



<u>Decision Ref:</u>	2019-0169
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide correct information
<u>Outcome:</u>	Substantially upheld

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

Background

This complaint relates to the Complainants' decision to change mortgage provider from the Provider, against which this complaint is made, to another mortgage Provider. The Complainants state that they held a variable rate mortgage with the Provider up to March 2018. They say that they decided to change the mortgage to another mortgage Provider because that other Provider was, at the time, offering an additional incentive to switch.

The Complainants' Case

As part of the process of changing the mortgage from the Provider, the Complainants state that they asked the Provider to furnish them with a redemption figure in respect of the mortgage. It is the Complainants' argument that the Provider erroneously provided a redemption figure of €202,667.36 to the Complainants and that this led to their applying to their new mortgage Provider for a mortgage of €202,000 when, as they argue, they actually needed a sum in excess of €204,000 to clear the mortgage with the Provider. The Complainants state that the need to raise the shortfall of €1,651.08 at short notice caused them financial loss as well as stress. The Complainants further state that arising from the Provider giving an incorrect redemption figure, they made a decision to switch Provider whereas they argue that if the correct figure had been provided to them, it would have been apparent that no advantage was to be obtained by switching Provider. The Complainants further state that they spent over an hour on hold to the complaints department of the

Provider when they tried to contact that department having received correspondence from the Provider.

In its final response letter dated 21 May 2018, the Provider accepts that the Complainants *"should have received a redemption figure when they expressed that they were switching banks"*. The Provider offered the Complainants €250 in full and final settlement of the complaint, *"in recognition of the lapse in service"* that the Complainants experienced.

The Complainants state that they were on a variable rate mortgage with the Provider until they decided to switch providers as the other provider was offering cashback on a similar interest rate. They state that on 9 March 2018, the first Complainant rang the Provider and told it that they were going to change mortgage providers and were looking for the final figure for their mortgage. He asserts that the Provider gave a mortgage balance figure of €202,667.62 and not the full redemption figure. He states that he then went to the other provider for a mortgage of €202,000. He states that the redemption figure he looked for and should have been given was over €204,000 and the Complainants state that they are out of pocket to the tune of €2,000 as a result. In reference to the compensation payment of €250 offered by the Provider, they state that the payment does not come close to the €1,651.08 they had to try to get together on short notice to pay and clear the mortgage. They further assert that they chose to change to the other provider based on the figure of €202,000. They state that if they had the full redemption figure of over €204,000, they may not have changed providers at all as the Provider was offering a better fixed rate of 2.9% instead of the 3.2% from the other financial service provider. They state that this would have saved them time and money as they could have entered into a fixed rate sooner and not paid the variable rate of 4.5% for an extra three months which cost close to €600. They state that they switched mortgages to try to save money but in the end it actually cost money. They state that they calculated the savings on the figure of €202,000 which included solicitors' fees, interest rate over the next three years, and the amount of the mortgage they would have to repay.

The Complainants state that the extra variable rate mortgage repayments to the Provider for three months, the associated solicitors fees, and the extra money they had to pay to the Provider to redeem the mortgage now means that they are left with no money from the cashback incentive offer that was available from the other financial service provider. Instead what they are left with is a three-year fixed-rate mortgage at a rate of 3.2% instead of a three-year fixed-rate mortgage of 2.9% which was on offer from the Provider. They state that they also suffered stress, particularly in raising the shortfall in a short period of time, and spent considerable time in dealing with the issue. The first Complainant further states that he spent over an hour on hold with the complaint department of the Provider and that the whole experience has discouraged him from changing providers in the future.

The Complainants state that they would like to be reimbursed €3,000 to cover the additional costs and stress that the issue has caused them.

In response to a submission by the Provider dated 7 November 2018, and in particular to the suggestion by the Provider that he should have sought the *"closing balance"* on the account to receive a redemption figure rather than an *"outstanding balance"*, the first

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Complainant argues that responsibility for effective communication which can be understood by a common person rests with the Provider.

He states that, as a lay customer, the difference between “*outstanding balance*” and “*closing balance*” is nuanced. He further argues that the wider context of the conversation should have been taken into account in that he was discussing switching mortgage providers so the Provider should have furnished him with a redemption figure given its responsibility to effectively communicate with its customers.

In response to the Provider’s contention that the provision of the correct redemption figure to the Complainants’ solicitor on 5 April 2018 gave them ample time to amend their mortgage application, the first Complainant states that they had already begun to progress the application by that point. He states that the figure provided by the Provider was the singular catalyst for the Complainants obtaining the services of a solicitor to switch providers and that engaging the solicitor was a financial loss to them which they would not have pursued if they had been informed of the details of the redemption figure when they initially sought it. He further argues that the provision of the correct redemption figure would have informed their overall decision on whether or not to switch provider. Having engaged the services of a solicitor before the correct figure was provided, he states that they already made a decision to pursue the switch. The first Complainant concedes that they had time at that point to amend the loan application to the other provider but did not have time to reverse their decision to engage a solicitor or make an informed decision about switching provider in the first place.

The Provider’s Case

In its final response letter to the Complainants dated 21 May 2018, the Provider states that having reviewed the relevant telephone calls from February and March 2018, the Provider accepts that the first Complainant requested the outstanding balance on his mortgage account and that its adviser provided him with the figure of €202,677.36. The Provider also accepts that the first Complainant advised on this call that he was looking to change providers and wanted to get a final figure for his mortgage. The Provider accepts that the figure provided on 9 March 2018 was the balance on the account which did not include accrued interest. The Provider accepts that first Complainant should have received a redemption figure when he expressed that he was considering switching banks. The Provider apologised for the confusion and inconvenience caused as a result, accepted that it had not met the level of customer service that it aimed to provide, and offered the first Complainant the sum of €250 in full and final settlement of the complaint.

In a submission to this Office dated 7 November 2018, the Provider states that it wrote to the Complainants on 24 January 2018 to advise them that the fixed interest rate period that they were on up to that point was due to expire on 24 February 2018. The Complainants were issued with a suite of interest rate options and a mortgage form of authority. As the Complainants did not return the authority before the fixed term expired, the mortgage automatically rolled to standard variable rate of 4.5% on 25 February 2018, as indicated in the January letter.

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The Provider states that on 26 February 2018, the first Complainant contacted it by phone enquiring whether the Provider was offering any discounts on rates or cashback offers to mortgage holders. He advised the Provider that the Complainants were considering a move to another financial service provider which was offering a three-year fixed rate of 3.2% along with 2% cashback on the mortgage account. The Provider advised the first Complainant that it did not offer cashback on mortgage balances as he was an existing customer but that it would review the rates offered to him. The Provider contacted the first Complainant later that same day and advised that it could provide a lower three- or five-year fixed rate at 2.9% or a 10-year fixed rate at 3.2%. An amended mortgage form of authority was issued to the Complainants on 27 February 2018.

The Provider states that on 7 March 2018, the first Complainant requested mortgage statements for the previous 12 months and noted that he was awaiting the updated mortgage form of authority in line with the discounted rates offered to him over the phone.

On 9 March 2018, the Provider states that the first Complainant contacted it by phone and requested the “*outstanding balance*” on the mortgage loan account. The Provider advised that the outstanding balance was €202,677.36 and enquired if everything was okay with the mortgage. The first Complainant advised that he was “*thinking of changing providers and just wanted to get an exact figure for the other bank*”. The first Complainant indicated that the 2% cashback on offer by the other financial service provider was a factor in the decision. The Provider advised that the cashback product was not available but that it would review the interest rates and the first Complainant confirmed that improved interest rate had been offered to him but they were seeking to move their mortgage loan account as a result of the cashback incentive.

The Provider states that solicitors acting on behalf of the Complainants requested a redemption quote on 4 April 2018 which was provided the following day in the sum of €204,039.31. The letter also advised that there was interest accruing of €25.10 daily on the redemption figure. On 1 May 2018, the first Complainant contacted the Provider and requested the remaining balance on the account which was provided at €203,600.50. The first Complainant stated he had been advised that the outstanding balance from February was approximately €202,000 and he was informed that this information was correct but that would have been an online balance, and not inclusive of interest. The first Complainant was advised that when seeking such information he should have asked for the closing balance which would have included the accrued interest. The first Complainant made a complaint by telephone on 4 May 2018 regarding the provision of incorrect figures in February in relation to the outstanding balance on the account and asked if the Provider could do something in relation to the accruing interest on the balance of the mortgage account in light of this. After the funds from the other financial service provider had cleared, a redemption figure of €1,650.87 with €0.21 daily interest was provided to the first Complainant on 9 May 2018, which was paid by the Complainants.

In its submission to this Office of 7 November 2018, the Provider states that it “*does not accept that there has been any alleged failure by it, as asserted by the Complainants, in relation to providing the Complainants with the correct amount required to redeem the mortgage loan account with the Bank.*” The Provider argues that the first Complainant

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specifically requested the “*outstanding balance*” in his call of 9 March 2018 and that this was provided to him. The Provider argues that a redemption quote was issued on request on 5 April 2018. It states that it is not privy to the Complainants’ mortgage loan application with another financial service provider and that the Complainants had the responsibility to satisfy themselves of the mortgage loan amount there are seeking from another provider. The Provider argues that redemption figure provided to the Complainants’ solicitor in April 2018 provided the Complainants with ample time to amend any mortgage loan application they had with another provider. It further argues that it would appear from a telephone call on 1 May 2018 that the redemption figure provided to the Complainants solicitors in April was not passed on to the Complainants which would have allowed the Complainants to amend the mortgage loan application at an earlier point. The Provider does not accept that it contributed in any way to the financial loss suffered by the Complainants. In the alternative, the Provider states that the Complainants appear to have drawn down a lesser mortgage with the other provider which will ultimately benefit them through the payment of less interest compared to drawing down a mortgage for a larger sum. It highlights that it offered alternative discounted interest rates which were more competitive than the other financial service provider which would have reduced the monthly repayments of the Complainants.

The Provider argues that this Office does not have the power to make an *award* for stress under section 60(4)(d) of the Financial Services and Pensions Ombudsman Act 2017 (FSPO 2017) as stress is not “*loss or expense*” within the meaning of that section and the Provider does not accept that the Complainants have demonstrated any inconvenience suffered. The Provider argues that for a claim of stress to succeed, there must be personal psychiatric injury and that this Office does not have the power to make an award for personal injury. It further argues that a court will not make an award for stress arising from breach of contract unless the contract has peace of mind as a particular aim.

The Provider argues that it provided the Complainants’ solicitor with a redemption figure on 5 April 2018 which was four weeks prior to the drawdown of the new mortgage with the other financial service provider. It does not accept that if the Complainants had been provided with the correct redemption figure, they would have realised there was no advantage to be gained by switching provider. The Provider further argues that the loan account statements clearly evidence that interest was charged quarterly and that as a result the next quarterly interest was due to be charged on the 21 March 2018. The Provider argues that the Complainants had sufficient information which allowed them to make an informed decision with respect to keeping the mortgage with the Provider and availing of a better fixed rate (at 2.9%) than that offered by the new provider (at 3.2%). It argues that it was clear at all times that it did not provide cashback to existing mortgage customers and that the Complainants chose to switch providers because they wish to avail of the cashback incentive. The Provider further submits that the Complainants had the benefit of legal advice at the relevant time and that their advisers had a duty to explain in detail the full implications of the commitments.

In respect of the final response letter issued and the apparent difference in approach between that letter and the Provider’s submission of 7 November 2018, the Provider states that upon a review of the relevant calls, it was of the view that while correct information

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was provided to the first Complainant, such information perhaps led to confusion which resulted in the first Complainant believing that the “*outstanding balance*” was in fact the same as the redemption figure. It asserts that this was acknowledged by the first Complainant on a call on 4 May 2018. This led to an acknowledgement by the Provider that perhaps further clarity could have been provided to the first Complainant and as a result it offered €250 for the lapse in service. The Provider argues that its offer of €250 was wholly appropriate for a minor slip in the level of customer service which it aims to provide. It also confirms that the offer of €250 remains available to the Complainants.

In respect of the complaint that the first Complainant spent over an hour on hold to its complaints department, the Provider states it carried out a review of all inbound calls between 21 May and 6 June 2018 and cannot find any evidence of an incoming phone call from the first Complainant. The Provider sought clarity from the Complainants as to what number the first Complainant called from and on what date the telephone call was made.

The Complaints for Adjudication

The complaint is that the Provider furnished the Complainants with an incorrect figure for the redemption of their mortgage with the Provider. The Complainants say that this caused them financial loss and stress. They further state that had the correct figure been provided to them by the Provider, it would have been apparent to them that there was no advantage to be gained by switching mortgage provider. The Complainants’ complaint is also that the Provider failed to provide good customer service in that they waited for over an hour to get through to the Provider’s complaints department following the issue of the Provider’s final response letter.

Decision

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

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

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

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A Preliminary Decision was issued to the parties on 9th May 2019, 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 my final determination below.

It is common case that when the first Complainant rang the Provider on 9 March 2018 and requested the balance of his mortgage loan account that the figure provided to him did not include accrued interest and therefore was approximately €2,000 short of the sum required to redeem the loan in full so that they could switch mortgage providers. At issue between the parties is whether the Provider was at fault in this regard or rather if the first Complainant ought to have worded his request differently to make it clear that that a *redemption* figure was sought rather than the balance on the account without the accrued interest. Further at issue between the parties is whether any loss, damage or inconvenience was suffered by the Complainants as a result of the provision of the lower loan account balance. The first Complainant argues that by the time the redemption figure was provided to his solicitors on 5 April 2018, the Complainants had already engaged the services of a solicitor and decided to switch mortgage providers so it was too late for them to change their mind. The Provider argues that an amendment to their mortgage application to the other lender could have been made at that point to ensure that the full redemption amount was sought from the other financial service provider.

Recordings of the calls between the Complainant and the Provider have been supplied in evidence. I have considered the relevant calls and, in particular, the call dated 9 March 2018. Provision 2.6 of the Consumer Protection Code (CPC) obliges a regulated financial service Provider to make full disclosure of all relevant material information in a way that seeks to inform the customer. I accept that responsibility for effective communication which could be understood by the Complainant rests with the Provider and that the difference between an 'outstanding balance' and a 'closing balance' is, as stated by the Complainant, nuanced. I further accept that the wider context of the conversation should have been taken into account by the Provider's agent when responding to the Complainant's request. The fact that the first Complainant indicated that he was considering switching mortgage providers and wanted to obtain a final figure for the potential new provider was relevant. I am therefore satisfied that it ought to have been perfectly clear to the Provider's adviser that a redemption figure was sought by the first Complainant with a view to possibly switching mortgage providers. I do not accept the (recent) argument of the Provider that it correctly provided the outstanding balance to the first Complainant upon request and that a different formulation of words should have been used by the first Complainant if he wished to obtain the relevant redemption figure. On the basis of the context of the conversation and the other information provided by the first Complainant to the Provider's adviser, the Provider should have provided the relevant redemption figure to the first Complainant or clarified to him that the figure provided was not a redemption figure as it did not include accrued interest.

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I find the Provider's position in this regard to be most unreasonable. The first Complainant was perfectly clear in what he sought. He simply wanted to know how much he would need to pay off his mortgage if they moved to another lender. I find the argument by the Provider that he should have used the particular words that it would use, to be most unreasonable.

I have been provided with relevant correspondence between the parties in relation to the mortgage switch.

I note a letter dated 13 March 2018 from solicitors acting on behalf of the Complainants wherein those solicitors enclosed authority to release the title deeds of the property to their offices for the purposes of a re-mortgage. The relevant title deeds were provided to the solicitors on 29 March 2018. Redemption figures were then requested by solicitors acting on behalf of the Complainants on 4 April 2018. In its submission to this Office, the Provider places great emphasis on the fact that the correct redemption figure was provided to the solicitors on 5 April 2018. The letter dated 13 March 2018 demonstrates that the Complainants had engaged the services of a solicitor for the purpose of the re-mortgage after the call on 9 March 2018 (wherein the balance of the loan account was requested) but several weeks before the actual redemption figure was provided.

I accept the argument of the Complainants that by the time the actual redemption figures were received by their solicitors on 5 April 2018, they had already engaged the services of a solicitor and moreover had made the decision to switch mortgage providers. I accept the argument of the Provider, however, that the redemption figure was provided to the Complainants in sufficient time to allow them to seek the higher amount of the redemption figure (i.e. approximately €204,000) from the other mortgage provider. What is not clear, however, is whether any application for an increase in the mortgage already approved would have been successful. I note the first Complainant's contention that the 2% cashback that was received from the other financial service provider was largely spent in the payment of the relevant solicitors fees, the payment of the surplus redemption figure, and the additional interest payable over three months while the Complainants remained on the variable interest rate of 4.5%. However, I do not accept that any of these items of expenditure are necessarily linked to the figure provided to the first Complainant on the telephone call of 9 March 2018 or that the Provider can be said to have been responsible for them.

The decision of the Complainants to switch mortgage appears to have been primarily made on the basis of the attraction of the cashback offered by the other financial service provider. No matter which the figure was provided to the first Complainant on 9 March 2018 (that is, €202,000 or €204,000), solicitors fees would have been payable in relation to the switch in light of the decision of the Complainants to engage a solicitor for that purpose. Further I believe that no matter what redemption figure was provided on 9 March 2018, there was a period during which the variable rate interest would apply prior to the drawdown of the mortgage with the new provider. Again I do not accept that this cost can be laid at the feet of the Provider in this context.

I further note that in its letter of 24 January 2018, the Provider indicated that the original fixed interest rate period would expire on 24 February and that if the Complainants did not

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choose one of the listed options, the mortgage account would automatically roll onto the variable rate from 24 February 2018.

As they did not choose a further fixed-rate offer, the variable rate of 4.5% was applied from the end of February 2018 until the mortgage account balance was cleared in full.

I note that the first Complainant has indicated that his decision to switch was based on his calculation of savings to be generated on a redemption figure of €202,000 taking into account solicitors fees, interest rate over the next three years, and the amount of the mortgage he would have to repay.

On the basis of the above, I am not satisfied that the Complainants have demonstrated that any ascertainable financial loss occurred to them as a result of the provision of inaccurate information on the call of 9 March 2018. I do accept, however, that the Complainants have demonstrated that they suffered significant inconvenience as a result of the shortcomings of the Provider in the provision of information in relation to the outstanding balance on their mortgage. I accept that the Complainants' decision-making at that time was informed by the figure received from the Provider and that time and energy was spent by them in remedying the situation when the shortfall was subsequently discovered.

I note the Provider's suggestion that the Complainants appear to have drawn down a lesser mortgage with the other provider which will ultimately benefit them through the payment of less interest compared to drawing down a mortgage for a larger sum. I find this to be a spurious and irrelevant defence of its conduct. Of course, the less the Complainants borrow, the less they will pay back. Clearly the problem the Complainants were faced with was finding that money at short notice rather than including it as part of the mortgage. I have no doubt that this was a challenge for the Complainants and I do not accept the Provider's contention that the Complainants have not demonstrated any inconvenience suffered. I believe this shows a lack of understanding of the impact of the Provider's conduct on the Complainants. It was clearly very difficult for them and a cause of serious inconvenience that the Complainants had to source an additional unplanned sum of money in order to draw down the new mortgage at such short notice.

Further, the impact of having to secure the additional money clearly negated the benefit that the Complainants hoped they would derive from the cash back offer.

I believe the Provider's characterisation of its conduct as a "*minor slip in the level of customer service*" shows a serious lack of understanding of the impact of its conduct on the Complainants.

In light of the fact that I accept that inconvenience was caused to the Complainants within the meaning of Section 60(4)(d) FSPO 2017, I do not believe the Provider's argument in relation to the jurisdiction of this Office to *award* compensation in relation to stress to be relevant.

I would however point out to the Provider, the wide remit of this Office in relation to the resolution of complaints and the decision of Hogan J in *Koczan v Financial Services*

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Ombudsman [2010] IEHC 407, at paragraphs 1 and 2 which address the role of the predecessor of this Office:

"The Ombudsman's task ... runs well beyond that of the resolution of contract disputes in the manner traditionally performed by the courts.

It is clear from the terms of [the relevant provision of CBA 1942] that the Ombudsman must, utilising his or her specialist skill and expertise, resolve such complaints according to wider conceptions of et aequo et bono which go beyond the traditional limitations of the law of contract."

I note the allegation by the first Complainant that he was left waiting for over one hour to get through to the Provider's customer complaints line after receipt of the final response letter. I further note that the Provider could not find any record of a call from the first Complainant during the relevant period and requested further detail in relation to the call such as the date and the number he was calling from. While I have no reason to doubt the first Complainant's recollection, he has not provided the details. I therefore do not propose to uphold this aspect of the complaint.

I am concerned about some aspects of the Provider's response to questions raised by this Office dated 7 November 2018 . It appears to me to differ significantly from the initial approach adopted in its final response letter of 21 May 2018 to the Complainants. In the final response letter, the Provider accepted that the first Complainant should have received a redemption figure when he indicated that he was proposing to switch banks. The Provider has sought to resile from this position in its response to the present Complaint and has resolutely argued that there has been no failure by it as it provided the first Complainant with the correct response to the query raised.

Not only are these two approaches inconsistent with one another, it is of concern to me that the Provider has sought to fully vindicate its position in response to the present complaint when it originally, rightly in my view, accepted that it had been at fault. The Provider is of course entitled to defend itself against complaints and to form its own opinion on whether compensation is warranted. It is the inconsistency in its approach that is of concern. It strikes me as somewhat unreasonable that the Complainants were initially told that the Provider accepted that it had been at fault in respect of the provision of the relevant figure and for the Provider to later retreat from this concession and deny any shortcoming in the context of a complaint to this Office. Furthermore, I do not agree with the later stance adopted by the Provider.

It is disappointing that the Provider has adopted this approach.

I am also concerned by the Provider's response to a question raised by this Office in the following terms:

"Please indicate whether the Bank is satisfied that, in its dealings with the Complainants, . . . it has complied with the General Principle set out in Chapter 2 of the Consumer Protection Code".

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In its response, the Provider notes that *“it has not been presented with any details of any specific incidents relating to the Complainants allegations that the Bank has been in breach of any regulatory obligations”*. Further responses in relation to specific provisions of the CPC reiterate this attitude that the Complainants have not identified the manner in which they believe the Provider operated in breach of particular provisions.

The Provider, as is always the case, was provided with each and every submission made by the Complainants to this Office, including the original complaint form. The question in relation to compliance with the CPC was raised by this Office as this Office wanted to know whether the Provider considers that it had complied with the relevant provisions in its dealings with the Complainants.

I am surprised and disappointed with the approach adopted by the Provider. I do not believe that a consumer or complainant should be required to be familiar with the detail of the Consumer Protection Codes in order to benefit from them. Nor should the Complainants be required to set out where they believe the Provider has breached a Code. I believe it is for the Provider to examine such issues. In that regard, I would remind the Provider of my comments above in relation to Provision 2.6 of the CPC and its failings in that regard.

Furthermore, I would direct the attention of the Provider to Provision 4.1 of the Consumer Protection Code 2012 which states that:

“A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information”.

I believe the Provider failed in its duty to bring key information to the Complainants' attention by its failure to provide a full and accurate answer to the Complainant's question in relation to the amount of money that the Complainants were required to pay in order to redeem their mortgage.

The CPC which was put in place by the Central Bank of Ireland provides very important safeguards for consumers. I am concerned that the Provider has adopted the approach it has in relation to this Complainant by expecting the Complainant to identify his complaint or otherwise within specific aspects of the Code. I would expect the Provider to examine its actions in light of its obligations under the Code without the need for complainants to identify specific provisions of the Code.

For the reasons outlined above, I substantially uphold this complaint and direct the payment of compensation by the Provider to the Complainants in the sum of €3,000 to reflect the Provider's communication failings and for the inconvenience caused to the Complainants.

Conclusion

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

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider make a compensatory payment to the Complainants in the sum of €3,000 to reflect the Provider's communication failings and for the inconvenience caused to the Complainants, to an account of the Complainants choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

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**

20 June, 2019

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.