



<b><u>Decision Ref:</u></b>	2018-0214
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Variable Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to provide calculations Failure to provide product/service information Maladministration
<b><u>Outcome:</u></b>	Upheld

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

##### **Background**

In July 2013 the Complainants took out a mortgage with the Respondent Bank. The Complainants submit that in January 2015 they decided to switch the loan from the variable interest rate then in place to a fixed rate of interest, fixed for a period of two years.

The Complainants state that in January 2017 they received a letter from the Bank setting out the interest rate options available to them upon expiry of the fixed rate term. The options offered included a number of fixed interest rates and a variable rate of interest. The letter also included at Section D a formula for calculating the penalty applicable in the event of early repayment of a lump sum during the currency of the fixed rate term. The Bank's letter, dated the 11 January 2017, outlined that an interest rate option would need to be selected by the 10 February 2017 or the loan would automatically transfer to a variable rate of interest.

The Complainants outline that they telephoned the Bank on the 25 January 2017 to advise that there was a possibility that they would be in a position to make a lump sum payment to their mortgage account within the next few years. They made a specific request for indicative values for the parameters of 'R%' and 'R1%', which appear in the formula included in the Bank's letter of the 11 January 2017 (at Section D) and are defined therein as follows-

*“R%= the annual percentage rate which was the cost to us of funding an amount equal to ‘A’ for the originally intended fixed rate period.*

*R1%= the annual percentage interest rate available to us for a deposit of an amount equal to ‘A’ for a period equal to ‘D’.”*

The Complainants explain that they sought this specific information because they wanted to be able to make a fully informed choice as to the best interest rate option to select.

They submit that equipped with indicative values for ‘R%’ and ‘R1%’, they would be able to do their own calculations to enable them to ascertain which option suited best, i.e. a 1-year, 2-year or 3-year fixed interest rate option, taking into consideration the penalty for early repayment.

The Complainants maintain that they are entitled to this information pursuant to Section 4.21 of the Consumer Protection Code, which mandates Regulated Entities to provide consumers with information about the main features and restrictions of a product to assist them in understanding the product.

The Complainants submit that the Bank refused to provide the information sought over the telephone and suggested that the request be made in writing. The Complainants state that they wrote to the Bank on the 25 January 2017 and requested the information again, but on this occasion they stipulated that they wanted the value of ‘R%’ and ‘R1%’ at *“today’s rates”*.

The Complainants submit that as no response to their request for information was forthcoming, and as the deadline for selecting an interest rate option was fast approaching, they decided to choose a 1-year fixed rate option in advance of the 11 February 2017. They state that they made it clear to the Bank that they were being forced into selecting an option without being provided with sufficient details to enable them to make an informed decision.

By letter dated the 10 February 2017 the Bank responded to the Complainants’ written request for information. However, the Complainants maintain that the Bank did not respond properly or fully to their request. The Complainants state that although the Bank’s communication did include a worked example, the example related to interest rates relevant to the existing term and not to forward-looking rates, which had been sought.

The Complainants are of the view that the Bank breached its obligations under the Consumer Protection Code by failing to supply the information requested. They point out that they are not seeking future values, which they concede are *“unknowable”*; rather, they are requesting values as at the date of the request, whenever such request is made.

### **The Complainants’ Case**

The complaint is that the Bank acted wrongfully and in breach of Section 4.21 of the Consumer Protection Code when it failed to accede to the Complainants’ request for information as outlined in their letter to the Bank dated the 25 January 2017.

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The Complainants submit that they are not seeking financial redress in order to resolve their complaint. Rather, they would like the Bank to be directed to provide the information relating to indicative values of 'R%' and 'R1%' on the next occasion they are invited to choose a new interest rate for their loan.

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

The Bank states that it is not in a position to provide approximate or estimated funding fees for future dates. Therefore, it was unable to accede to the Complainants' request for the values of 'R%' and 'R1%' for three months, 6 months, one year and two years.

The Bank is satisfied that it complied with its obligations pursuant to the Consumer Protection Code. The Bank states the Mortgage Offer Letter that issued to the Complainants on the 30 April 2013 and the Mortgage Form of Authorisation contained details about how fixed rate funding costs are calculated, in accordance with Section 4.21 and 4.5 of the Consumer Protection Code. The formula the Bank uses to calculate the funding cost was outlined and a worked example was also set out, using a figure of €100,000. The original mortgage contract also contained details as to the mortgage amount, the applicable interest rate and the term of the mortgage in compliance with the requirements of Section 4.29 of the Consumer Protection Code.

The Bank points out that a letter of response issued to the Complainants' letter seeking information on the 6 February 2017. This letter explained the Bank's position and states that *"we cannot advise on future costs of funds in 3 months, 6 months, one year and two years as requested, as these costs are not known."*

### **Decision**

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

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 17 October 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that

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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 issuing of my Preliminary Decision, both parties made additional submissions to this office as follows:

1. Letter from the Bank dated 7 November 2018, together with enclosure.
2. Letter from the Complainant dated 15 November 2018.
3. Letter from the Provider dated 3 December 2018.

I have now considered those submissions and set out below my final determination.

The Complainants' grievance concerns the Bank's failure to provide them with information requested in their letter to the Bank dated the 25 January 2017. A copy of this letter has been provided in evidence and for purposes of clarity I will set out the Complainants' specific request herewith-

*"As a result I am making a specific request for the provision in writing of the following data:*

*The value of **R%** at today's rates for funding €100,000 for three months, six months, one year and two years.*

*The value of **R1%** at today's rates for a deposit of €100,000 for three months, six months, one year and two years."*

The Complainants explain that they sought this information to enable them to make a fully informed choice about which interest rate option to select. Their request for information came about following receipt of an interest rate options letter dated the 11 January 2017 from the Bank in the lead up to expiry of the fixed rate term in place on their mortgage. The Complainants argue that in circumstances where they anticipated being in a position to apply a lump sum payment to their mortgage account, they needed further information about the values of 'R%' and 'R1%' to enable them to perform their own calculations in order to select the most suitable interest rate choice.

The Bank states that it cannot provide estimates of the values used by the Bank in the calculation of funding fees for unknown dates in the future. The Bank states that it is satisfied that it provided sufficient information to the Complainants, in accordance with the requirements of the Consumer Protection Code.

While I note the Bank's contention that the Complainants' request encompassed an element of future valuation, having considered the Complainants' letter of complaint (attached to

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their online Complaint Form and as set out in the body of their online Complaint Form) and the assertion therein that they did not seek *“future values of these parameters (which are unknowable) but simply the values used on the day of request”*, I am of the view that the Bank may have misunderstood the exact nature of the Complainants’ request.

The definitions for ‘R’ and ‘R1’ as they appear in the Bank’s literature are as follows:

*“R%” = the annual percentage interest rate which was the cost to us of funding an amount equal to “A” for the originally intended fixed rate period.*

*“R1%” = the annual percentage interest rate available to us for a deposit of an amount equal to “A” for a period equal to “D”*

It seems to me that the Complainants simply asked the Bank to provide them with the current value of ‘R’ and ‘R1’ as those parameters relate to an early repayment of €100,000 at various stipulated intervals (3 months, 6 months, 1 year and 2 years). Rather than looking for a future valuation of ‘R1’, which cannot be known until the day a customer opts to break out of the fixed rate period. My understanding of the Complainants’ request is that they wanted current, indicative valuations of ‘R’ and ‘R1’ so they could carry out their own calculations.

The Complainants were very specific about why they sought this information from the Bank in their submissions to this Office.

They were also eager to point out that they never sought future valuations. At paragraph 4 of their letter of complaint the Complainants outlined why they were looking for indicative values of ‘R’ and ‘R1’, as follows-

*“Please let me explain my rationale for looking to discover what the parameters used by [the Bank] are. I feel that some idea of the values used in this calculation were essential for making an informed choice about which product to take. I know the timing of the lump sum with a reasonable degree of certainty. Indicative values for the parameters used by [the Bank] would have allowed me to carry out my own calculations to see if a one-, two- or three-year rate represented best value for us, taking into consideration the penalty for early repayment.*

At paragraph 10 the Complainants emphasised that were not requesting future values-

*“Please note that I **was not requesting future values of these parameters** (which are unknowable) but simply the values used on the day of request.”*

While I note that the Bank did respond to the Complainants’ written request dated the 25 January 2017 on the 6 February 2017, the Complainants contend that the information provided by the Bank in its letter of the 6 February 2017 fell short of what they specifically looked for. The Complainants maintain that the information the Bank supplied related to the cost of funding to the Bank (i.e. ‘R’) two years ago, rather than to the current cost the Bank would incur for funding a certain amount for a certain period. Unfortunately the Bank

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has not clarified whether the information provided in its letter dated the 6 February 2017 was indeed historic, as the Complainants maintain, or current.

In its post-Preliminary Decision submission of 7 November 2018, the Bank set out further calculations and states that *“the value of R and R1 ‘at today’s rate’ provide a meaningless calculation which is of no use to the Complainants in developing ‘a deeper understanding of the product’”*.

The Bank submits that the *“main features and restrictions of the product”* were provided to the Complainants in the worked examples in the Offer Letter, the Mortgage Form of Authorisation and the Bank’s Final Response Letter. The Bank does not accept that by providing values of R and R1 *“at today’s rates”* would in any way assist the Complainants to *“fully comprehend the features and restrictions of the fixed interest rate products offered”*. In fact, it asserts that by providing these values, it would have had the opposite effect on the Complainants and would have served to provide confusion relating to the cost of the funding fees as it suggests each calculation would provide an unrealistically high funding fee, which would be in no way accurate.

The Bank asserts that *“instead, what the Bank provided to the Complainants, were figures which were of actual relevance to the Complainants’ situation and provided meaning to their request”*.

The Complainants in their response to the Bank’s post-Preliminary Decision state *“The worked examples the Bank provided are irrelevant. However, what they show is that the Bank does indeed have ‘live’ rates for R% and R1% for various maturities which, if supplied, could be used by an informed consumer to best guide their own decisions”*.

They also state *“the rates requested would have helped us to better understand the product on offer. I frankly find it insulting for the Bank to claim that this information would be ‘confusing’. We are quite capable of running arithmetical calculations to determine which rate on offer would represent best value for us”*.

The Bank accepts that it can produce indicative figures for R% and R1% *“on today’s rates”* but argues such calculation is effectively meaningless, as the scenario is not one that would even occur in practice.

I accept that the Bank could only supply the information requested by the Complainants on an indicative basis and that the Bank could not be held to such calculations. I consider that in supplying such requested indicative calculations the Bank would have been able to communicate the values with appropriate warnings that such calculations *“were not guaranteed, but were indicative only”*. I accept that it is not unusual or impossible for a Provider to supply such indicative calculations or illustrations, subject to the Provider giving the appropriate warnings as to their indicative nature.

The Bank’s position is that providing values of *“at today’s rate”* provide a meaningless calculation which would be of no use to the Complainants. This may or may not be the outcome from the provision by the Bank of such calculations. This is not a matter which I

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intend to determine. What matters is that the Complainants have requested the value of R1 and R1%, and believe that such information is of value to them in making decisions in relation to their finances.

The Bank has indicated that it is possible for it to provide the indicative values of R1 and R1% . The issue of whether the calculations are meaningless or not to the Complainants is for the Complainants themselves to decide.

I fail to understand why the Bank refused to provide information to the Complainants on the basis that it believes the information is of no value to the Complainants in circumstances where the Complainants believe the information is of value.

I believe it is a matter for the Complainants to decide whether or not the information sought is of value to them.

The provision of such information or individual requested calculations should of course always be given subject to the Bank making it very clear the terms upon which the information or calculations are being provided, that is, that they are indicative only, that the Bank is providing them on that basis and that it cannot be held to those actual calculations in the future.

A Provider should always supply information to its customers in the most accurate, clear and timely manner and there is no justification for such information to be withheld merely because a Provider considers that the information would be meaningless to the customer.

It is both surprising and disappointing that this matter has become the substance of such a protracted dispute. The Complainants have asked for certain information, the Bank has not provided any reason as to why it cannot or should not provide the information other than its view that the information is of no value to the Complainants.

In light of all of the foregoing, I uphold the complaint.

I direct the Provider to provide the value of "R" and "R1" and furnish the current prevailing rate of "R" and "R1" on receipt of my Legally Binding Decision and at any time it is reasonably requested by the Complainants in future and that on the next occasion or indeed any occasion the Complainants are asked to choose between certain fixed interest rate options (and other interest rate options) and if, on that occasion, they see fit to request indicative values for 'R' and 'R1' for funding a stipulated sum, **the Bank is to provide to the Complainants, in writing accompanied by any appropriate warning that the information is indicative of the current, prevailing values of 'R' and 'R1' (i.e. values at "today's rates")**. Equipped with this information, the Complainants will then be able to perform their own calculations.

## **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2) (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by providing the value of “R” and “R1” and furnish the current prevailing rate of “R” and “R1” on receipt of my Legally Binding Decision and at any time it is reasonably requested by the Complainants in future and that on the next occasion or indeed any occasion the Complainants are asked to choose between certain fixed interest rate options (and other interest rate options) and if, on that occasion, they see fit to request indicative values for ‘R’ and ‘R1’ for funding a stipulated sum, **the Bank must provide to the Complainants, in writing, the current, prevailing values of ‘R’ and ‘R1’ (i.e. values at “today’s rates”)**. Equipped with this information, the Complainants will then be able to perform their own calculations.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 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.**