



<u>Decision Ref:</u>	2018-0036
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to advise on key product/service features Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant holds a mortgage loan account with the Bank. The Complainant made overpayments to her mortgage loan account, in addition to her standard monthly repayment amount, between April 2007 and June 2015.

The Complainant's complaint against the Bank is that it wrongfully failed to advise her on the suitability to her needs of making overpayments to her account during this period, and that the Bank failed to discuss or present her with the alternative options available to her which might have been financially more beneficial.

The Complainant alleges that the Bank has breached provisions of the Consumer Protection Codes 2006 and 2012 in this regard.

The Complainant's Case

The Complainant states that she opened her mortgage account with the Bank on 25 May 2005 with a loan amount of €240,000.00 to be repaid to the Bank over a term of 40 years.

In her complaint to this office dated 5 August 2016, the Complainant refers to her letter of complaint to the Bank (undated), received by the Bank on 3 June 2016, in which the Complainant stated as follows:

"My concern with [the Bank] relates to the fact that I commenced overpaying the standard repayment amount per month on 1 April 2007 and continued making

significant monthly overpayments to this loan until 1 June 2016. At no point throughout this 9 year 2 month timeframe of overpayment did [the Bank] provide me with any advice in relation to the suitability of my payments to my needs, and discuss and present the alternative options available to me that would have been financially more beneficial to me than the action I took. Also, [the Bank] benefited by me taking this overpayment approach on my loan as my loan interest rate is a Tracker Rate linked to ECB and this was a loss making product during the downturn of interest rates during this timeframe. Therefore it was also beneficial to [the Bank] to allow me overpay my mortgage and not provide me with alternative options to same or provide me with guidance in relation to the suitability of same to my needs”.

The Complainant states that she is very disappointed that the Bank would knowingly take advantage of a customer in such a way *“and not be open and transparent to outline that the customer is facilitating the bank in a financial gain that the customer could have benefitted from had they taken an alternative approach with their personal finances, and that my bank did not proactively bring this to my attention and act in my best regard.”*

The Complainant contends that the Bank has breached both the Consumer Protection Code 2006 and the Consumer Protection Code 2012 in this regard, in a number of respects.

The Complainant seeks the following resolution of her complaint:

“In order to resolve my complaint, I would like [the Bank] to fully review my mortgage account and conduct actuarial calculations necessary to put my loan back in the position it should have been in had I made no overpayments to same over the nine years two months that I overpaid same, repay the overpayments made to me in full, and pay me an appropriate interest that my funds would have earned via the range of financial instruments available to a retail customer during this 9 year 2 months period, including Tracker Bonds returns that were available at this time.”

The Complainant raises an additional concern about correspondence received from the Bank in March 2016 advising her of a rate reduction of 0.05% on her mortgage interest rate, leading to a reduction in her monthly mortgage repayment amount from €196.12 to €131.67. The Complainant states that *“much as I appreciate any reduction in cost on my borrowing, I fail to comprehend how a 0.05% reduction on my lending rate has resulted in such a significant reduction in my monthly repayment, and I am very concerned that [the Bank] have made another error on my mortgage account”.*

The Complainant seeks an explanation from the Bank for this reduction and the correction of any error that might have been made.

The Complainant is dissatisfied with the Bank’s response to her complaint to date. She submits that the Bank has not addressed the specific concerns and issues raised by her.

In addition, the Complainant is dissatisfied with her interactions with the Bank's complaints handling team since June 2016, and submits that the Bank has failed to adhere to the timelines for complaints handling set out in the Consumer Protection Code 2012.

The Bank's Case

The Bank submits that the Complainant's overpayments to her mortgage loan account were not a financial product sold by the Bank, nor a financial service offered by the Bank. The Bank states that an overpayment is an instruction from a customer to the Bank to increase a regular direct debit mortgage repayment, over and above the regular monthly repayment amount.

The Bank submits that the Complainant chose to make regular overpayments to her mortgage loan account of her own accord, that she instructed the Bank to carry out this request, and that she was under no obligation under the terms of her mortgage loan to pay more than her regular monthly repayment amount. The Bank states that the Bank acted on the Complainant's instructions in this regard, during the period in question, and facilitated an overpayment on the Complainant's mortgage loan account in accordance with her request.

The Bank states that the monthly overpayments, made in addition to the normal monthly mortgage repayment, were capitalised immediately off the balance of the Complainant's mortgage loan account and have had the effect of reducing the mortgage balance by this additional amount. The Bank states that, as a result, the Complainant has had the benefit of these additional repayments reflected in the lower mortgage balance and lower interest charged.

The Bank states that the Complainant's mortgage loan avails of an interest product linked to the European Central Bank base rate. The Bank submits that it has reviewed some of the regular savings products available during the period in which the Complainant was making overpayments, and accepts that *"at certain periods the savings rate may have been slightly higher than your mortgage product interest rate"*. However, the Bank states that *"when considering that any potential interest earned in savings is subject to annual Deposit Interest Retention Tax (DIRT), [it is] unable to comment if the overpayments in place on [the Complainant's] mortgage account made [her] considerably worse off financially"*. The Bank submits that any projected illustration on potential savings products during the period in question would be hypothetical at best.

The Bank contends that at any point during the period that the overpayments were being made, the Complainant could have contacted her local Bank branch to seek advice on the alternative options that were available to her, or to seek a financial review with one of the Bank's qualified financial advisers. The Bank states that it was also open to the Complainant to visit the Bank's website to view information on making overpayments, and to view information on the various savings and investment products which were available to customers at the time in question.

In any event, the Bank contends that it was under no obligation to contact the Complainant to discuss the processing of overpayments on her mortgage loan account as opposed to investing the funds in a number of savings or investment products, and that the instructions received from the Complainant during the period in question were completed as requested. The Bank does not accept that it has acted in breach of the requirements of the Consumer Protection Code 2006 and 2012 in this regard.

The Bank submits that the Complainant received annual statements on her mortgage loan account which would have illustrated the interest paid and the accelerated capital reduction of the mortgage. The Bank submits that the onus was on the Complainant to contact the Bank if she had any queries with regard to the overpayments or the operation of her account.

The Bank has declined to refund the overpayments to the Complainant. The Bank states that, once an overpayment is in place, this overpayment cannot later be refunded or withdrawn. The Bank states that this amount was immediately capitalised and applied to the mortgage account and that, as the Complainant has already benefitted from the reduced mortgage balance, reduced repayments, and reduced interest on the loan outstanding, she cannot benefit again by withdrawing the overpayment.

In response to the concern expressed by the Complainant in relation to her tracker rate reduction in March 2016 and the effect this had on her monthly payment, the Bank affirms that on 23 March 2016 it issued a letter to the Complainant noting a rate reduction of 0.05%. The Bank states that the consequential reduction applied to the normal monthly payment was calculated based on the mortgage balance at that time, the interest rate applicable, and the term remaining on the loan.

The Bank states that it acknowledges that it took some time to finalise its investigation into the Complainant's complaint, and that this may have caused the Complainant additional frustration. The Bank submits that it logged the Complainant's complaint on the date it was received in the Bank and that it issued the required letters in response. The Bank notes that the Complainant states that she did not receive certain letters from the Bank in relation to her complaint, in particular those dated 30 June 2016 and 14 July 2016. The Bank submits that these letters issued to the Complainant in line with the requirements of the Consumer Protection Code 2012, and were not returned to the Bank undelivered. The Bank regrets that the Complainant may not have received these letters, and states that it re-issued this correspondence to the Complainant on 18 July 2016.

In issuing its final response to the Complainant dated 22 July 2016, the Bank offered the Complainant a goodwill gesture in the sum €250.00 in recognition of any lapse in service which the Complainant may have experienced with regard to the handling of her complaint.

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

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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 16 April 2018, 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, the final determination of this office is set out below.

The Complainant has made a complaint against the Bank which concerns overpayments made to her mortgage loan account between April 2007 and June 2015.

The Complainant's complaint against the Bank is that it wrongfully failed to advise her on the suitability to her needs of making overpayments to her mortgage account during this period, and that the Bank failed to discuss or present her with the alternative savings and investment options available to her which might have been of greater financial benefit. The Complainant alleges that the Bank, in so doing, did not act honestly, fairly and professionally, or in her best interests, and that the Bank has breached provisions of both the Consumer Protection Code 2006, and the Consumer Protection Code 2012, in this regard.

The Complainant raises an additional concern about correspondence received from the Bank in March 2016 advising her of a rate reduction of 0.05% on her mortgage interest rate, leading to a reduction in her monthly mortgage repayment amount. The Complainant queries how such a small rate reduction led to what she considers to be a significant reduction in repayment, and is concerned that the Bank has made an error in this regard.

Further, the Complainant is dissatisfied with her interactions with the Bank's complaints handling team, and submits that the Bank has failed to adhere to the timelines for complaints handling set out in the Consumer Protection Code.

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As a preliminary issue, I note that the Complainant was advised by this office, on 17 February 2017, that the Ombudsman was precluded from examining any aspect of her complaint concerning conduct of the Bank which occurred prior to August 2010, ie. more than six years before the complaint was made to this office.

In circumstances where recent legislation has extended this 6 year limitation period in certain circumstances, for complaints in relation to conduct that relates to a long term financial service, subject to relevant legislative provisions, I am satisfied that this office now has the required jurisdiction to examine the conduct of the Bank occurring between 2007 and 2016, which forms the subject matter of this complaint.

Issue of Overpayments

The submissions show that the Complainant drew down a mortgage loan with the Bank in May 2005, in the sum of €240,000.00, for a term of 40 years, and that she commenced making regular monthly direct debit repayments of €838.55 thereafter. The Complainant's mortgage is a Flexible Mortgage which tracks the European Central Bank rate with a margin which is fixed for the life of the loan.

The submissions show that the Complainant made overpayments to her mortgage loan account, over and above the regular monthly repayment amount, between April 2007 and June 2015, and that these overpayments led to a reduction in the balance of the Complainant's mortgage. The result of this was a lower balance, lower interest, and lower monthly repayments. I note that the Complainant, in her complaint submissions, contends that she made overpayments until June 2016. However, a review of the evidence establishes that the last overpayment was made in June 2015.

I note that the Complainant wrote to the Bank, on 15 May 2007, stating that she wished to increase her monthly mortgage repayment to €1,700.00 "*with immediate effect*". The Bank's written response, dated 5 June 2007, confirmed that the Complainant's request had been implemented and that the sum of €1,700.00 would be collected from 1 July 2007 onwards, as requested. The Bank advised the Complainant to make contact with the Bank if she had any queries regarding the matter.

The Complainant wrote to the Bank again on 14 April 2011, stating that she wished to increase her monthly mortgage repayment to €2,350.00 "*with immediate effect*", and requesting confirmation in writing that this had been done. The Bank acted on this instruction, and confirmed this in writing to the Complainant on 14 June 2011.

The submissions show that the Bank received an undated letter from the Complainant on 27 May 2015, requesting that her monthly mortgage repayments be amended to the normal monthly repayment amount. The Complainant advised the Bank as follows:

"I no longer wish to make any overpayment to the standard monthly repayment".

The Bank's Payments Team wrote to the Complainant on 5 June 2015, as follows:

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“You asked us to cancel the monthly step-up payment of €2,188.84 on your mortgage account.

We’ve now cancelled this for you and your standard payments will start from 1 July 2015”.

The submissions show that the collection of standard monthly mortgage repayments in the sum €196.08 commenced with effect from 1 July 2015, and that no further overpayments were collected on the Complainant’s mortgage loan account after that date.

The submissions show that the Complainant raised her complaint with the Bank in June 2016, in an undated letter received by the Bank on 3 June 2016, regarding the overpayments she had been making to her mortgage loan account, and her request to have the overpayments returned to her.

The Complainant refers to specific provisions of the Consumer Protection Codes 2006 and 2012 in support of her complaint. She contends that the Bank has acted in breach of the requirements of these provisions in failing to advise her on the suitability of making the overpayments to her account, or to discuss with her the alternative savings and investment options which would have been available to her at the time, and which might have been of greater financial benefit to her. In particular, the Complainant refers to a number of the General Principles set out in Chapter 1 of the 2006 Code, (which are also contained in the 2012 Code), and a number of the Common Rules set out in Chapter 2, of the 2006 Code, as follows:

Consumer Protection Code 2006

Chapter 1 General Principles

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;*
- 2. acts with due skill, care and diligence in the best interests of its customers;*
- 3. does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;*

...

- 12. complies with the letter and spirit of this Code.*

Chapter 2 Common Rules for all Regulated Entities

12. A regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the

consumer. The method of presentation must not disguise, diminish or obscure important information.

30. A regulated entity must ensure that, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated entity is aware:

a) any product or service offered to a consumer is suitable to that consumer;

...

The Complainant also refers to number of provisions contained in Chapter 5 of the 2012 Code, in relation to “Knowing the Consumer and Suitability”, as follows:

Consumer Protection Code 2012

Chapter 5 Knowing the Consumer and Suitability

5.3 A regulated entity must gather and maintain a record of details of any material changes to a consumer’s circumstances prior to offering, recommending, arranging or providing a subsequent product or service to the consumer. Where there is no material change, this must be noted on a consumer’s records...

5.17 A regulated entity must ensure that any product or service offered to a consumer is suitable to that consumer, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated entity is aware.

The following additional requirements apply:

a) where a regulated entity offers a selection of product options to the consumer, the product options contained in the selection must represent the most suitable from the range available from the regulated entity;...

The Consumer Protection Code was introduced by the Central Bank of Ireland in August 2006, and came fully into effect on 1 July 2007, in order to provide a consistent level of protection for consumers. This Code was updated and replaced by a revised Consumer Protection Code 2012, which came into effect on 1 January 2012. The **Code** is a set of rules and principles that all regulated financial services firms must follow when providing financial products and services.

An overpayment on a mortgage loan account occurs when a customer decides to increase their direct debit repayment, over and above the regular monthly repayment amount, and instructs the Bank accordingly.

In this complaint, having reviewed the terms and conditions of the Complainant’s mortgage loan, it is evident that there was no obligation on the Complainant under the terms and conditions of her mortgage to make overpayments to her mortgage loan account, over and above the regular monthly repayment amount. Nor is there any

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evidence in this complaint that the Bank offered, recommended or advised the Complainant to make overpayments to her mortgage loan account. It was open to the Complainant to increase her regular monthly repayment amount, and thereby to avail of the benefits of making additional monthly payments to her mortgage loan account, if she wished to do so.

It was, in the normal way, open to the Complainant to seek advice from the Bank, or indeed from an independent financial adviser, in relation to the making of overpayments to her mortgage loan account, and to seek information on alternative savings and investment options which might have been available to her at the time. From the evidence before me, it does not appear that she sought any such advice or information from the Bank during the period in question.

The Bank is obliged under the Consumer Protection Code, in all its dealings with customers, to act honestly, fairly and professionally, and with due skill, care and diligence, in the best interests of the customer. However, in circumstances where the Complainant elected of her own accord to make overpayments to her account, and sent a written instruction to the Bank to implement her request, I do not consider that there was any obligation on the Bank, under the provisions of the Consumer Protection Code, to contact the Complainant to discuss her decision to make overpayments, or to present her with alternative savings or investment options. Nor, in the circumstances of this complaint, was there any requirement under the Consumer Protection Code for the Bank to ensure, or to advise on, the suitability to the Complainant's needs, of her instruction to increase her mortgage loan repayment amount. I note that, upon receipt of the Complainant's written instruction dated 15 May 2007, the Bank advised the Complainant in its written response dated 5 June 2007 to make contact with the Bank if she had any queries regarding the matter.

It is evident that the Bank, upon receipt of the Complainant's written instructions with regard to overpayments, implemented the instructions received, and provided the Complainant with immediate application of these funds against her mortgage balance. There is no evidence that it did so incorrectly, or without the required skill, care and diligence.

Once overpayments were made to the Complainant's mortgage loan account, and applied to the capital balance, the Complainant had the benefit of these additional repayments reflected in the reduced mortgage balance, reduced repayments, and reduced interest on the loan outstanding.

The submissions indicate that the Bank acknowledged in writing the receipt and implementation of the Complainant's request to increase her regular monthly mortgage repayment amount. The Complainant received annual statements on her mortgage loan account which illustrated all the mortgage transactions during the period in question, including the interest paid and the accelerated capital reduction. When the Complainant requested in May 2015 that her overpayments cease, and that her standard monthly repayments resume, the Bank confirmed in writing that it had acted on her instructions.

In these circumstances, having considered the submissions made by both parties, I see no evidence of wrongdoing on the part of the Bank, such as would justify a finding that the Bank has acted in breach of the provisions of the Consumer Protection Code in relation to suitability. Nor does the evidence support the Complainant's contention that the Bank failed

to act honestly, fairly and professionally, or with due skill, care and diligence, in the best interests of the Complainant, as required by the Consumer Protection Code, in the manner in which it dealt with and implemented the Complainant's overpayment instructions.

The Bank states that it is not in a position to refund overpayments as the Complainant has already had the benefit of these overpayments reflected in her mortgage loan account.

For these reasons, I find no grounds upon which to direct the Bank to refund the overpayments to the Complainant's mortgage loan account, from which the Complainant has already benefitted.

In these circumstances, this aspect of the complaint is rejected.

Issue of Rate Reduction and its Impact on the Complainant's Monthly Repayment

Clause 15(a) of the Mortgage General Terms and Conditions in respect of "*The Monthly Payment*", provides that:

"the Monthly Payment may be increased or reduced so as to take account of and provide for any increase or reduction in the Bank's Mortgage Rate or so as to include any increase or reduction in the amount which the Lender may require to be paid in respect of a further loan or an agreed reduction in the Mortgage balance as a result of a lodgement to the Account"...

Clause 16 of the Mortgage General Terms and Conditions of, in respect of "*Interest Rate*", provides that:

"All loans are subject to the Bank's Mortgage Rate at the date the loan is drawn down. Subsequently, the interest rate may vary in accordance with the terms and conditions of the loan offer..."

The Complainant's mortgage is a Flexible Mortgage which tracks the European Central Bank rate with a margin which is fixed for the life of the loan. This is set out in the "*Special Conditions Relating to Loan*" as found in the "*Offer of Advance*" to the Complainant dated 3 May 2005. The Bank has submitted a schedule of the ECB Base Rate from November 2007, and a schedule of the interest rates which have applied to the Complainant's mortgage since it was drawn down in May 2005. The applicable interest rate is also set out at the end of the statements of account for the Complainant's mortgage loan account, which have been submitted in evidence, and which were sent to the Complainant for the period in question.

The Complainant expressed a concern about correspondence received from the Bank in March 2016, which advised her of a rate reduction of 0.05% on her mortgage interest rate leading to a reduction in her monthly mortgage repayment amount from €196.12 to €131.67.

The Complainant refers to an earlier rate reduction of 0.10% in June 2014, and again in September 2014, which she submits caused a lower reduction in her monthly repayment, than the 0.05% reduction in March 2016.

The Complainant states that *“much as I appreciate any reduction in cost on my borrowing, I fail to comprehend how a 0.05% reduction on my lending rate has resulted in such a significant reduction in my monthly repayment, and I am very concerned that [the Bank] have made another error on my mortgage account”*.

The Bank states that on 23 March 2016 it issued a letter to the Complainant noting the ECB rate reduction of 0.05%. The submissions show that this resulted in a consequential reduction in the interest rate applicable to the Complainant’s mortgage loan account from 0.80%, which had applied since 19 September 2014, to 0.75%, applicable as of 26 March 2016, leading to a reduction in the Complainant’s monthly mortgage repayment amount.

The Bank states that *“the normal monthly payment is calculated based on the mortgage balance, interest rate applicable, and term remaining on the Complainant’s borrowings”*. In support of the Bank’s response dated 9 February 2018, the Bank has submitted an Excel worksheet outlining the calculation of the mortgage repayments in June and September 2014, and in March 2016. An extract thereof is reproduced below. The Bank states that the monthly Tax Relief at Source (TRS) amounts, which are outlined in the mortgage statements, are taken into account in the monthly repayment also.

Date of Calculation	Term	System Balance	System Rate	Calculation of Payment	System Expectation	Overpayment
22/06/2014	372	72446.48	0.90%	£223.25	223.25	2165.92
13/09/2014	369	65510.58	0.80%	£200.33	200.33	2188.84
18/03/2016	351	42736.5	0.75%	£135.64	135.64	0

I accept that the information contained in the spreadsheet reflects the information contained in the statements of account for the Complainant’s mortgage loan.

The submissions show that a recalculation of the mortgage loan repayment amount took place on 22 June 2014, to reflect a 0.1% reduction in the applicable interest rate, leading to a reduction in the Complainant’s monthly mortgage repayment amount from €263.99 to €215.61 (these amounts do not include the Tax Relief at Source (TRS) element of the payment which would mean a change from €272.98 to €223.25).

A further recalculation of the mortgage loan repayment amount took place on 13 September 2014 to reflect, among other elements, another 0.1% reduction in the

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applicable interest rate, as a result of which the monthly repayment amount was reduced to €194.61 (€200.33 when inclusive of TRS).

It is not disputed that the Complainant continued to make substantial monthly overpayments to her mortgage loan account up until June 2015.

Clause 15(b) of the *Mortgage General Terms and Conditions* sets out that

“(b) In the event that the amount of the Loan is at any time or from time to time reduced other than by the Monthly Payment by an amount or amounts which has/have been agreed with the Lender, the Monthly payment shall be reduced to ensure that the loan is repaid with interest at the Bank’s Mortgage Rate not earlier than the loan would have been discharged if the reduction in the amount of the loan had not been made” [our underlining]

This means that any overpayment made by the Complainant did not result in a reduction in the term of the mortgage but in the overall balance. In its letter to the Complainant dated 22 July 2016, the Bank stated that “[t]he overpayments are capitalised immediately off the balance of the account on the system”.

The repayment amount set in September 2014 was on the basis of the capital balance outstanding at that date, the interest rate applicable and the term remaining, resulting in a repayment of €194.61. From that date on, up to March 2016 (a period of some 16 months), the repayment amount remained more or less static, despite the significant overpayments which the Complainant continued to make until June 2015.

At the time that the next interest rate reduction of 0.05% took effect in March 2016, the capital balance outstanding on the Complainant’s mortgage loan had significantly reduced due to the sizeable overpayments made in addition to the monthly repayments. In its submission to this office dated 9 February 2017, at Schedule D, the Bank set out that “[t]he Complainant had made a total of €23,105.16 in repayments to the loan at this point – thereby impacting on the loan balance and the subsequent scheduled monthly repayment...”.

If these overpayments had been taken into account in the monthly repayment amount each time the overpayments were made, the reduction in the repayment amount due to the interest rate change in March 2016 would not have appeared so dramatic. I agree with the Complainant that, where a 0.1% reduction to a larger capital balance and a longer term leads to a less significant relative decrease in the repayment amount, than a 0.05% reduction to a shorter term and lower capital balance, this could be perceived to be an inconsistency. However, the reduction in the repayment amount in March 2016 took into account not just the interest rate reduction of 0.05% but also the 9 months of overpayments (October 2014 to June 2015), and the elapse of a further 16 months of the loan term, whereas in September 2014 only 3 months overpayments were taken into account, and the elapse of 3 months of the loan term, in addition to the 0.1% decrease in the interest rate (as well as any TRS) to arrive at the October 2014 repayment amount.

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Despite the lower balance on 1 March 2016, the repayment amount had only been amended in a minor way since that calculated further to the September 2014 interest rate change. Therefore, when the recalculation occurred after the March 2016 interest rate reduction, it took into account the rate reduction, the shorter remaining term, the repayments made in the intervening period AND the significant overpayments made in the previous 16 months. Consequently, the resulting reduction in the repayment amount appeared much larger than the effect of the 0.1% decrease in the September 2014.

I do not consider that the Complainant was prejudiced by the fact that the repayment amount did not change month to month. The capital balance reduced on receipt of each overpayment and the debit interest charged was based on the reduced capital balance. Furthermore, in this instance, where the Complainant was in fact making overpayments, I do not consider that she was prejudiced if the repayment amount was greater on a given day than it might have been if a more frequent recalculation had occurred, given that she was paying in excess of this amount on a voluntary basis. The Complainant had determined the amount of her overall payment and the Bank took the difference and applied it to the overpayment, eg. the Complainant instructed the Bank on 14 April 2011 to increase her mortgage repayment to €2,350.00 each month regardless of, but inclusive of, the amount of the regular monthly repayment.

I consider that it would have been helpful if the Bank had made greater efforts to explain the reason for the apparent incongruity between the change in the Complainant's repayments after a 0.1% decrease in the rate in June and September 2014 in comparison with the change in her repayments after the 0.05% decrease in March 2016 which was coincidental with the taking into account of the numerous and sizeable overpayments in the intervening period and thus appeared to cause the greater reduction in the Complainant's payments for a smaller reduction in the interest rate. Nevertheless, I can find no wrongdoing by the Bank in this regard.

In these circumstances, this aspect of the complaint is not upheld.

As a separate but related matter, this office wrote to the Bank on 22 January 2018, requesting a copy of the letters which issued to the Complainant in June 2014, September 2014 and March 2016, in relation to the rate reductions applicable on each occasion, and further clarification on how the rate reduction impacted on the monthly repayment on each occasion.

Provision 6.6 of the Consumer Protection Code 2012 sets out the following requirements, in this regard:

*"A **regulated entity** must notify affected **personal consumers** on paper or on another **durable medium** of any change in the interest rate on a loan. This notification must include:*

- a) the date from which the new rate applies;*
- b) details of the old and new rate;*
- c) the revised repayment amount; and*

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*d) an invitation for the **personal consumer** to contact the lender if he or she anticipates difficulties meeting the higher repayments.*

In the case of a mortgage where a revised repayment arrangement has been put in place in accordance with the Code of Conduct for Mortgage Arrears, the notification must clearly indicate the revised repayment amount required in Part c) that applies to the revised repayment arrangement.”

I am disappointed to note that, in its responses dated 9 February 2018 and 20 February 2018, both of which were made available to the Complainant, the Bank indicated that it was unable to provide copies of the interest rate change letters requested, which it states would have issued to the Complainant in June 2014, September 2014 and March 2016, the reason being that *“the communication would have been done as a mail merge”*. However, the Bank has provided copies of template letters which it submits would have been used in communicating interest rate and repayment changes to the Complainant in June 2014, September 2014 and March 2016. The Bank submits that the Complainant would have received letters addressed specifically to her, outlining her account, interest rate and repayment details, on those occasions. Indeed, the Complainant’s submissions indicate that she did receive these communications from the Bank.

Customer Service Issues

The Complainant wrote a letter of complaint to the Bank in June 2016, and this was received by the Bank on 3 June 2016. The Complainant is dissatisfied with her subsequent interactions with the Bank’s complaints handling team.

The Complainant submits that the Bank failed to issue her with written updates in relation to her complaint as required by Chapter 10 of the Consumer Protection Code 2012, in respect of *“Complaints Resolution”*, and that it failed, without reasonable explanation, to respond to two emails sent by her to the Bank in relation to her complaint, one on 5 July 2016 and one on 15 July 2016.

In addition, the Complainant raises issues of complaint regarding the frustration caused by contact phone numbers on complaints correspondence, which she submits were either out of order, or very difficult to make contact on, and a change in the Bank personnel responsible for investigating her complaint.

Chapter 10 of the Consumer Protection Code 2012 sets out certain obligations on regulated entities in respect of complaints handling and complaints resolution, to include the following provisions, relevant to this complaint:

Complaints Resolution

...

10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant’s satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

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- a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;*
- b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;*
- c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;*
- d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and*
- e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:*
 - i) the outcome of the investigation;*
 - ii) where applicable, the terms of any offer or settlement being made;*
 - iii) that the consumer can refer the matter to the relevant Ombudsman, and*
 - iv) the contact details of such Ombudsman.*

The Bank submits that it has complied with these requirements in terms of the management of the Complainant's complaint, but recognises that certain aspects of the complaints handling process may have caused the Complainant some frustration.

The Bank received the Complainant's complaint on 3 June 2016, and the Complainant has confirmed that she received the required 5 day acknowledgement letter from the Bank dated 10 June 2016, and the subsequent letter dated 17 June 2016 which advised that the Bank would issue a full response, or alternatively an update on the progress of the complaint, by 30 June 2016.

The Complainant submits that she did not receive two subsequent letters from the Bank, dated 30 June 2016 and on 14 July 2016, which the Bank has stated that it issued to her in accordance with the requirements of the Code. It is the Complainant's position that she does not generally experience any difficulty with receiving post, and that she was not notified by the postal service that it had attempted without success to deliver items of post to her in or around the time that these letters were said to have been issued to her by

the Bank. The Complainant submits that she has doubts whether the Bank issued these letters to her at all.

It is difficult to resolve this aspect of the complaint. The Bank has submitted copies of the letters in question, dated 30 June 2016 and 14 July 2016, and states that its records indicate that these letters were despatched to the Complainant and were not returned to the Bank undelivered. Once issued by post, the Bank is not accountable for any lapse in the postal service in delivering the letters to the Complainant.

Nonetheless, it is evident that the Complainant emailed the Bank on 5 July 2016 to inquire why she had received no further communication, either by phone or in writing, in respect of her complaint, and that she emailed the Bank again on 15 July 2016 seeking an explanation for the lack of further correspondence. Once on notice, as early as 5 July 2016, that the Complainant had not received the correspondence in question, dated 30 June 2016 and 14 July 2016, the Bank should have re-issued the letters to the Complainant without delay. It is unclear why the Bank did not respond to the Complainant's emails, and re-issue the correspondence in question, until after the Complainant had spoken to a member of the Bank's Complaints Handling Team on 18 July 2016. I accept that these aspects of the complaints handling process caused the Complainant unnecessary additional anxiety.

This notwithstanding, I note that these letters were re-issued, and that the Bank transmitted its final response letter to the Complainant on 22 July 2016, which was within the required timeframe set out within the Code.

I have considered the additional customer service issues raised by the Complainant regarding the frustration caused by contact phone numbers on complaints correspondence (which were either experiencing technical difficulties when the Complainant attempted to use them, or were difficult to get through to on account of volume of calls), and the change mid-June 2016 of Bank personnel responsible for investigating her complaint. I note the Bank's response to these aspects of the complaint.

Every customer of a financial service provider is entitled to expect a good service and to have things put right if they go wrong. When things do go wrong, it is important that financial service providers manage complaints properly so that the customer's concerns are dealt with appropriately, and any additional hardship is avoided. The process should be clear and straightforward, and readily accessible to customers, in order to avoid a complaint escalating unnecessarily. While it has not been established, in the circumstances of this complaint, that the Bank acted in breach of the requirements of the Consumer Protection Code in the manner in which it managed the Complainant's complaint, I consider that there were unfortunate aspects of the handling of the complaint which led to additional and unnecessary anxiety on the part of the Complainant.

I am aware that, in its final response letter dated 22 July 2016, the Bank offered the Complainant a sum of €250.00 as a goodwill gesture *"in recognition of any lapse in service you have experienced with regard to your complaint, the length of time the issue has been*

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ongoing, any inconvenience the subject matter of the complaint has caused you. Our offer also includes any telephone/stationery costs incurred in progressing your complaint”.

I consider this to be a reasonable sum of compensation for the inconvenience caused to the Complainant by certain aspects of the Bank’s handling of her complaint, as distinct from the subject matter of her complaint.

In these circumstances, on the basis that this sum remains available to the Complainant, this aspect of the complaint is not upheld.

Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

10 May 2018

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) in accordance with the Data Protection Acts 1988 and 2003.**