



<u>Decision Ref:</u>	2020-0467
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Errors in calculations Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Failure to provide correct information Failure to provide calculations
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the rate of interest charged on the Complainant's mortgage loan account after she had made a lump sum payment.

The Complainant's Case

The Complainant entered into an endowment mortgage agreement with the Provider in **December 2006** in the amount of €400,000. The loan agreement allows for lump sum repayments to be made during the loan term.

The Complainant made a series of monthly interest only repayments and occasional lump sum repayments between 2006 and May 2018. In **May 2018** the Complainant made a lump sum repayment of €1,400 it caused her monthly repayments to increase from €1,082.22 to €1,129.73 (an increase of €46.73).

The Complainant was surprised by this increase and is at a loss to understand how her interest repayments could have increased after making a lump sum repayment. The Complainant believes she is being penalised for making such a repayment.

The Complainant contends she has been, effectively, double charged interest for a specified period. Calculations carried out on her behalf purportedly support this contention.

The Provider furnished its calculations to the Complainant by way of explanation for the increase. The Complainant believes that these calculations are incorrect, and that the Provider's explanation of the calculations is unclear.

The Complainant contends she has been proffered a poor level of customer services in relation to this complaint. Correspondence issued to her has frequently borne a date many days earlier than the date of the postmark on the envelopes containing it. Furthermore, she believes the length of time, and amount of effort, it has taken for her to get an explanation of any sort is inordinate and unreasonable. She notes that correspondence has been posted to the wrong address, and the Final Response Letter failed to provide direct contact details for the person who signed it.

The Complainant's complaint is that the Provider has wrongfully calculated interest repayments, thereby overcharging her; that the Provider has failed to explain its calculations clearly; and, that she has been proffered an unacceptable level of customer service.

The Complainant seeks the following redress:

"I wish to either have 1 – a return of the €1,400 paid to [the Provider] with [each €46.73 monthly overcharge] and restoration of interest payments [to] €1,082.22. The loan balance will revert to €366,810 or 2 – the loan balance to remain at €386,810, the interest payments to continue at no more than €1,082.22 and a refund of [each €46.73 monthly overcharge]. 3 – an apology. 4 – I would hope [the Provider] would incur a fine given the service breaches and appalling service standards."

The Provider's Case

In its final response letter dated **4 December 2018** the Provider apologised for the delay in replying to the Complainant's complaint, and purported to explain how the calculation of interest was arrived at:

"we work out the total amount of interest to be charged from the calculation date up to your previous bill date plus one year. In these circumstances [the Provider] recalculates the repayment going forward on the account and in doing this takes into account any interest debit or credit accrued on the mortgage account. When your repayment was calculated following the lump sum payment of €1400 on the 18/06/2018 we worked out the total amount of interest to be charged from this date up to your previous bill date plus one year, i.e. your last bill was 05/06/2018 so we calculated up to 05/06/2019, plus any accrued interest debit on your loan or less any accrued interest credit, following your last bill."

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This figure is then divided by 12 even payments. Insurance and TRS where relevant are then applied to this figure.”

“Projected interest between 05/06/2018 to 05/06/2019 = €12461.11, plus interest accrued at the date of calculation, 20/06/2018 in the amount of €817.65 = €13278.76 / 12 = 1106.56”

In its responses to this office (**6 March 2020**) the Provider has accepted that it failed to provide sufficient clarity and has apologised to the Complainant for the level of service it provided to her. It has also advised that it has commenced a review to determine whether it can implement any changes that make the calculation more transparent for customers with this product.

The Provider has also offered to meet with the Complainant to personally apologise as well as offering €3,000 as a goodwill gesture.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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 25 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.

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The Complainant took out a loan with the Provider for an investment property in **2006**.

In the lead up to the events that give rise to this complaint, the interest only monthly repayment was €1,082.22.

In its response to this office the Provider has explained that this repayment amount was recalculated at the time of the previous repayment change in **April 2016**, and that this repayment change was triggered by a change in interest rate to 3.35% on **31 March 2016**. The next event to trigger a repayment recalculation was when the Complainant made a lump sum repayment (to be applied to the capital balance) of €1,400 in June 2018. This is based on the Overpayment Options instruction form dated 1 June 2018 and stated as being received by the Provider on **5 June 2018**.

On **18 June 2018** the Provider processed a credit amount of €1,400 and reduced the capital balance to €386,810.00.

On **3 July 2018** the Complainant contacted the Provider to enquire as to why her repayment had increased in spite of the fact that the capital balance had reduced. The Provider's telephone agent was unable to answer her query. The Complainant was advised that her query would be forwarded to the relevant department and a letter would issue to her.

An internal email arising out of this telephone call was sent on **4 July 2018** requesting that an explanation be forwarded to the Complainant.

On **9 July 2018** the Complainant telephoned the Provider to follow up on her query. The Provider's agent was unable to locate a record of a response from the relevant department and agreed to follow up. There is, however, no record of the Provider's agent doing so.

On **12 July 2018** the Complainant telephoned the Provider to follow up. A complaint was formally logged. The Complainant emailed the Provider's customer resolution centre outlining the details of her complaint.

On **18 July 2018** (a Wednesday) the Provider issued a letter acknowledging receipt of the complaint. However, the Complainant has furnished copy of the envelope containing this letter which shows it was not posted until **23 July 2018** (Monday) – outside the five business days set out in the Consumer Protection Code (CPC).

This delay between the issue date of correspondence and the postmark date is a feature of nearly all of the correspondence that was sent to the Complainant by the Provider throughout the currency of this complaint.

The Complainant telephoned the Provider on **24 July 2018** to ask that her complaint be prioritised.

Holding letters issued on **9 August 2018, 6 September 2018, 4 October 2018, 2 November 2018, 30 November 2018**, and a substantive response – a Final Response Letter – issued on **4 December 2018**.

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The Complainant has furnished evidence (the envelopes) confirming that all of the above letters were in fact posted a number of days after they had issued. The dates are set out in the correspondence.

In the meantime, the Complainant had followed up by email on **13 September 2018** and **3 October 2018**. The Complainant submitted a complaint to this office on **5 October 2018**.

It took the intervention of this Office to secure a Final Response Letter for the Complainant.

The explanation set forth in its Final Response Letter dated **4 December 2018** by the Provider for the change in repayment has already been set out above.

Analysis

I will deal firstly with the customer service aspect of this complaint, and then will consider the substantive issue of whether or not the Complainant has been overcharged (i.e. whether the Provider has incorrectly calculated the repayments for her account since July 2018).

The relevant provisions of the CPC are as follows:

(4.1) a regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English;

(10.9(a)) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;

(10.9(c)) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

(10.9(d)) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman.

Firstly, with regard to provision 4.1 above, the explanation of the repayment calculation offered in the Final Response Letter is impenetrable – even allowing for the Complainant having the benefit of a career in actuarial / financial services. I am satisfied that the Provider failed to comply with its obligations under the CPC in that regard.

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I am also satisfied that the inability of telephone agents, or indeed any of a number of staff members to provide an answer to her query until a Final Response Letter was issued, constitutes a breach of provision 4.1 of the CPC. A customer is entitled to expect that a Provider will be able to explain how a repayment has been calculated without undue delay.

Secondly, with regard to provision 10.9(a) above, whilst the acknowledgment letter was dated within 5 business days of receipt of the complaint, I am satisfied it was not posted until over 5 days later, and that this constitutes a failure of the Provider to comply with its obligations under the CPC in that regard. This is a very worrying matter which I propose to bring to the attention of the Central Bank of Ireland.

10.9(c) above is satisfied where the Provider sends what is commonly known as a "holding letter" at intervals of not greater than 20 business days up until the complaint is resolved. I am satisfied that this provision was complied with by the Provider.

10.9(d) deals with outside time limits for the resolution of a complaint. Where the complaint is not resolved within 40 business days, the Provider must give an anticipated timeframe for resolution. It is not at all apparent why the Provider took 5 months (from July to December 2018) for any explanation at all to be provided to the Complainant. Furthermore, it is wholly unacceptable that it took the intervention of this Office to secure a Final Response for the Complainant.

The Complainant has noted that the Final Response Letter contained the wrong address. This is a matter for the Data Protection Commissioner and I note that the Complainant has submitted a complaint to that office.

Whilst the Complainant contends that the Final Response Letter does not have adequate contact details for the staff member who signed it, I am satisfied that it provides a telephone number and email address for the relevant department in the header.

Turning to the issue of whether or not the incorrect repayments have been applied, the Provider has furnished a detailed explanation to this office in its response of March 2020. Within that response, the Provider has included a schedule detailing how interest is calculated on an interest only mortgage account (such as the account the Complainant holds).

In order to deal with the repayments fluctuating on a near monthly basis the Provider calculates interest in advance. It maintains repayments at the calculated level until an event occurs which triggers a recalculation. One example of such an event is a change in the interest rate. Another example is a lump sum repayment which reduces the capital balance.

When such an event occurs, the Provider calculates the interest which it expects to be due over the year ahead and then divides this total by 12 which provides the new monthly repayment amount.

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It makes the calculation of the total interest amount based on the loan balance, including overpayments or arrears, which may also include interest credits or interest debits, and the current interest rate applicable. For the purpose of the calculation, the Provider will assume that future years' projected interest will be the same as for the coming year. Accordingly, the repayment does not change unless a triggering event occurs.

An interest debit arises where the repayments that have been set in advance fall short of the interest that is then, in fact, applied to the account during that period. Conversely, an interest credit arises where the set repayments end up being in excess of the interest that is charged.

This could arise where repayments have been calculated on the basis of an interest rate of, for example, 3% but during the course of the repayments that rate in fact goes up or down.

In the Complainant's case, an interest credit arose because she had made repayments on top of the normal monthly repayments in the lead up to April 2016, when repayments were recalculated €1,082.22 (triggered by a payment change event – a change in the applicable interest rate).

However, by June 2018 the Provider explains that an interest debit had built up, because the repayments calculated in April 2016 had not proved sufficient to cover the interest that had in fact been applied. This was due to the fact that the calculation had assumed overpayments at the same level that had been made prior to April 2016, and whilst overpayments continued to be made post-April 2016, they were not made at the same level as pre-April 2016.

This is, ultimately, the answer to the Complainant's query – the previous level of repayments (€1,082.22) calculated in April 2016 were based on an assumption (that the Complainant would continue making overpayments at the level she had been making them pre April 2016) that did not in fact occur.

The interest debit that had built up in the period from April 2016 to June 2018 offset the reduction in interest that resulted from the €1,400 reduction in the capital balance.

I accept that the calculations furnished by the Provider in response to this Office are correct. I accept that the method of calculation is complex, and there is a limit as to how simple the explanation in terms of plain English can be in respect of a complex calculation.

However, I am not satisfied that the Complainant should have been subjected to a delay of nearly 2 years (from June 2018 to March 2020) to receive a clear explanation. Furthermore, this explanation was only secured through the intervention of this Office.

I welcome the offer of compensation of €3,000; the offer that the head of department will meet with the Complainant to personally apologise; and the Provider having informed this office that it has undertaken a review of accounts of this nature to ascertain whether or not the manner in which interest is charged (and explained) can be simplified.

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In the circumstances, I believe the offer of €3,000 to be a reasonable level of compensation to be offered to the Complainant and I note it remains available to her.

However, I am not satisfied that an explanation for the conduct complained of was given when it should have been. Also, the fact that letters appear to have been consistently posted days after they were issued, as evidenced by the documentation provided in evidence by the Complainant, is a cause of serious concern.

For this reason, I am bringing this Decision to the attention of the Central Bank of Ireland.

For the reasons outlined in this Decision, I partially uphold this complaint.

Conclusion

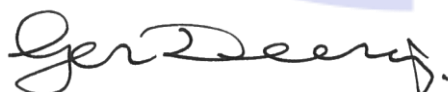
My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(f) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to (i) 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) review its procedures for sending correspondence by post and, if necessary, rectify processes that are currently in place resulting in correspondence being sent by post, days after the date of the correspondence concerned.

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

17 December 2020

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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.

