



<b><u>Decision Ref:</u></b>	2020-0469
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to provide correct information Dissatisfaction with customer service Errors in calculations
<b><u>Outcome:</u></b>	Partially upheld

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

This complaint concerns the Complainants' attempts to redeem the warehoused portion of a split mortgage account held with the Provider.

**The Complainants' Case**

This complaint refers to the Complainants' mortgage loan account. The Provider notified a redemption figure for the warehoused portion of the split mortgage in **November 2018**. The Complainants were subsequently informed that an incorrect redemption figure had been given, despite them having confirmed the figure with the Provider "*on 5 different occasions*" over a period of weeks.

The Complainants state they had become concerned that their loan was being sold/transferred to a third party lender and sought to redeem the warehoused portion of the mortgage loan. They state that they first met with the Provider at a local branch and were informed that the redemption figure was €71,978.00. Following this the Complainants say that "*in order to confirm this figure we rang a mortgage consultant*". Again it is stated that the Provider in head office confirmed the redemption figure to the Complainants and they were advised to lodge €71,978.00 and their "*warehouse account would be closed*".

It is not stated when, but the Complainants contacted the branch again to arrange clearing the warehouse portion of the loan account, and state that they were told to “lodge €71,978.00” and their warehouse account would be closed. They state that they rang the Provider’s head office and were “assured that without any doubt” €71,978.00 was needed to clear the warehoused portion of the account.

On **6 December 2018** the Complainants lodged €71,978.00 at the Provider’s local branch and “[they] were told [their] warehouse account was closed”. The First Complainant says that they did not at the time receive any correspondence to the contrary.

Approximately 6 weeks later the Complainants state that they received a phone call from the Provider telling them that the information that had been given to them was incorrect and that they still owed money on the warehoused account.

The complaint is that the Provider gave the Complainants incorrect redemption figures on 5 different occasions in the latter half of 2018, and then informed the Complainants that they owed more after the Complainants had paid what had been asked of them.

### **The Provider’s Case**

The Provider has apologised for the inconvenience caused. It explains that there was an issue closing the Complainants’ warehouse account as the information that the Complainants were provided with was incorrect. The Provider goes on to say this arose out of a system error whereby accrued interest was not taken into account when furnishing a redemption figure.

The Provider states that a redemption letter with the correct figure was issued to the Complainant on **27 November 2018**. The Provider notes that the Complainants contend that they did not receive this letter. It states that copies of the redemption letter and long term treatment agreement issued to the Complainants on **16 January 2019** as per their request.

The Provider advises that the redemption figure for the mortgage as of **27 November 2017** was in fact €85,538.41.

### **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.

/Cont’d...

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 26 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 Complainants took out a loan with the Provider in **2008** for €495,000.

In **February 2015** the mortgage was split and a warehoused portion of €71,978.00 was created as a separate account ("the Warehouse Account").

In **August 2018** correspondence issued to the Complainants to advise them that their loan was being transferred to a third party provider.

One of the Complainants contacted the Provider on **21 November 2018** by calling into the local branch. He asked that the transfer information letter that had been sent in August be re-issued to him, and advised branch staff that he had access to a lump sum to lodge to the Warehouse Account. He was given information documentation to review.

On the same day, one of the Complainants telephoned the Provider seeking information about the loan transfer. Recordings of telephone calls between the Complainants and the Provider have been provided in evidence. I have considered the content of these calls. On the call of **21 November 2018** the Complainant again advised the Provider's agent that he had access to a lump sum. He queried whether he would be entitled to any concessions/discounts if he were to redeem the Warehouse Account in full. He was told that there were no applicable discounts available. The Provider's agent then told him that the Warehouse Account was "*€71,978, that's what it was when you split the mortgage [unintelligible] there hasn't been any interest or anything on that that's basically what we.. we put into the warehouse at that time so the same amount...*". The Complainant asks the Provider's agent to repeat that figure, and he is told: "*€71,978*". The Complainant repeats that figure twice more, and is confirmed each time. He asks whether if he pays that amount, the Warehouse Account will be "*gone*", and he is told "*yeah it will clear off that balance*".

/Cont'd...

The Complainant asks if the agent is sure, and is told *“yeah, so if you lodge that into that account it will clear it, so that balance is basically what is owed in the warehouse and it’s not changing...”*

The Complainant asks whether there is any interest on that figure, and is told *“no”*. The Complainant confirms again that the *“redemption figure”* is the amount stated, is told yes, and then confirms that he can pay that in the next few weeks because the loan will not be transferred before then.

On **22 November 2018** the Complainant called into his branch seeking written confirmation of the mortgage redemption figure. The note on the Provider’s file (and an email provided) confirms that the staff member in branch contacted the relevant department to request that department furnish a redemption figure to the Complainants. Internal emails state that a letter containing redemption figures issued to the Complainants on 23 November 2018. It appears, however, that the letter may have issued on 27 November 2018 – as that is the date that the copy letter provided in evidence to this office bears.

On **4 December 2018** the Complainant contacted the Provider by telephone again to confirm the redemption figure for the Warehouse Account. Again he was told that the redemption figure was €71,978. The figure was repeated at the Complainant’s request. He was told he could make that payment in branch and *“there wouldn’t be anything else outstanding on it”*. He also sought confirmation of the transfer date for the accounts to the third party, but was told there was no confirmed date as yet. He stated that he wished to have the Warehouse Account cleared before any such transfer to a third party took place.

On **6 December 2018** the Complainant called into his branch and lodged €71,978 to the Warehouse Account. The Complainant was asked by the teller whether the payment was a lodgement or a redemption, and informed the teller that it was a redemption. This was noted by the teller on the account log.

It appears that during **January 2019** the error came to light between the Provider’s internal departments. It was noted that the mortgage was for a Buy to Let property and that the account could not be closed as there was an outstanding balance of €13,648.09. This was the interest that had accrued on the Warehouse Account since inception.

The parties subsequently reached an impasse, whereby the Complainants believe they should be entitled to rely on the figures given to them on the telephone, and the Provider (whilst accepting its error) insists that the correct, full amount is repayable.

### **Analysis**

The Provider contends that the Complainants were notified when the mortgage was being split that the Warehouse Account would be subject to interest. This is true, insofar as the Letter of Offer for the split mortgage clearly stated that *“Interest will be charged on your warehouse account...”*

/Cont’d...

The Provider explains that its telephone staff did not realise that the Complainants' account was in respect of a Buy to Let mortgage for which interest was applicable to the warehouse portion of the account (as opposed to other accounts where interest would not have been applied). I accept that this is a fair account of how the error occurred.

I have been provided with no evidence that the Complainants were given incorrect figures in person by branch staff. The Complainant's enquiries during the telephone calls in November do not suggest he had also been given figures (incorrect or otherwise) in branch, and the file notes made by branch staff do not contain any mention of an actual figure being given.

There is no question that the correct redemption figure as of 27 November 2018 was in fact €85,538.41. There is also no question that on two phone calls (21 November 2018 and 4 December 2019) the Complainant was incorrectly advised that the redemption figure was €71,978.

There is an issue in relation to the letter dated 27 November 2018 which contained the correct redemption figures, in that the Complainants state that they did not receive it. For the reasons set out hereunder, it is not necessary for me to resolve whether or not this is the case.

During the telephone calls the Complainant checks and double checks the figures being given to him by the agents to such an extent that it is clear that he was surprised by the figure being given to him. Whether that is because he had understood (correctly) that interest was applicable to the account or not is largely irrelevant. He was entitled to take what he was being told at face value and as accurate information. It would be unreasonable to expect a customer to double check the answers given to them by a provider's agent in response to a direct question.

This was a failure in customer service – the Provider failed to provide clear and accurate information to the Complainants during the telephone calls of 22 November 2018 and 4 December 2018.

The question is would it be a fair and reasonable consequence of the above failure that the Complainants should be entitled to rely on the lower figure and have the Warehouse Account set to zero and closed? I do not believe that would be fair or reasonable.

The loan terms and conditions did not become invalidated by reason of the telephone agents' error.

Furthermore, it cannot be said that the Complainants acted to their detriment in paying down debt – particularly when the Provider offered to return their lodgement and reset the balance accordingly.

Having said that, in the circumstances of this case, the inconvenience imposed on the Complainants due to the Provider's error was significant.

/Cont'd...

The Provider failed to provide clear and accurate information to the Complainants during the telephone calls of 22 November 2018 and 4 December 2018, when it provided the Complainants with incorrect redemption figures for the Warehouse Account.

Further, I believe that the Provider also failed to make a reasonable effort to investigate and resolve this complaint, in circumstances where – having made a clear error – did not offer any resolution to the Complainants other than a bare apology for “*inconvenience caused*” in its Final Response Letter dated 17 January 2019.

It is disappointing that having investigated the complaint, the Provider gave the incorrect reason for the error to the Complainants in its Final Response Letter. It would appear the matter was only properly investigated and the correct reason given in response to the investigation by this Office.

Therefore, while I am satisfied that the “*goodwill*” gesture of €3,000 offered by the Provider in its response to this Office is a reasonable sum in the circumstances, I partially uphold this complaint on the basis that an explanation for the conduct was not given when it should have.

Also, given the length of time taken to resolve this matter, I believe the Complainants should not be held responsible for any interest that may have accrued on the Warehouse element of the loan.

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

### **Conclusion**

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

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 Complainants in the sum of €3,000 to an account of the Complainants’ choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider, and (ii) in the event that further interest has accrued on the Warehouse Account since December 2018, such interest be waived by the Provider and the balance on that account be reset to the balance it was immediately after the lodgements of 6 December 2018 were applied.

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.

/Cont’d...

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

**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

17 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.