



<b><u>Decision Ref:</u></b>	2020-0324
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to switch interest rate
<b><u>Outcome:</u></b>	Rejected

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

The complaint concerns the Complainants' joint mortgage loan account with the Provider.

**The Complainants' Case**

The Complainants mortgage loan account, held with the Provider, is comprised of two sub-accounts drawn down on **27 February 2015** and **03 February 2016** respectively.

The Complainants submit that they had been seeking to move from fixed rate mortgage loan accounts to new lower fixed rate mortgage loan accounts on their principal private residence. The Complainants submit that the Provider had agreed to this proposition subject to a breakage fee on the current fixed rate mortgage loan accounts, of approximately €1,950.

The Complainants submit that this breakage fee is too expensive and they assert that the Provider's calculation pertaining to the breakage fee is flawed and that it has breached the European Union (Consumer Mortgage Credit Agreements) Regulations 2016.

The Complainants submit that when they queried the breakage fee with the Provider, its response "*was vague and lacked transparency*" as it did not clarify the reference rate that it used when calculating the fee and it also did not identify the formula which it used to calculate the fee. The Complainants submit that when they requested further clarification from the Provider in relation to this matter, they did not receive a response.

The first Complainant submits that when he contacted the Provider to request a letter from it to state the Provider's final response to the matter, the Provider informed him that the complaint had been opened by it on **22 August 2018** and was closed 5 days later, when the complaint remained unresolved. The first Complainant submits that after a lengthy process, the Provider issued him with its Final Response letter dated **12 February 2019**, which was some months after the complaint was first raised.

The first Complainant states that he has received and reviewed the Final Response Letter from the Provider and that same does not "*exhaustively answer [his] question*". He states that:

*"the supplied document quotes the lower of two values as the input for the final breakage cost;*

1. *The 'Economic Breakage cost' (€1,941.79, which does not have any explanation)*  
*Or*

2. *The '6 months interest cost' (€3,753.20)*

*The latter it seems has been calculated using our current fixed annual rate of 4.45% for 6 months [€3753.20/€154910.70]\*2 = 4.84% (simple annual interest).*

*My problem is that this reference rate is incorrect for calculating mortgage breakage costs."*

The First Complainant then provides a link to an article which he argues states that the Provider "*can only charge for 6 months of opportunity cost of funds on deposit*". The First Complainant further states that the Euribor 6 month rate was, as of **2 October 2018**, -.268% and that he is not aware of any Eurozone 6 month deposit that would offer a >4.5% annual return.

The First Complainant made further submissions to this Office dated **27 April 2020**. In these submissions, the First Complainant sets out the history of his communications with the Provider to date. He states that his initial query with the Provider by way of telephone call on **09 August 2018** was to understand the method of calculation used (and input variables) to calculate a previously quoted breakage fee. The First Complainant states that this telephone call was the beginning of "*a cycle of incompetent, flippant and non-transparent handling*" of his query by the Provider. He states that his complaint was not addressed with seriousness and also that he was not issued with a Final Response Letter at the appropriate time by the Provider. He states that the Provider stated that it did not deal with the complaint because it was "*low... with staff*" (telephone conversation **20 August 2018**). The First Complainant states that on **20 August 2018** he again stated to the Provider that he would like to know the basis of the rate the Provider was using for the breakage fee. By way of phone call dated **23 August 2018**, he states that he was told by an agent of the Provider that nobody was able to deal with the request. The First Complainant states that on **30 August 2018**, he clearly outlined his concerns to the Provider and tried to offer a reasonable solution (namely a telephone call from someone with the knowledge to answer his question).

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The First Complainant also states that on **29 January 2019**, a representative from the Provider admitted that there had been a lack of transparency in the interaction between the Provider and the First Complainant and also admitted that many other providers are no longer charging breakage fees.

In his further submissions dated **27 April 2020**, the First Complainant addresses the Provider's submissions made to this Office. He states that Appendix C in the Provider's submissions, which purports to outline the list of criteria upon which the breakage cost is calculated, still does not answer his query satisfactorily. He states that while the Provider refers to the mortgage contract between himself and the Provider as the basis of its defence, his understanding is that the European directive and its local application supersedes any previous agreement and that the Provider is only entitled to the 6 months' opportunity cost of placing the funds in the money market at EURIBOR rates. The First Complainant states that the 6 month EURIBOR rate has been consistently negative since **December 2015** and on this basis the Provider should not be entitled to any breakage fee. The First Complainant states that this is consistent with other providers in the Irish market, very few of which have been charging breakage fees since **2016**. The First Complainant states that even following the Provider's logic, its inputs for the breakage calculation are questionable. He uses the figures and calculation supplied by the Provider:

$$\text{"Breakage Calculation} = (\text{Redeemed Amount} \times (R-R1) \times \text{Time}) \text{ divided by } 360 = \\ (\text{€}155,171.03 \times (.349\% - 0,01\%) \times 1344)/360 = \text{€}1,963.84\text{"}$$

On the basis of the above, the First Complainant queries whether a provider is going to pay 0.349% for funds when the interbank and prime rates are lower. He queries whether the Provider has any evidence that it can/could have at the appropriate time placed funds at that rate. He also queries whether the Provider is borrowing from itself at inflated rates or proposing to place the funds into a high risk product.

The First Complainant outlines what he states is "*a more realistic charge*" taking historical rates from 1year, 5year and 10year yields from the ECB.

For the purpose of his calculation the First Complainant states that "R" means the interest rate available to the Provider for the funds placed in the money market on the start date of the relevant Fixed Rate Period for the duration of the relevant Fixed Rate Period. He states that "*7 years from 27 February 2015, 10yr was 0.316% 5yr was -0.080536%, 7 year placement would have been in the region of 0.174%*". The First Complainant states that "R1 means the interest rate available to the Lender for funds placed in the money market on the date of the proposed early repayment, lump sum repayment of interest rate conversion for the remainder of the relevant fixed rate period. He states that "*4 years from 25 June 2018, 5yr was -0.080536%, 1yr was -0.246645%, 4 year placement would have been in region of -0.0112%*".

The First Complainant states that the rate applied is based on the remaining fixed rate term of the mortgage, rounded to the nearest month if less than one year and to the nearest year if greater than one year.

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He states that "Time" means the number of days from the date of early repayment, Lump Sum Repayment or interest rate conversion to the end of the relevant Fixed Rate Period. The First Complainant states that six months interest is the estimated interest that would be payable in the six months following the proposed repayment of interest rate conversion.

On this basis the First Complainant states that:

*"Breakage Calculation = (Redeemed Amount x (R-R1) x Time) divided by 360 = €155,171.03 x (0.174% - (-0.112%) x 1344)/360 = €1,077.51"*

He states that the Complainants are performing debtors who never had any arrears and only sought to exercise their contractual right to move at a fair cost. He states that this right has been denied to them at every turn via the "drawn out and frustrating process" orchestrated by the Provider.

The First Complainant states that the financial impact on both Complainants has been as follows:

*"i) 8 repetitive, vexing phone calls totalling more than an hour of time = €450*

*ii) 20 man-hours, reviewing the Provider's communications, chasing cases, research and response formulation, man-hours that could have been spent on personal pursuits and/or charging for my services as a consultant over the last 20 months: €400 x 20 hours = €8,000*

*iii) 20 months of excessive payment of interest due to prevention of transition to lower rate without penalty (€996 less €789.50) x 20 months = €4,130*

*iv) Stress and vexation, endured by my wife and I, relating to the uncertainty of our financial future over the last 20 months due to the Provider's negligence and unfair/unjust treatment in this case, specifically the inability to exercise our right to switch without penalty = €10,000*

*Total financial impact = €22,580"*

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

In its Final Response dated **12 February 2019**, the Provider states that after having consulted with its "Products Department" and after having received "a legal opinion" on the matter, it found that its methodology for calculating the breakage cost was calculated correctly. It notes that the breakage cost was initially sent to the Complainants on **25 June 2018** following the Complainants' request on **21 June 2018**. It also acknowledges that there was a period of a few weeks after the Complainants' request on **9 August 2018** where there was no contact from the Provider and it has apologised for this.

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In its Final Response Letter, the Provider states that it has investigated the breakage cost calculations on three occasions and has been unable to find any error in the figures provided or calculation process. It states that its legal team "*feel [the Provider] are compliant with legislation*".

The Provider made submissions to this Office in relation to the complaint on **14 April 2020**. In these submissions, the Provider states that it is "*satisfied that the breakage fee quote issued to the Complainants on **25 June 2018** is correct*".

The Provider also states that it is satisfied that it was in compliance with **Section 121 of the Consumer Credit Act 1995**. It states that the loan offer agreement between the customer and the Provider is dated **14 December 2014** and the mortgage was drawn down on **27 February 2015** on a fixed rate for 7 years. The Provider submits that the relevant sections of the loan offer entered into by customers with the Provider state:

*"[i]n the event that you break out of your fixed rate early, a charge of either 6 months interest, which is currently €4,004.00 or the Economic Breakage Cost applies, whichever is lower. 6 months interest formula: Loan Amount x Interest Rate % divided by 2. See the "Interest Rate" section of the Terms and Conditions for more details on the Economic Breakage Cost"*

*Section 16: Interest Rate Clause in Terms and Conditions:*

*(b) (iii) Where, during a Fixed Rate Period, the Lender accepts:*

- (a) early repayment of the loan in full,*
- (b) a Lump Sum Repayment, or Part Redemption,*
- (c) the conversion of a fixed interest rate loan to a variable interest rate loan (or other fixed interest rate loan) the Borrower must pay to the Lender a sum equal to the lower of (i) six months interest or (ii) a sum to be calculated in accordance with the following formula:  
(Redeemed Amount x (R-R1) x Time remaining in days until the end of the fixed period) divided by 360 where:*

*"Redeemed Amount" means the estimated average loan balance between the time of the proposed repayment or interest rate conversion and the end of the relevant Fixed Rate Period, assuming that no such repayment or interest rate conversion takes place and that all scheduled repayments of the loan are made by the Borrower under the terms specified in the Loan Offer; Provided that where a Lump Sum Repayment is made, "Redeemed Amount" shall mean the amount of the Lump Sum Repayment;*

*"R" means the interest rate available to the Lender for funds placed in the money market on the date of the proposed early repayment, Lump Sum Repayment or interest rate conversion for the duration of the relevant Fixed Rate Period.*

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*“R1 means the interest rate available to the Lender for funds placed in the money market on the date of the proposed early repayment, Lump Sum Repayment of interest rate conversion for the remainder of the relevant Fixed Rate Period. The rate applied is based on the remaining fixed rate term of the mortgage, rounded to the nearest month if less than one year to the nearest year if greater than one year.*

*“Time” means the number of days from the date of early repayment, Lump Sum Repayment or interest rate conversion to the end of the relevant Fixed Rate Period.*

*Six months interest is the estimated interest that would be payable in the six months following the proposed repayment of interest rate conversion.”*

The Provider also provides the “worked example” as contained within the terms and conditions:

“Worked Example

*In the example below, a customer took out a 5 year fixed mortgage at a rate of 5.00% on 1 January 2010. On 4 January 2011, the mortgage outstanding was €100,000 and the customer opts to break out of the fixed rate. The breakage cost calculation is:*

*Redeemed Amount = €87,832.42*

*R (Market rate on 1 January 2010) = 2.849%*

*R1 (Market rate on 4 January 2011) = 1.713%*

*Time = 1,457 days*

*Breakage Calculation = (Redeemed Amount x (R-R1) x Time) divided by 360*

*= (€87,832.42 x (2.849% - 1.713%) x 1,457)/360*

*= €4,038.22*

*Six Months Interest = €2,500*

*Therefore, in this case the customer would be charged the lesser amount of the six months interest, i.e. €2,500”*

In response to queries from this Office concerning the Provider’s compliance with Regulations 26(1) and 26(2) of the European Union (Consumer Mortgage Credit Agreements) Regulation 2016, the Provider states that it did not amend the method or wording in relation to the early redemption charge applied when a customer moves from a fixed rate before the expiry of the fixed rate period, as the method being applied was fair, justified and did not impose a sanction on the customer. The Provider states that there was no reason for the Provider to communicate with the Complainants in relation to the legislation when the legislation was enacted as there was no change to the process in relation to Early Redemption Charges.

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Therefore, the Provider states that it did not advise the Complainants that the breakage fees provided were not subject to Regulations 26(1) and 26(2) of the European Union (Consumer Mortgage Credit Agreements) Regulation 2016, as the Provider states that the way it calculated the Complainants' Fixed Rate Breakage fees was in line with the Complainants' loan offers and did not change when the Mortgage Credit Directive came into effect.

In relation to the Complainants' submission that the Provider has potentially breached the European Union (Consumer Mortgage Credit Agreements) Regulations 2016, the Provider states:

*"S.I. No 142/2016 – European Union (Consumer Mortgage Credit Agreements) Regulations 2016 gave effect to Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008//48/EC and 2013/36/EU and Regulation (EU) No.1093/2010 (the Directive).*

*Regulation 26 of the Mortgage Credit Directive deals in particular with Early Repayment and states as follows:-*

*Early repayment:*

*26. (1) A consumer has a right to discharge fully or partially his or her obligations under a credit agreement prior to the expiry of that agreement. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.*

*(2) A creditor shall be entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment, but shall not impose a sanction on the consumer, and any such compensation shall not exceed the financial loss of the creditor."*

The Provider goes on to refer to the calculations behind the figures provided for the fixed rate breakage cost from **25 June 2018** which it states illustrates that the Provider charged the lower of 6 month interest or the Economic Cost of breaking the money market instrument which it entered into on the date the fixed rate was first applied to the customers' account. The Provider states that customers are furnished with details as to how the Provider calculates an early redemption charge in their loan offer and that they are also provided with a letter setting out the breakage fee that will apply to them if they decide to break a fixed rate period before the expiry of the agreed period.

The Provider states that the economic cost to the Provider is based on the money market rates at the date the fixed rate was entered into and the date the customer wants to break the fixed rate. The Provider states that this is fair and objective compensation and that there are no other costs charged to the customers (such as admin fees etc.)

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Therefore, the Provider states that this does not impose a sanction on the customer and it does not exceed the financial loss of the Provider. The Provider states that the money market rates entered into by the Provider are swaps based on the EURIBOR 3 months reference rate and if a customer wishes to break their fixed mortgage product agreement, the Provider will need to break the interest rate swap. The Provider states that it will then have to enter into another interest rate swap going in the opposite direction in terms of fixed and floating for a duration that is remaining on the customers' original fixed rate period. The Provider states that if the market rate on the new swap dictates that there will be an economic cost to the Provider, that cost will be passed onto the customer if it is lower than 6 months' interest on their loan.

The Provider furnished worked calculations specific to the two sub accounts drawn down by the Complainants, using the format set out in the loan offer:

***"Example specific to the Complainants sub account 1 using the format set out in the Loan Offer:***

*The Complainant took out a 7 year fixed mortgage at a rate of 4.5% on 27<sup>th</sup> February 2015. On 25<sup>th</sup> June 2018, the mortgage outstanding was €169,933.62 and the Complainants opt to break out of the fixed rate. The breakage cost calculation is:*

***Redeemed Amount = €155,171.03*** (means the estimated average loan balance between the time of the proposed repayment or interest rate conversion and the end of the relevant Fixed Rate Period)

***R (Market rate on 1<sup>st</sup> January 2014) = 0.349%*** (Market rate on the day the Provider placed the funds on the Money Market.)

***R1 (Market rate on 4<sup>th</sup> January 2015) = 0.01%*** (Market rate on the day the customer broke the fixed rate and the cost to the Provider for this occurring).

***Time = 1,344 days*** (this is the number of days left until the expiry of the fixed rate period and the longer left the higher the Breakage Fee will be)

***Breakage Calculation = (Redeemed Amount x (R-R1) x Time) divided by 360 = (€155,171.03 x (0.349% - 0.01%) x 1344)/360 = €1,963.84***

*Step 1: 0.349 – 0.01 = 0.339*

*Step 2: 155,171.03 x 0.339 = 526.03*

*Step 3: 526.03 x 1344 = 70698.32*

*Step 4: 70698.32/360 = 1963.84*

***Breakage cost: 1963.84*** (Economic Breakage Cost to the Provider for the customer moving from the Fixed Rate Period of 7 years at year 3)



**Calculation of the 6 months interest rate, using the formula outlined in the loan offer.\***

$4.45\% \times 169,934/2 = \text{breakage fee.}$

Step 1:  $(4.45 \times 169,933.62)/100 = 7562.06$  (this is the interest rate charge for the year)

Step 2:  $7562.06/2 = 3781.03$  (interest rate charge for 6 months)

**Six Months Interest = €3781.03 (interest rate charge for 6 months)**

\*at loan offer a basic calculation is done to illustrate the potential break fee payable by the customer. The logic used to calculate this is the **rate x amount borrowed divided by 2**. However this is not a reducing balance calculation so the figure on the loan offer at drawdown will not match the figure that is calculated when the customer actually applies for a break fee. This is because the balance outstanding is less than what was there are original drawdown. When a customer requests a breakage fee, this is calculated using a reducing balance calculation and a **daily interest rate** (applicable only on the date the breakage fee is calculated) is used to calculate the 6 month interest. The 6 months interest charge used for the purposes of determining a customers breakage fee will always be slightly less than the 6 months interest charge provided for using the calculation in the loan offer. The actual 6 months interest cost calculated using the reducing balance and daily rate on **25 June 2015** was €3765.57.

Therefore, in this case the customer would be charged the lesser amount of Early Redemption Charge i.e. €1,963.84

**Example specific to this customer using the format set out in the loan offer: Account No. 5090527/02**

Customer took out a 3 year fixed rate mortgage at a rate of 3.35% on 03/02/2017. On 25<sup>th</sup> June 2018, the mortgage outstanding was €18,489.24 and the customer opts to break out of the fixed rate. The breakage cost calculation is:

**Redeemed Amount = €17,203.68** (means the estimated average loan balance between the time of the proposed repayment or interest rate conversion and the end of the relevant Fixed Rate Period)

**R (Market rate on 03/02/2017) = -0.156%** (Market rate on the day the Provider placed the funds on the Money Market.)

**R1 (Market rate on 26/06/2018) = 0.24%** (Market rate on the day the customer broke the fixed rate and the cost to the Provider for this occurring).

**Time = 645 days** (this is the number of days left until the expiry of the fixed rate period and the longer left the higher the Breakage Fee will be)

**Breakage Calculation = (Redeemed Amount x (R-R1) x Time) divided by 360 = (€17,203.68 x (-0.156% - -0.24%) x 645)/360 = €25.89**

Step 1: (-0.156) – (-0.24) = 0.08%

Step 2: 17,203.68 x 0.08% = 14.45

Step 3: 14.45 x 645 = 9321.13

Step 4: 9321.13/360 = 25.89

**Breakage cost: 25.89** (Economic Breakage Cost to the Provider for the customer moving from the Fixed Rate Period of 3 years at year 1)

**Calculation of the 6 months interest rate, using the formula outlined in the loan offer.\***

$3.35\% \times 18489/2 = \text{breakage fee.}$

Step 1:  $(3.35 \times 18489)/100 = 619.38$  (this is the interest rate charge for the year)

Step 2:  $619.38/2 = 309.69$  (interest rate charge for 6 months)

**Six Months Interest = €309.69 (interest rate charge for 6 months)**

\*at loan offer a basic calculation is done to illustrate the potential break fee payable by the customer. The logic used to calculate this is the **rate x amount borrowed divided by 2**. However this is not a reducing balance calculation so the figure on the loan offer at drawdown will not match the figure that is calculated when the customer actually applies for a break fee. This is because the balance outstanding is less than what was there are original drawdown. When a customer requests a breakage fee, this is calculated using a reducing balance calculation and a **daily interest rate** (applicable only on the date the breakage fee is calculated) is used to calculate the 6 month interest. The 6 months interest charge used for the purposes of determining a customers breakage fee will always be slightly less than the 6 months interest charge provided for using the calculation in the loan offer. The actual 6 months interest cost calculated using the reducing balance and daily rate on **25 June 2015** was €308.20.

Therefore, in this case the customer would be charged the lesser amount of Early Redemption Charge i.e. €25.89”

The Provider states that when breakage fees were calculated on **25 June 2018**, the days remaining until the end of the fixed rate period were:

50905278/1 – 1,344 Days

50905278/2 – 645 Days

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The Provider state that the redeemed amount of the mortgage loan account at the dates the Complainants were provided with breakage fees are as follows:

**25 June 2018** Sub Account 1 - €155,171.03

Sub Account 2 - €17,203.68

**15 August 2018** Sub Account 1 - €154,910.67

Sub Account 2 - €17,171.26

The Provider states that a complaint was logged in relation to this matter, following a phone call with the First Named Complainant on **23 August 2018**.

The Provider outlines its chain of communication with the Complainants as follows:

***“21 June 2018** our records show that the First Named Complainant contacted the Provider and requested information regarding the breakage fee on the account. A rate sheet and a redemption statement were ordered to be issued to the Complainants. The rate sheet issued to the Complainants on **25 June 2018**, confirming the breakage costs to be valid until **3 July 2018**.*

***9 August 2018** our records show that the First Named Complainant contacted the Provider twice by phone and raised a query regarding the breakage cost and the change in legislation. This request was sent to our mortgage operations department to provide the information requested by the First Named Complainant. It was advised on the 2<sup>nd</sup> phone call that the exact calculations could not be provided to the customer.*

***15 August 2018** a letter issued to the Complainants advising of the breakage costs.*

***20 August 2018** the First Named Complainant contacted the Provider again by phone and requested the calculation formula and specific basis of the rate being used (i.e. EURIBOR/interbank etc) in calculating the breakage cost. This request was sent to mortgage operations department again. The breakage costs were confirmed over the phone to the First Named Complainant and it was confirmed that this was valid until **23 August 2018**.*

***23 August 2018**, the First Named Complainant again contacted the Provider by phone regarding the information requested. The agent advised that the Provider was unable to provide the figures over the phone, the agent advised that the Treasury provide the daily coupon rate, the Provider can send a letter giving information however no figures. Advised the Provider need to contact Treasury and clarify if we can provide the information the Complainant is looking for. The Complainant was unhappy with this and a complaint was logged under reference [Complaint Reference Number].*

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*The First Named Complainant was advised if the complaint is not resolved within 5 working days, the complaint will be passed to a complaint handler and a full investigation completed.*

**29 August 2018** a letter from mortgage operation issued.

**30 August 2018** the First Named Complainant contacted the Provider by phone and sought further clarification within 24 hours, as he had not received an update following the complaint being logged. The First Named Complainant was advised that a letter was posted to the Complainants on **29 August 2018**, the contents of the letter were read to the First Named Complainant, however the letter did not contain the information the Complainant required. The agent advised that he could not confirm that Treasury would provide the information regarding the specific daily reference rate to the Complainant. The Complainant advised that he thinks the Provider had misunderstood his query, rather than not providing the information requested.

**18 September 2018**, the First Named Complainant called to speak to the complaint handler who was unavailable. A call back request was sent to the complaint handler.

**19 September 2018** Call made to the First Named Complainant by complaint handler.

**20 September 2018** Letter issued to the Complainants setting out the Complainants' rights to refer their complaint to the Ombudsman's office.

**05 November 2018** the Provider received correspondence from your office [FSPO], enquiring if our letter of **20 September 2018** was our Final Response Letter.

**16 November 2018**, the Provider responded to your office [FSPO] and requested a copy of the complaint form to allow the Provider review full details of the complaint raised.

**15 January 2019**, response received from your office with complaint form attached.

**29 January 2019** Customer Care Centre contacted First Complainant, following contact from your office [FSPO]. On this call, the First Named Complainant summarised the complaint, outlining his dissatisfaction regarding not receiving the base rate or calculations used in calculating the breakage costs provided to the Complainants. However, the Provider acknowledges that this contact should have been made sooner, and the complaint should have been reactivated on **15 January 2020**, when your office [FSPO] sent the Complainants' FSPO Complaint Form to our office. The Provider wish to apologise for the delay in not contacting the Complainants sooner, following receipt of their complaint form.

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*On **30 January 2019**, the First Named Complainant sent an email to the Customer Care Centre outlining the EU Directives he believes the Provider to be in breach of.*

*On **12 February 2019**, the Provider issued a Final Response Letter to the Complainants; however on further reviewing the Response Letter during the course of our investigation into this matter, we acknowledge that this did not provide the clarification of interest rates used, or the exact calculations in how the breakage cost was calculated. Although this is not something that we usually provide to our customers, the formulae used to determine the breakage costs are provided in the Terms & Conditions of the Complainants' loan offer documents. That being said, the Provider acknowledges that the T&C's of the loan offer does not provide the clarity sought by the Complainants in relation to this matter."*

This Office raised a query with the Provider, enquiring as to how the Provider complied with provisions 10.7, 10.8 and 10.9 of the **Consumer Protection Code 2012** ('as amended') ('the CPC'). With respect to 10.7 ("a regulated entity must seek to resolve any complaints") and 10.8 ("when a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity's complaints process"), the Provider states that the complaint was initially logged on **23 August 2018** and a letter issued to the Complainants dated **29 August 2018** in response to their complaint. With respect to 10.9 (the procedure a regulated entity must have in place for the proper handling of complaints), the Provider again states that a response to the First Complainant's query was issued within 5 working days, therefore the complaint was logged as closed within 5 working days. The Provider states that when the Complainant contacted the Provider again on **20 September 2018** a further letter was issued to the Complainants with the calculations used attached. The Provider states that the complaint was not reactivated with the Provider until **29 January 2019**, following receipt of the FSPO Complaint Form from this Office on **15 January 2019**. The Provider acknowledges that the complaint should have been reactivated within 5 days of receipt of the Complaint form. The Provider states that it wishes to apologise to the Complainants for the delay in reactivating the complaint. The Provider states that a final resolution letter was issued on **12 February 2019** which contained all details specified in 10.9(e).

The Provider states that it has complied with provision 4.25 of the CPC. Provision 4.25 states that:

*"Where a regulated entity:*

- a) Offers credit on a fixed interest rate to a personal consumer; or*
- b) Offers a personal consumer the option to fix their rate or to switch to a fixed rate, on an existing credit agreement:*

*The regulated entity must provide, in the credit documentation, a worked example specific to the personal consumer of the early redemption charge in monetary terms and details in relation to the calculation of this charge.*

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The Provider states that *“although not customer specific”*, the loan offer does set out a worked example for a fixed rate customer. The Provider states that a letter is also issued to the customers setting out the breakage costs once the customer queries this.

Furthermore, in response to the Complainants’ submission that the Provider’s response to their query regarding the calculation of the breakage fee was vague and it lacked transparency as it did not clarify the reference rate that it used when calculating the fee and it did not identify the formula which it used to calculate the fee, the Provider states that its letter dated **20 September 2018** provided a response to the queries raised by the Complainants. It further states that it *“is not usual practice to provide customers with our breakage cost calculator as this in an internal document”*. The Provider also submits that the breakage fee was set out in the specific loan offer conditions in the loan offer dated **4 December 2014**.

The Provider states that in light of the customer service delays experienced by the Complainants in relation to the query they initially raised and the Provider’s delays in providing the requested information, including the delays in reactivating the complaint in **January 2019**, the Provider would like to offer the customers a goodwill gesture of €1,000 in relation to this matter.

### **The Complaints for Adjudication**

The first complaint is that the Provider failed to correctly calculate the fixed rate mortgage loan account breakage fee. The second complaint is that the Provider dealt with the Complainant’s complaint in an unacceptable manner.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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 8 September 2020 outlining my preliminary determination 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, within the period permitted, I set out below my final determination.

In relation to the complaint that the Provider failed to correctly calculate the fixed rate mortgage loan account breakage fee, I note that on **21 June 2018** the First Named Complainant contacted the Provider and requested information regarding the breakage fee on the account. As a result of this request for information, I note that the Provider sent two letters to the Complainants dated **25 June 2018**. The first letter referred to account number: ending 278/2 and stated that said mortgage account was on a fixed rate of 3.35% until **31 March 2020** and there would be a fee payable of €25.89 to break out of this fixed rate early. The second letter referred to account number: ending 278/1 and stated that the mortgage account was on a fixed rate of 4.45% until **28 February 2022** and there would be a fee payable of €1.963.84 to break out of this fixed rate early.

I note that the loan offer between the Complainants and the Provider is dated **4 December 2014** as opposed to being dated **14 December 2014**, as stated by the Provider. The specific loan offer conditions state:

*"[i]n the event that you break out of your fixed rate early, a charge of either 6 months interest, which is currently €4,005.00 or the Economic Breakage Cost applies, whichever is lower. 6 months interest formula: Loan Amount x Interest Rate % divided by 2. See the "Interest Rate" section of the Terms and Conditions for more details on the Economic Breakage Cost"*

*Section 16: Interest Rate Clause in Terms and Conditions:*

*(b) (iii) Where, during a Fixed Rate Period, the Lender accepts:*

- (a) early repayment of the loan in full,*
- (b) a Lump Sum Repayment, or Part Redemption,*
- (c) the conversion of a fixed interest rate loan to a variable interest rate loan (or other fixed interest rate loan) the Borrower must pay to the Lender a sum equal to the lower of (i) six months interest or (ii) a sum to be calculated in accordance with the following formula:*

*(Redeemed Amount x (R-R1) x Time remaining in days until the end of the fixed period) divided by 360 where:*

*“Redeemed Amount” means the estimated average loan balance between the time of the proposed repayment or interest rate conversion and the end of the relevant Fixed Rate Period, assuming that no such repayment or interest rate conversion takes place and that all scheduled repayments of the loan are made by the Borrower under the terms specified in the Loan Offer; Provided that where a Lump Sum Repayment is made, “Redeemed Amount” shall mean the amount of the Lump Sum Repayment;*

*“R” means the interest rate available to the Lender for funds placed in the money market on the date of the proposed early repayment, Lump Sum Repayment or interest rate conversion for the duration of the relevant Fixed Rate Period.*

*“R1 means the interest rate available to the Lender for funds placed in the money market on the date of the proposed early repayment, Lump Sum Repayment or interest rate conversion for the remainder of the relevant Fixed Rate Period. The rate applied is based on the remaining fixed rate term of the mortgage, rounded to the nearest month if less than one year to the nearest year if greater than one year.*

*“Time” means the number of days from the date of early repayment, Lump Sum Repayment or interest rate conversion to the end of the relevant Fixed Rate Period.*

*Six months interest is the estimated interest that would be payable in the six months following the proposed repayment of interest rate conversion.”*

I note that the amount stated as the breakage cost as outlined above is “€4,005.00” as opposed to “€4,004.00” as stated by the Provider in its submissions to this Office. The terms and conditions to the loan offer also provide the “worked example” as outlined above by the Provider.

The evidence indicates that from the outset of the loan the Provider furnished a clear and coherent explanation for the process/calculation that would be undertaken should the Complainants wish to break out of their fixed charge early and provided a worked example illustrating this. I note that the Provider’s submissions refer in detail to the calculations behind the figures provided for the fixed rate breakage cost from **25 June 2018** and having considered these I accept that those figures illustrate that the Provider charged the lower of 6 months interest or the economic cost of breaking the money market instrument which it entered into on the date the fixed rate was first applied to the Complainants’ account.

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With regard to section 121 of the Consumer Credit Act 1995, I note that section 121(1) of the Act states that:

*“a borrower may, at any time before the time agreed, repay to the mortgage lender the whole or any part of a housing loan and shall not be liable to pay any redemption fee in relation to the loan or any part of the loan.”*

However, I also note that section 121(2) of the Act states that:

*“2) The exemption from redemption fees in subsection (1) shall not apply to a housing loan in respect of which the mortgage or loan agreement provides that the rate of interest:*

- (a) may not be changed, or*
- (b) may not be changed over a period of at least one year, or*
- (c) may not, for a period of at least 5 years, exceed the rate applicable on the date of the making of the said agreement by more than 2 per cent.*

Therefore, by reason of the fact that mortgage accounts ending 278/1 and ending 278/2 were loan agreements with fixed rates of interest, s121(1) would not apply.

While I acknowledge that the First Named Complainant has raised issues concerning the EURIBOR 6 month rate at the time of the requested break, I accept the Provider’s submission that the economic cost to the Provider is based on the money market rates at the date the fixed rate was entered into and the date the customer wants to break the fixed rate. I accept from the Provider’s submissions that this is a fair and objective compensation and there are no other costs charged to the Complainants. Therefore, I accept that the breakage cost does not impose a sanction on the customer.

I note the submission of the Provider that the Money Market Rates entered into by the Provider are swaps based on the EURIBOR 3 months’ reference rate and if a customer wishes to break their fixed mortgage product agreement, the Provider will need to break the interest rate swap. Therefore, I accept that the Provider will have to enter into another interest rate swap going in the opposite direction in terms of fixed and floating for a duration that is remaining on the customers original fixed end period. I note that if the market rate on the new swap dictate that there will be an economic cost to the Provider, then that economic cost will be passed onto the customer if it is lower than 6 months’ interest on their loan.

In relation to the Provider’s compliance with Regulations 26(1) and 26(2) of the European Union (Consumer Mortgage Credit Agreements) Regulation 2016 and the Complainants’ submission that the Provider has potentially breached the European Union (Consumer Mortgage Credit Agreements) Regulations 2016, I accept that there was no requirement for the Provider to amend the method or wording in relation to the early redemption charge applied when a customer moves from a fixed rate before the expiry of the fixed rate period.

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This is because the method being applied was fair, justified and did not impose a sanction on the customer. I also accept that there was no reason for the Provider to communicate with the Complainants in relation to the legislation when the legislation was enacted as there was no change required by that legislation to the process in relation to early redemption charges.

The evidence before me demonstrated that from the outset of their loan offer, the Complainants were provided with details as to how the Provider would calculate the breakage fee that would apply to them if they decided to break their fixed rate period before the expiry of the agreed period. The exact figure they would have to pay was properly calculated and confirmed to them by the Provider in relation to both of their sub-accounts in correspondence dated **25 June 2018**.

With respect to provision 4.25 of the CPC I note that the loan offer sets out a worked example for a fixed rate customer but further note that the Provider acknowledges that it did not provide a customer specific example. Therefore, the Provider has breached provision 4.25 of the CPC.

I also note that the Provider has acknowledged that there were customer service delays experienced by the Complainants in relation to the query they initially raised and that there were delays by the Provider in furnishing the requested information, including the delays in reactivating the complaint in **January 2019**. This is a breach of provision 2.8 of the CPC to handle complaints "*speedily*".

While I do not believe it is reasonable to find that the Provider dealt with the Complainant's complaint in an unacceptable manner, I do accept that there were some customer service delays experienced by the Complainants and that the Provider breached provision 4.25 of the CPC.

I note that the Provider has made an offer of €1,000 to the Complainants in respect of its shortcomings.

On the basis that I believe the offer of €1,000 by the Provider is reasonable and remains available to the Complainants should they wish to accept it, I do not uphold this complaint. I note that the Complainants, in their e-mail to this Office dated 8 September 2020, advise that they will accept the Provider's offer of €1,000.

### **Conclusion**

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

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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**

30 September 2020

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.**