



<u>Decision Ref:</u>	2018-0210
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Off-set Mortgage
<u>Conduct(s) complained of:</u>	Application of interest rate Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's administration of a mortgage account, and in particular the Provider's clarity of communication in respect of balances outstanding at various times throughout the lifetime of the mortgage.

The Complainants' Case

The Complainants took out a mortgage with the Provider, which was drawn down in April 2006. The letter of approval dated the 7th of November 2005 details the following loan terms: €288,000 at an interest rate of "ECB + max 1.10%" to be repaid over 15 years. The total amount repayable was described as €360,486.94.

In addition to the agreed monthly repayments, the Complainants made monthly payments of €250.00 from June 2007 to January 2012, and two lump sum payments of €7,400 and €50,000 in May 2006 and January 2008, respectively.

By way of example, the statements received by the Complainants display information under headings as follows:

Date	Description	Transaction Amount	Interest Due	Arrears (DR) Prepayment (CR) Balance	Current Loan Balance
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24 Dec	Direct Debit	1,917.36CR		16,167.36CR	
24 Dec	Repayment Due	1,917.36		14,250.00CR	
31 Dec	Interest Accrued		85.75DR		73,467.52DR
31 Dec	Closing Balance			14,250.00CR	73,467.52DR

The Complainants submit that, on a plain and reasonable reading of the foregoing, it means that the amount owed by them on the mortgage is in fact the current loan balance minus the credit (prepayment) balance. On that basis, the foregoing figures would mean that the amount outstanding on the loan would have been €59,217.52. The Complainants contend that they understood this to be the correct and logical way to calculate the balance outstanding.

The Complainants were therefore surprised to be told, in 2016, that they owed the amount listed as “current loan balance”, and not that balance minus the “prepayment CR” balance. This information was given to them when they were applying for funds to extend their house (in the belief that their original mortgage would soon be paid off in full).

The Complainants state that at no stage were they ever advised that the net balance (i.e. current loan balance DR minus the prepayment CR) was not the correct balance outstanding.

The complaint is that the Provider has failed to provide information to the Complainants in a clear and accurate manner, and that the Provider has miscalculated the balance owed on the loan account. The Complainants would like to be paid out the funds they have described as the “credit balance” on their loan account.

The Provider's Case

The Provider states that the “Current Loan Balance” detailed on the Complainants’ statement is inclusive of any arrears or credit balance on the mortgage and this is clearly outlined on the reverse of the statement.

The Provider states that, in addition to annual statements and in response to this complaint, it has provided the Complainants with detailed breakdown of the account and offered €500 as a goodwill gesture.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider’s

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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 19 November 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, I set out below my final determination.

I have been provided with the annual statements that were furnished to the Complainants for this account from inception. The statement for the 31st of December 2006 lists the following pertinent information:

Date	Description	Transaction Amount	Interest Due	Arrears (DR) Prepayment (CR) Balance	Current Loan Balance
28 Apr	Loan Amount				288,000.00DR
<i>The year's payments and interest charges are then set out for Apr-Dec until the final, bottom line of the statements which reads:</i>					
31 Dec	Closing Balance			0.00CR	271,474.41DR

On this statement there could be no confusion, given that the figure in the "Arrears (DR) Prepayment (CR) Balance" column is zero. It is nonetheless worth noting the following information displayed on the reverse side of the statement, a page entitled "YOUR MORTGAGE STATEMENT EXPLAINED":

“ARREARS (DR), PREPAYMENT (CR) BALANCE

An amount (DR) is the amount by which you have underpaid the repayments due.

An amount (CR) is the amount by which you have overpaid the repayments due.”

“CURRENT LOAN BALANCE

This represents the amount you owe on your account.

This balance also includes any arrears or prepayments on your account but is not the amount needed to fully repay your loan.”

The reason the “current loan balance” is not the amount needed to fully repay the loan is because it would not take into account, for example, an early repayment charge that could apply to any given loan (albeit not applicable to the Complainants’ loan), or other charges that could apply and whose value would only be known on the day of redemption.

I would note at this point that the Complainants have maintained their mortgage account in an exemplary fashion. The significance of the “Arrears/Prepayment” column is usually more pressing on a customer who has fallen behind on their repayments as it informs them of exactly how much they need to pay in order to get out of arrears and back up to date on their mortgage. In other words, that column is essentially a record of how far behind or ahead of the scheduled repayments a customer is.

The confusion appears to have begun from 2007 onwards. On the 2007 annual statement, the final lines read as follows:

Date	Description	Transaction Amount	Interest Due	Arrears (DR) Prepayment (CR) Balance	Current Loan Balance
31 Dec	Closing Balance			1,750.00CR	256,348.46DR

On the Complainants’ logic, this statement would in fact mean that the outstanding balance on their account was not €256,348.46 but €254,598.46. However, this statement contains an identical “YOUR MORTGAGE STATEMENT EXPLAINED” page on the reverse of each page of the statement where it explains, among other things, that the current loan balance represents the amount you owe on your account.

Each year from then on, the “credit” balance in the arrears column has increased as the Complainants continued their prepayments, culminating in a prepayment credit figure of €14,240.00 when the Complainants made their complaint.

In 2007 and 2008 the Complainants made payments of €7,400.00 and €50,000.00 into the account. These payments were applied to the account as principal reductions and therefore did not remain in the Arrears/Prepayment column. This is clearly reflected in the 2007 and 2008 statements.

Each statement has an identical explanation of the figures on the reverse page of the statements. These explanations are sufficiently clear. They are not, in my view, "misleading". If the Complainants have misunderstood their outstanding loan balance, I am not satisfied this can be attributed to any failure on the part of the Provider.

I believe a provider could include a "principal amount outstanding" figure on its annual statement, being a figure to which the arrears/prepayment balance is applied to give the loan balance. However, I am of the view that the average customer would prefer to simply see the net loan balance as set out in this Provider's statements under the heading "current loan balance".

Having examined the statements, I can find no evidence that the Provider has miscalculated the outstanding balance on the Complainants' account. The €250.00 payments were applied to reduce the "current loan balance" throughout the course of the loan. The Complainants have submitted that the €10.00 bank charge applied to the account for a missed direct debit was subtracted from the prepayment credit balance but not added to the current loan balance. I note however that this €10.00 charge was in fact applied to the "current loan balance".

For the reasons outlined above, I do not uphold this complaint.

Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

11 December 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.