



<u>Decision Ref:</u>	2020-0459
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Application of interest rate Dissatisfaction with customer service Failure to process instructions Fees & charges applied (mortgage)
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Complainant's attempts to obtain information about her mortgage loan account.

The Complainant's Case

The Complainant has a mortgage loan with the Provider. In **2018** she was seeking to overpay her mortgage repayments (that is to make repayments greater than the contractually agreed monthly repayments). The Complainant submits that the Provider allows for a total of 10% of annual payments to be overpaid without incurring penalties. On **18 December 2018, 28 December 2018, and 31 December 2018**, the Complainant states that she asked the Provider:

1. What was the 10% allowance figure for 2018;
2. How much of that 10% figure had been used at that point;
3. How much of that 10% figure remained for the Complainant to use for 2018.

The Complainant submits that none of the letters she received in response addressed her queries, and that they gave differing figures for her outstanding mortgage balance, thereby resulting in differing 10% thresholds being given to her.

On **31 December 2018** the Complainant made payments of €2,500 and €350, being the payment level she estimated to be sufficient to reach, but not exceed, the annual overpayment threshold.

The Complainant believes she could be at a financial loss by being penalised for exceeding the 10% threshold, or could lose out by not being in a position to fully take advantage of the 10% threshold because of the inaccurate information given to her by the Provider.

On **3 March 2020**, the Complainant made an additional submission to this office with two more letters from the Provider dated **27 January 2020**. One of these letters indicated the annual 2020 allowance as €6,920.97, and the other indicating the annual 2020 allowance as €7,050.97. The Complainant contends that this is further evidence of a continuing failure in the systems of the Provider and an inability to furnish correct information to its customers.

The Complainant also noted that some of the correspondence she received was sent to a previous address even though she had instructed the Provider to update her details to reflect her current address.

The complaint is that the Provider has proffered poor customer service and has repeatedly given the Complainant inaccurate information in response to her queries.

The Complainant wants the Provider to:

1. Explain why these incidents occurred;
2. Detail the total 10% allowance for 2018;
3. Detail what the Complainant overpaid for 2018;
4. Confirm that she would not be penalised for overpayments in 2018;
5. Confirm the total 10% allowance for 2019;
6. Confirm that there would be no penalties in 2019 where overpayments are less than the 10% figure;
7. A breakdown of all overpayments to date.

The Provider's Case

In its Final Response Letter dated **29 March 2019** the Provider apologised for advising the Complainant of differing amounts.

It notes that because two payments were made manually by the Complainant on **31 December 2018** (New Year's Eve), they were not credited to the loan account balance until **2 January 2019** and so were included in the 2019 allowance.

The Provider advised that its resolution to the matter would be to *"not put the €2850.00 made on 31/12/18 against the allowance for 2019"*. It stated that this left a remaining balance of the 10% allowance for 2019 at €8,322.14 for the year. It noted that at the existing level of monthly overpayment (€779.62 per month), the Complainant could continue at that level of overpayment until July 2019 without any breakage fee.

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The Provider has stated that holding letters in relation to the complaint were sent to the Complainant at her mother's address by reason of a "security screen on our system", but this has now been amended.

The Provider offered €250 by way of redress.

By further letter dated **18 April 2019**, and in response to the Complainant, the Provider elaborated further on its final response letter.

The Provider stated that the €2,850.00 was being applied to, and was within, the 2018 allowance.

The Provider corrected its previous statement in the final response letter, and stated that the current level of monthly overpayment could continue within the 10% allowance for 2019 until October 2019, and not July 2019 as had been stated. The Provider explained this error as resulting from the fact that the July 2019 date was produced before the €2850.00 was applied to the 2018 allowance and so had still formed part of the 2019 overpayments, as far as their system had been concerned.

The Provider apologised for giving incorrect information on a January 2019 call.

The Provider also stated that the 10% allowance offer does not form part of the original terms and conditions of the loan agreement, but is in fact an agreement made after the original mortgage was taken out, and applies only where the customer is on a fixed rate and the current allowance is 10%.

The Provider noted that not all correspondence letters are available on its systems and this was why its letter dated **7 January 2019** was not acknowledged in previous correspondence.

The Provider states that its offer of €250.00 remains open to the Complainant.

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 Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on 23 November 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.

The Complainant took out a mortgage with the Provider in **2013**, for €104,400.00 to be repaid over 30 years.

The Complainant signed a form on **22 January 2018** electing to avail of a fixed rate of interest of 2.95% until 31 March 2021. As part of a fixed interest rate agreement, it was agreed that in the event of the Complainant paying all or part of the mortgage prior to the end of that fixed term, a breakage fee would be applicable.

This is a standard condition of a fixed interest rate. Where a mortgage is subject to a standard variable rate, a breakage fee may not be applicable.

However, the Provider offered its fixed rate customers (including the Complainant) the option of making overpayments up to a maximum of 10% of the outstanding balance per year without incurring any breakage fees or penalties. The Complainant decided to avail of this offer, with the intention of reducing her mortgage balance further while maintaining fixed rate of interest without incurring penalties.

The Complainant experienced some difficulties with the Provider in relation to this switchover, as evidenced by phone calls from early 2018, however these do not form part of this complaint.

From January to December of **2018**, the Complainant made overpayments totalling €6,011.28 to her mortgage. Her overpayments under the fixed rate agreement began in March 2019. Under the fixed rate of interest she made overpayments of €5,546.20. These figures have been furnished to this office as part of the Provider's response to this complaint. This breakdown was not furnished to the Complainant when she made her complaint to the Provider.

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On **30 November 2018** the Complainant telephoned the Provider in an effort to confirm that her then current level of monthly overpayments would not breach the 10% allowance for the year 2018; and to find out if she would have to adjust the level of overpayments in 2019 in order to stay under the 10% overpayment allowance.

She was advised that her current level of monthly overpayments if continued to the end of the year, would not breach her 10% allowance. She was informed that for 2019, she could contact the Provider on 1 January 2019 to find out what monthly overpayment she could make for the year 2019 in order to stay within the 10% allowance. She was told that, for example, 10% of her mortgage "now" was €8,400.21, but she was advised that the 10% allowance is set on 1 January each year, based on 10% of the outstanding mortgage balance.

The Complainant telephoned the Provider again on **30 November 2018** with a query on the figures she could see on her internet banking for the mortgage account, specifically in relation to the interest. It was explained to her that the interest figure is calculated based on the days in the month, so a month that has 31 days may result in a larger interest figure than a month that has 30 days.

I accept that the Provider conveyed accurate and clear information to the Complainant during these phone calls.

On **17 December 2018** the Complainant telephoned the Provider to find out how much remained available under the 10% allowance for her for the year 2018. She wished to make an overpayment up to that 10% limit. She was told that her 10% allowance for the year 2018 was €9,131.87, she had already overpaid €5,346.20 (including her December repayment) therefore her remaining allowance was actually €3,785.67.

She enquired as to the opening hours of the Provider over the holiday period. Whilst she did not specifically ask, neither was she advised that if she made a repayment over the telephone there would likely be a delay of 1 or 2 working days before that payment was applied to the account.

On **18 December 2018** the Complainant telephoned the Provider to ask for a copy of her account terms and conditions, together with confirmation of her 10% allowance for the year 2018 and a breakdown of what overpayments she had already made towards this figure. She was told she would receive this information in the next few days by letter. She was then advised verbally that she had made overpayments of €6,011.28 for 2018 as opposed to the lower figure she had been told the previous day. The Provider's agent surmised that the previous agent had not taken the January overpayment into account (before the fixed term had begun in March). However, it is now apparent the agent meant the January *and* February overpayments). This left the Complainant believing she had €3,162.23 remaining in her 10% allowance for 2018.

On **20 December 2018**, in a letter that the Provider was unable to locate on its systems, but the Complainant has produced to this office, the Provider advised her as follows:

“Based on your actual Balance outstanding of €83,018.75, 10% is €8,301.87. You can make a lump sum payment up to this amount, if it exceeds Breakage fee will be charged.”

I can fully understand how this was confusing to the Complainant. It is not at all clear whether or not this figure takes account of payments already made into the account during 2018 or not. In fact, it does not. Furthermore, this letter does not include any of the specific information that the Complainant sought during the phone call of 18 December 2018. It is apparent that this letter is a pro forma, automatically generated letter, which simply calculates the 10% figure based on the outstanding mortgage balance that day. It does not take into account the possibility that a customer may have already made overpayments that year.

On **28 December 2018** the Complainant telephoned the Provider to follow up on her previous query, as she had not yet received the information she had requested during the 18 December 2018 – specifically how much of her 10% allowance remained for 2018.

As close of business approached on 18 December 2018, the Complainant had not received a call back that day (as she was told she would) so she telephoned the Provider again. She was advised that her 10% allowance was €8,326.17. The Complainant, understandably, simply responded *“No it’s not”*. Clearly, this figure had not taken into account the overpayments she had already made.

Eventually, after the Provider’s agent double checked the figures and had them approved by a manager, the Complainant was advised that the figure was in fact €2,968.06. The Complainant expressed her frustration and her worry that she was being given so many different figures, and she did not want to overpay an amount that would exceed her 2018 10% allowance. She was advised that a letter would be sent to her confirming this amount as she still had not received a letter with the information promised on 18 December 2018. She was also informed that she would be able to make the payment on Monday 31 December 2018. She was advised that as long as she made the payment on Monday 31 December 2018 it would be applied to her 2018 allowance.

On **31 December 2018** the Complainant telephoned the Provider in the morning (as opposed to the Provider contacting her). The Complainant wanted to make the overpayment up to her 10% allowance. She had not received the information by letter. She was told the remaining allowance was €3,162. She was told that this calculation was done on 18 December 2018. The Complainant said that she had since been told a different amount since €2,968, and was worried that she was in danger of overpaying too much which would cause her to exceed the 10% allowance.

She was initially informed that €2,968 was the correct figure. The Complainant made payment by one debit card payment of €2,500, and another debit for €350.

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The Complainant was advised that these payments would be applied to the mortgage account balance, her balance would be updated, and ‘tomorrow’ (that is, on 1 January 2019) she would be able to check her total mortgage loan balance and her allowance for 2019 would be 10% of that figure.

On **31 December 2018** the Provider issued a letter to the Complainant stating that:

“Currently, your allowance is €8,322.14, however this amount is subject to change”.

Again, this appears to be a pro forma, automatically generated letter which simply tells a customer what 10% of their mortgage balance is on the day it is generated, and does not take into account the possibility that the customer may have already made overpayments that year, against a 10% allowance that is calculated on 1 January of that year.

On **2 January 2019** the Complainant was again told by letter that her allowance was €8,322.14.

On **3 January 2019** the Complainant telephoned the Provider to query why her lump sum payments of 31 December 2018 had not yet been applied to her account balance. She was told it would take between three to five days from the date of payment for the payment to be applied to the account.

On **7 January 2019** the Complainant was sent a copy of her mortgage terms and conditions, as requested during the telephone call of 20 December 2018. The Complainant was not advised, and the Provider has since explained, that the 10% allowance is not provided for in the terms and conditions of the mortgage account, but is in fact provided for separately in the fixed interest period terms and conditions.

On the same date the Complainant received a receipt for the €2,500 lump sum payment made by telephone on 31 December 2018. We now know that this was due to the time lapse between the payment being made by the Complainant by telephone (on 31 December 2018) and being applied to the account. The Complainant had not been specifically advised that such a time lapse could occur during her December telephone calls. In fact, in the telephone calls of 28 December 2018 and 31 December 2018 she was advised that payments made by telephone on 31 December 2018 would be applied in time to form part of her 2018 allowance.

The receipt letter stated that a lump sum payment of €2,500 was made on 2 January 2019 and this would be applied to reduce her monthly repayments. There was no reference to the other €350 lump sum payment, or to the overpayment allowance figures for 2018 or 2019, but the Complainant was advised that her new monthly repayments were being set at €1,153.00. This was not the intention of the Complainant when making the lump sum payment.

On **8 January 2019** the Complainant telephoned the Provider noting that her balance reflected the lump sum payments having been applied to the account on 7 January 2019 despite having been made on 31 December 2018. The Complainant also noted that she had not received numerous call backs, and the letters received by her did not contain the information she had been consistently requesting. The Complainant sought confirmation that the lump sum payments made on 31 December 2018 would be applied towards the overpayment allowance for 2018.

On **15 January 2019** correspondence issued to the Complainant advising that the lump sum payment of €2,500.00 was being applied to reduce the mortgage term, and the monthly repayments would remain at €1,200.

On **21 March 2019** the Provider issued correspondence to the Complainant stating that her 10% allowance for 2019 (from 1 January 2019) was €8,322.14; the lump sum payment of €2,500.00 and the monthly overpayments (799.62) for January and February 2019 had been applied to reduce the remaining 10% allowance for 2019 to €3,493.28.

This was the precise scenario the Complainant had gone to great lengths to avoid – a 2018 overpayment being applied to the 2019 allowance instead of the 2018 allowance.

It appears that a formal complaint in relation to this matter was made on 14 January 2019. I have not been provided with a copy of this in the evidence furnished. The final response was not issued until **29 March 2019**. However, the Provider did issue holding letters to the Complainant during this period in order to remain in compliance with its obligations under section 10.9 of the Consumer Protection Code (CPC) – it acknowledged the complaint as being received within 5 days (on 18/1/19). It issued holding letters to the Complainant within 20 business days each time (on 8/2/20 and 8/3/20) before issuing its first Final Response Letter. These holding letters were sent to a different address (the Complainant's mother's address) to the one relating to this mortgage account.

This letter acknowledged that the Complainant had been furnished with conflicting information. It explained that, due to the lapse in time between the lump sum payments being made and being applied, they had been put towards the 2019 allowance. It stated that that these lump sum payments would now not be applied to the 2019 allowance. It also apologised for the fact that the holding letters had been sent to a previous address held on file for the Complainant. It offered €250 by way of redress for inconvenience caused.

Although it addressed some of the complaint, this final response letter did not address a number of issues that the Complainant had experienced. In particular, it did not provide a breakdown of overpayments recorded as being made for 2018 and 2019; it did not provide an explanation as to why the Complainant had been given incorrect information involving different amounts. It also stated it could not find 2 of the letters that the Complainant had referenced in her complaint. The Complainant raised these issues with the Provider by email on **8 April 2019**. I have not been furnished with a copy of this email.

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However, I can fully understand how the Complainant was not satisfied with the first Final Response Letter – at this stage she has still not been clearly told what her allowance was for 2019 nor had she been given a breakdown of the overpayments made for 2018 and 2019.

The Provider issued another Final Response Letter on **18 April 2019**.

The Complainant emailed the Provider on **28 May 2019** setting out her grievances in detail – noting that she had still not been provided with figures that she could be confident in; that numerous calls made by her had not been returned; that the mortgage terms and conditions which provide for the 10% allowance had not been highlighted to her; and she was still receiving conflicting information about this allowance – in particular whether or not the monthly overpayments were applied towards the 10% overpayment allowance. She also notes that she never gave any instructions to the bank to change her repayments or term outlined in the letters that issued to her during January.

The Complainant sought the following information:

- The 10% allowance for 2018;
- The overpayment amount made in 2018 (to include the lump sum payments made on 31 December 2018);
- Confirmation that she would not be penalised for overpayments in 2018;
- The 10% allowance for 2019;
- Confirmation that she would not be penalised for overpayments in 2019 (within the allowance);
- A breakdown of payments made up to that point for 2019.

I do not believe that these queries were answered in a clear or satisfactory manner until the Provider furnished a detailed response to this Office on **29 May 2020**. It is now clear that the Complainant has not exceeded her 10% allowance for 2018 or 2019. The Provider has stated that the amount she had left on her allowance for 2018 was €312.22 and for 2019 was €5.56. The €312.22 figure suggests that the actual figure for the remaining allowance at the end of 2018 was €3,162.22.

Analysis

The Complainant had a relatively simple request for information from the Provider – how much she could repay at the end of 2018 in order to use what remained of her 10% overpayment allowance.

Numerous staff did not appear to know either how to calculate the allowance figure, or that the figure on a given day had to be net of overpayments already made. This was compounded by automated correspondence which did not take into account any overpayments already made in a given year, nor did any correspondence issue which answered the specific queries being made by the Complainant.

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This was, in turn, further exacerbated by the 31 December 2018 lump sum payments not being applied to the account until early January 2019. This was despite the Complainant being assured that payments made on 31 December 2018 would be applied to 2018.

The Complainant's confusion and worry in relation to her 10% allowance was completely understandable and her frustration was totally justified. She was put to great inconvenience to try to rectify matters.

The Provider's attempts to advise the Complainant were shambolic. She was consistently given incorrect and/or contradictory information by telephone agents of the Provider. On numerous occasions the Complainant was told she would be called back, but was not. For a period of at least 6 months from December 2018 up to May 2019 she was unable to obtain a breakdown of overpayments made versus the 10% allowance for 2018 or 2019.

The Provider has failed to give an acceptable level of service, and consistently furnished incorrect, contradictory and misleading information to the Complainant for a sustained period of time.

The Provider's staff did not appear to have been competently trained in how the 10% allowance for overpayments was to be calculated, or of the importance of taking overpayments already made for a calendar year into account. The Provider's automatically generated letters were equally unhelpful.

The Provider initially offered the Complainant a sum of €250 and later in its submissions to this office, offered €2,000 by way of compensation. In light of the level of failures by the Provider, and the stress and inconvenience caused to the Complainant, I do not believe this to be a satisfactory amount of redress, given the level of inconvenience caused to the Complainant and the level of time taken to furnish the necessary information.

For the reasons outlined in this Decision, I uphold the complaint and direct the Provider to pay the sum of €3,000 to the Complainant. I also direct, in accordance with Section (60)(4)(a) of the **Financial Services and Pensions Ombudsman Act 2017**, that the Provider provide training to the staff who deal with, or provide information relating to the subject matter of this complaint.

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 that (i) the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider, and (ii) that the Provider provide training to the staff who deal with, or provide information relating to the subject matter of this complaint.

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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

15 December 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.