



|   |  |
|---|--|
| <b><u>Decision Ref:</u></b>             | 2020-0470  |
| <b><u>Sector:</u></b>                   | Banking  |
| <b><u>Product / Service:</u></b>        | Fixed Rate   |
| <b><u>Conduct(s) complained of:</u></b> | Fees & charges applied (mortgage)<br>Complaint handling (Consumer Protection Code)<br>Dissatisfaction with customer service<br>Failure to provide calculations |
| <b><u>Outcome:</u></b>                  | Rejected   |

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

The Complainants' complaint concerns the administration of a mortgage loan account held with the Provider.

**The Complainants' Case**

The First Complainant contacted the Provider on **13 March 2019** to discuss reducing the monthly repayments based on the loan to value (LTV) ratio offered by the Provider at that time. The complaint centres on the Complainants receiving inconsistent information regarding monthly repayments quoted to them, and the asserted inadequate and delayed responses they received when lodging their complaint with the Provider. The Complainants also cite breaches of the Consumer Protection Code 2012 (as amended).

Having contacted the Provider by phone, the Complainants discussed various repayment interest options on the 13 March 2019, and after considering the information provided to them they opted for a 2 year fixed rate at 4.5%. The Provider issued a letter dated **14 March 2019** which outlined their current repayment of €1,410.44 at 4.80%. The First Complainant states that they had discussed and agreed to a reduced repayment of €1,392.70 at a 4.5% fixed rate. They asked the Provider to forward this option in writing, and when they received it they returned the documentation back to the Provider. The Complainants submit that the documentation was received by the Provider on **3 April 2019**.

The Complainants say they were surprised to receive a further letter, dated **8 April 2019**, confirming a fixed mortgage rate for 2 years at the same interest rate of 4.5%, however the repayment amount was quoted at €1,405.03 and not €1,392.70 as expected. The Complainants subsequently received a further letter from the Provider, dated **17 May 2019** which stated that *“as of 17 May 2019”* the monthly mortgage repayment would be €1,392.94.

The Complainants submit that over the months from early April 2019 to July 2019, they raised their grievances to the Provider. The First Complainant states he wrote a number of emails and made several phone calls, copies of which have been provided. He states that the Provider *“utterly failed to answer repeated questions, calls and emails, in breach of Consumer protection codes and its own customer assurances”*.

The Complainants submit that the inconsistency in quoted monthly repayments has not been fully explained by the Provider. They are also unhappy with the varied amounts being debited from their bank account. The Complainants assert that delays in the responses to the complaints and unreturned phone calls are a *“breach of the requirement as a lender”*.

The complaint is that the Provider:

1. Has failed to fully explain why it issued inconsistent monthly repayment amounts, despite having the same term and interest rate, between April 2019 and May 2019;
2. Has failed to deal with the complaint in accordance with the Consumer Protection Code or its own assurances.

The Complainants want the Provider to answer all of their questions, give an apology and they are seeking *“appropriate compensation”*.

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

In its Final response Letter of **19 June 2019**, the Provider submits that repayments quoted are an estimate, depending on the mortgage balance, term of the loan remaining, and the date that the interest is applied. The Provider states that the letter containing the estimate states *“rates are valid for 10 days and are subject to variation”*.

The Provider also stated that it had complied with the timelines for dealing with the complaint in accordance with the Consumer Protection Code.

The Provider apologised for failing to return a telephone call and failing to respond to their queries. It offered a goodwill payment of €50.00 in light of the *“poor customer service”* received.

The Provider has since increased this offer to €850.00.

/Cont'd...

## 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.

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 mortgage with the Provider in **2004**.

By **March 2019** the Complainants monthly repayment was €1,410.44, and the balance was €164,258.13 after the repayment of **11 March 2019**. The interest is calculated and applied on the last business day of the month.

On **13 March 2019** the First Complainant contacted the Provider by telephone to enquire about his interest rate options, based on the current loan to value ratio. He was told that the current interest rate was 4.8%. The Provider's agent said that he would check what rates were available, and told the First Complainant that he could give repayment figures to him but these figures may not be the final figure. The Provider's agent advised that the rates available were "*not much better*" than what he was on, but advised that a rate of 4.5% for 2 years was available to him. The Complainant was given what the agent described as "*an indicative quote*" for monthly repayments of €1,392.70. It was agreed that the necessary documentation would be sent to the Complainant. There was an option to carry out the switch online, but the Complainant preferred to do it on paper.

The following day – **14 March 2019** – an interest rate options letter issued to the Complainants. Amongst the interest rates that the Complainants could avail of, was the rate of 4.5%, fixed for 2 years. The repayment quoted for that option was €1,392.70 (as had been quoted in the previous day's telephone call.

The letter also contained the following text: *"The repayments quoted are estimated based on your current mortgage balance and remaining term and may vary depending on the actual date you move to your new interest rate... Rates are valid for 10 days and are subject to variation"*.

The completed form, opting for the 4.5% 3 year fixed rate was received by the Provider on **3 April 2019**. The new rate was applied on **8 April 2019**.

It is apparent that in the period between figures being quoted to the Complainants on 13/14 March 2019, and the new rate being applied on 8 April 2019, monthly interest was applied to the account (on 30 March 2019), thereby increasing the mortgage balance. This would necessarily result in a different level of monthly repayments from that quoted prior to 30 March 2019. The Complainants were not aware of this at the time, nor did they have any reason to be.

On **8 April 2019** the Provider issued a letter to the Complainants stating the new interest rate and that monthly repayments would be €1,405.03.

On **15 April 2019**, the First Complainant contacted the Provider to enquire as to why the repayments they were being charged were different to the figure that they had been quoted. The Provider's agent explained that the figures given prior to the interest rate being changed were an *"indication"*, but between that figure being quoted and the new rate being applied interest was applied to the account thereby increasing the balance, and it was on the basis of the increased balance that the repayment was higher. This explanation was repeated to the Complainant when he stated that he could not understand it. The Provider then told the Complainant they could ask that this figure be double checked, and the Complainant asked for the form he signed to be sent to him. He noted that the gap between what he was quoted and what was applied was more than 30% of the reduction he thought he would be getting. The agent said that the information should be sent to him in 5-10 working days. It was stated that the mortgage was now on the 4.5% rate.

The Complainant followed up in a telephone call of **23 April 2019**. The intervening weekend was Easter so this telephone call was on the 5<sup>th</sup> business day after the previous call. The Complainant explained his query. He stated that it had been two weeks since he had been told he would receive information and that he had not received the information. The Complainant logged his complaint on this call. The Complainant was advised that the Provider was within the timescale to furnish the information, but it would follow it up. The Complainant stated that he was not told of a timescale and stated that the Provider was outside the timescale permitted. The Complainant cited the Financial Services and Pensions Ombudsman Act, 2017 in support of this contention.

The Complainant accused the Provider's agent of lying to him about the timelines permitted. The Complainant was advised that the investigation into his query was ongoing.

In addition to logging the complaint on the telephone call, the Complainants submitted a written complaint which was received by the Provider on **25 April 2019**.

An acknowledgement of this complaint issued from the Provider on **1 May 2019** – the 5<sup>th</sup> business day after it was logged on the telephone call of 24 April 2019.

On **9 May 2019** the Complainant telephoned the Provider seeking an update. He stated that his complaint had not been logged as requested, that his letter of complaint had not been logged, and, in essence, that the Provider was ignoring his query/complaint. On the same day documentation was emailed to a branch of the Provider for the Complainant to collect.

Another complaint acknowledgement issued on **15 May 2019** in respect of the new, albeit identical, complaint raised during the 9 May 2019 telephone call.

A holding letter in relation to the complaint was sent on **23 May 2019** – the 20<sup>th</sup> business day after the complaint of 23 April 2019 was made (allowing for 2 bank holidays – Easter and May).

On **30 May 2017** the Provider rang the Complainants and advised that the repayments had been reset at €1,392.94 and the Provider was investigating why this happened.

The Provider has since explained that, on 29 April 2019, it recalculated the repayments on the basis of the account balance *after* the payment was made on 9 April 2019, when the mortgage balance was lower than it had been prior to the payment being made – thereby resulting in a lower monthly repayment figure for the 2 year fixed term.

On **7 June 2017** the Complainant telephoned the Provider to follow up on his complaint and expressed his dissatisfaction with how it was being handled. The Complainant sought to speak with the person who had signed the letters since May, but was told that in fact the handler was the agent he was speaking to. The Complainant was frustrated that the person he was speaking to was not the same person that had signed the Provider's correspondence. It was explained that 2 complaints had been opened (a reference to the complaints raised by the Complainant on 23 April 2019 and 9 May 2019) by the Provider but the complaints had been merged into one as they concerned the same issues. The Complainant felt that the 2 complaints were separate and distinct, and should not have been merged into one complaint. The Complainant said that he should have been told about this, and disagreed with the timeline provided of when the complaint was logged.

On **10 June 2017** a repayment on the account went through for €1,392.94. It appears that this repayment amount has been in place since.

On **11 June 2017** the Provider attempted to telephone the Complainant but did not get through.

/Cont'd...

A Final Response Letter issued on **19 June 2019** – the 38<sup>th</sup> business day after the complaint was logged (allowing for 3 bank holidays – Easter, May and June).

Between 9 May 2019 and 12 July 2017 10 telephone calls took place – 2 of which were from the Provider to the Complainant and the other 8 from the Complainant to the Provider. On 10 July 2017 a direct debit instruction was returned unpaid.

The dispute did not progress in any meaningful manner – the Complainant insisted that his complaint was not being dealt with within the applicable timelines, and that he had not received a satisfactory response to his initial query; the Provider's position remained that timelines had been complied with, and an explanation had been furnished.

The Complainants submitted their complaint to this office by complaint form on **29 July 2019**.

### **Analysis**

The Consumer Protection Code 2012 (as amended) ("CPC) provides for timelines in respect of the handling of complaints.

Recordings of telephone calls between the Complainant and the Provider have been furnished in evidence. I have considered the content of these calls.

The Complainant contacted the Provider on the repayment amount issue on 15 April 2019. He was told that he would receive documentation in 5 – 10 business days. His contention on a later call that he was not given any timeframe is not borne out by the content of these telephone recordings.

The call of **15 April 2019** was not a complaint within the meaning of the CPC, but rather a query that he had raised with the Provider concerning the level of repayments. I am satisfied that the Complainant received a clear answer to his query during that call – that is, that interest had been applied to the balance in the time between 14 March 2019 and the rate being applied on 8 April 2019.

This could have been the end of the matter. It is to the Provider's credit that it took the step of recalculating the repayment on the basis of the balance after the first repayment was made, such that a lower repayment would be applicable from June onwards.

It did not become a complaint until **23 April 2019** when, during the telephone call that day, it was logged as such. To find otherwise would effectively mean that every single phone call where a customer has a query would have to be treated as a "complaint". This would neither be practical nor reasonable.

/Cont'd...



Section 10.9 of the CPC provides as follows:

*“A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant’s satisfaction within five business days, provided however that a record of this fact is maintained.*

*At a minimum this procedure must provide that:*

- a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;*
- b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant’s point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;*
- 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;*
- 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; and*
- e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:*
  - i) the outcome of the investigation;*
  - ii) where applicable, the terms of any offer or settlement being made;*
  - iii) that the consumer can refer the matter to the relevant Ombudsman, and*
  - iv) the contact details of such Ombudsman.”*

Once the complaint was logged, it was acknowledged within 5 business days (1 May 2019), a holding letter issued within 20 business days (23 May 2019), and a final response issued within 40 business days (19 June 2019). The Provider has not breached the provisions of the CPC in this regard.

This Complainants’ consistent assertion that regulatory timelines were being breached is not correct. The evidence clearly demonstrates that the Provider adhered to its obligations.

I accept that it was reasonable of the Provider to merge the two complaints that were logged into one complaint, under one reference number, as they were essentially the same complaint.

I note that the documentation that the Complainant sought on 15 April 2019 (and which he was told would be sent within 5-10 business days), was in fact sent to his branch by email for him to collect on 9 May 2019 – some 15 business days later.

This was later than the Complainant had been advised. In the context of the Complainant having logged 2 complaints in the meantime, I can understand why perhaps it took a little longer than expected, however it was a timeline that the Provider itself imposed and did not comply with. The Complainant did not receive a call back on this occasion, so he called the Provider to make his complaint 5 business days later.

The amount of telephone calls and correspondence, and indeed, confusion generated around the repayment issue was not a result of wrongful conduct on the part of the Provider. It arose due to the Complainants' insistence that a clear explanation for the differing repayment amounts had not been given to them, and that regulatory/advisory timelines were not being complied with.

During the dispute it appears to have been lost on the Complainants that the Provider recalculated the repayments, to their benefit, after the complaint was logged, resulting in their repayments being at the lower level of €1,392.94 since June 2019.

After the complaint was forwarded to this office the Provider increased its offer of redress to €850.

The repayment was reset for June 2019 on foot of the original complaint. It was not part of the original complaint. I am not satisfied that the Provider was given a reasonable period of time to deal with this issue prior to the complaint (which was founded upon the April 2019 repayment level) being forwarded to this office. I therefore do not believe it is appropriate to make a finding against the Provider in this regard.

The repayment amount is calculated on the basis of, amongst other things, the outstanding balance of the account. The outstanding balance fluctuates during the course of each month depending on what day interest is applied, and what day repayments are made.

The reason for a difference between the repayment quoted in March 2019 and the repayment that was in fact applied in April 2019 was clearly explained to the Complainants during the first telephone call on the subject on 15 April 2019, and on numerous occasions since then. Indeed, the figure initially quoted to them was always explained as being "indicative" only.

The Complainants' account of what was said during the telephone calls is not borne out by the telephone call recordings.



The Provider did not breach timelines set out under the CPC in its response to the Complainants' complaint.

The Provider was 5 business days later than the deadline it had set for itself (not any regulatory deadline) in furnishing documentation on 9 May 2019 that was sought by the Complainants on 15 April 2019.

During the course of the initial complaint (April 2019) the Provider recalculated the repayments (which it was not obliged to do) such that a lower figure would be applicable for the 2 year fixed term.

The Provider offered a monetary gesture of €50 in its Final Response Letter of 19 June 2019. This, in my view, would not have been an unreasonable or unjust outcome to the initial complaint. The offer was made at an early stage.

The Provider offered €850 as a resolution to the complaint in March 2020. This was a more than reasonable level of compensation considering that the only culpable issue on the Provider's part was a failure to send documentation to the Complainant within the 5-10 business days he had been promised by the Provider itself on 15 April 2019.

The Final Response Letter of 19 June 2019 was a reasonable response to the complaint that was raised.

For the reasons outlined in this Decision, I do not 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 rejected.

**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

/Cont'd...

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.

