **2 April 2019** advising of his dedicated point of contact. Letters were also issued to the Complainant on **11 April 2019, 23 April 2019, 24 May 2019, 24 June 2019, 22 July 2019, and 1 August 2019** advising that the matter was being investigated.

Due to the delay involved, this Office wrote to the Provider on **16 August and 9 September 2019**. The Provider responded to this Office on **11 September 2019**.

A detailed final response letter was ultimately issued by the Provider on **1 October 2019**.

I note that during this period, there were several phone calls between the parties. A detailed update of the investigation was provided to the Complainant on **23 April 2019**. The Complainant was informed of the Provider's position in respect of several aspects of his complaint, including the Provider's failure to change his correspondence address. He was informed that the complaint could not be resolved as there were further enquiries to be conducted. The Complainant was extremely dissatisfied that the complaint would not be resolved on that date and claimed to have been informed by another agent that it would be resolved by the date in question. He was also extremely abusive and, in my opinion, needlessly so, in his characterisation of the behaviour and physical appearance of a manager who he had dealt with, in branch.

The Complainant demanded a call from the other agent who he had referred to (as having told him that the complaint would be resolved by that date) and I note that this agent called him later on **23 April 2019**. The agent denied confirming that the complaint would be resolved by that date, and stated that he had notified the Complainant that, on the date in question, he would be updated. The Complainant disagreed with this.

I note that during this call, the Complainant committed to clearing the **November 2012** balances from the credit card and current account the following day, or the following week. He also made a number of threats against the Provider in terms of media exposure saying repeatedly that "*I'm in the media*" and that he would expose "*you parasites*". The Complainant repeatedly mentioned his friends in the media and made clear his view that the Provider had "*picked the wrong man*". The Provider confirmed its position that it did not accept that the **November 2012** balances were redemption figures.

In the final response letter dated **1 October 2019**, the Provider set out a similar response to its submissions above, in respect of the complaint. In addition, the Provider outlined that it was conducting a review of its term loan accounts (where the interest rate had increased over the term, but the regular repayment amount remained the same, which meant that the loan was in fact repaid over a longer term). The Provider submitted that this practice was in line with the loan terms and conditions, but the review has been undertaken to ensure that no customer suffered financial loss by having the term of the loan extended.

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The Provider notified the Complainant that his account had been included in the review and a refund of **€255.89** would be applied to his account. It explained that the refund was calculated as the total cost between (i) what he actually paid over the term (up to the date he stopped payment) compared to (ii) what he would have paid if he had elected to increase his monthly payments, at the time of each interest rate change.

This issue is noted, insofar as it goes some way to explain why there was a lengthy delay between the making of the complaint on **27 March 2019** and the final response letter to the complaint on **1 October 2019**. I note that the Provider had already examined many of the issues arising, by the date of the **23 April 2019** phone call and had updated the Complainant accordingly.

It is undoubtedly the case that there was considerable delay by the Provider in issuing a final response in this matter, as it took it six months to respond to the complaint. I appreciate, that there was a large volume of correspondence, documentation, and telephone recordings to consider, and that the complaint raises multiple issues against the background of a banking relationship over a long number of years. I also note that there was a wider review ongoing in respect of the Provider's variable rate term loans and the Complainant's term loan was included in this review. This timeline however, even taking account of that complexity, is disappointing, and I do not accept that it was appropriate.

In summary, taking account of all of the evidence, I accept that the Provider's conduct fell far short of acceptable customer service levels, firstly in its failure to either amend the Complainant's correspondence address between **December 2012** and **April 2016** or to properly notify the Complainant of the steps he was required to take to amend the correspondence address. I also believe that the period of 6 months taken by the Provider to issue a final response to the Complainant, fell short of an appropriate timeline. On the basis of the evidence available however, the other aspects of the Complainant's complaint cannot reasonably be upheld.

In assessing the appropriate redress in this matter, I note that the evidence shows that the Complainant received the Provider's correspondence, with the assistance of people/neighbours at that location. It is disappointing however that no clear information was given to the Complainant by the Provider, until 2016, to correct the misinformation he had received from it, for more than three years.

Whatever frustration may have been caused to the Complainant regarding the correspondence address, up to 2016, I am satisfied that he was given very clear information from that time, but this did not alleviate his aggravation, or the way in which he communicated with the Provider's staff. I consider it appropriate to note and commend the very professional interactions of the Provider's staff members, who spoke with the Complainant over the telephone, on a number of occasions during 2019, when they were faced with very considerable aggression and inappropriate expletive language.

Whilst I take the view that a compensatory payment is appropriate to address the Provider's errors in its dealings with the Complainant, I consider it appropriate to take account of the overall context of the parties' interactions regarding these issues.

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I note in that regard that the Complainant had many opportunities to make payment to the Provider of the amounts which he did not dispute, but he elected not to do so. Rather he chose to comment regarding his satisfaction that the Provider would be unable to pursue him in the USA. I am also conscious that the Complainant's 3 account balances have now been written off by the Provider, with the ensuing financial benefit to the Complainant, arising from the fact that he no longer has to repay any portion of the overdue balances on the 3 accounts.

I accept that the complaint was adequately responded to by the Provider, when it sent its formal response to the investigation of this Office in **January 2021**, and in all of those circumstances, having considered the matter at length, I take the view that the compensatory sum of €1,500 offered in open correspondence to the Complainant at that time by the Provider, in recognition of its errors, was and is adequate, to redress the Complainant's inconvenience for the issues which arose.

In all of the circumstances and noting that this goodwill gesture of €1,500 remains open for acceptance by the Complainant, I do not consider it necessary or appropriate to make any directions, or to partially uphold the complaint. Rather, insofar as I have noted that the compensatory measure offered by the Provider to the Complainant is an appropriate figure to redress this aspect of the matter, it will be a matter for the Complainant to make direct contact with the Provider, if he wishes to accept this compensatory measure to conclude. In that event, I would urge the Complainant to communicate expeditiously with the Provider, as the Provider cannot be expected to hold that offer open indefinitely to the Complainant.

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)

1 July 2022

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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—

(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.