



<b><u>Decision Ref:</u></b>	2021-0038
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Errors in calculations Delayed or inadequate communication Complaint handling (Consumer Protection Code) Maladministration (mortgage)
<b><u>Outcome:</u></b>	Partially upheld

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

This complaint concerns the Complainant's attempts to make ad hoc repayments to his mortgage in order to reduce the capital balance.

**The Complainant's Case**

The Complainant submits that he made overpayments for the purpose of reducing the capital balance on his loan, but the Provider did not implement this instruction.

The Complainant states that he made a number of overpayments during 2018 and 2019 and followed up by telephone to confirm these payments had been applied as requested (to reduce the capital balance), but in these follow up calls he was advised they had not in fact been applied to reduce the capital balance.

The Complainant submits that this was contrary to the arrangement that he had in place with the Provider – he states that he was advised any ad hoc payment he made would be applied in reduction of the capital balance.

The Complainant states that in late 2019 he discovered that his payments had not been applied as intended, and that instead they had been assigned to what he describes as a form of quasi-escrow account. He emphasises that he had to investigate and uncover this himself as opposed to the Provider advising him of this.

The Complainant states that when he made a complaint to the Provider in November 2019, he was unhappy with its response. He contends that when he made his complaint he received an automated response and emailed the Provider without receiving a reply. The Complainant submits that this lack of communication is unacceptable.

### **The Complaint for Adjudication**

The complaint is that the Provider has mishandled the Complainant's payments and failed to properly implement his instructions.

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

The Provider, in its Final Response Letter dated **18 December 2019** acknowledges that a credit balance of €2,018.42 had built up on the Complainant's account (rather than having been applied to reduce the capital balance).

It states that the Complainant identified payments made on 2 January 2019 and 25 January 2019 to it on telephone calls and these were applied in reduction of the capital balance as instructed. However, it stated that it could not locate any call after that date where the Complainant instructed it to apply a repayment in reduction of the capital balance.

It states that, where a lump sum repayment of less than €5,000 is made, it does not get applied automatically in reduction of the capital balance. It advises that it requires a specific instruction from the customer to do so, and without a specific instruction the overpayments remains as a credit balance on the account (as opposed to being applied to reduce the capital).

### **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.

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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 27 January 2021, 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 loan with the Provider in 2017. The loan offer letter is dated **17 January 2017**. The amount advanced was €127,591.50 repayable over 13 years by monthly instalments of €916.61.

During 2018 the Complainant decided to make repayments in addition to the agreed monthly repayments, referred to variously as "out of course", "lump sum", "additional" or "ad hoc" repayments.

On **8 October 2018** the Complainant telephoned the Provider to enquire about making these repayments.

The Complainant said that he was looking to see about making additional payments, and increasing the monthly repayment on one of the accounts. He was told that if he made a regular overpayment by direct debit it would simply "*go off the main payment*" unless he set up a standing order. The account was split into a tracker rate portion and a variable rate portion. The Complainant was told that if he wanted to apply payments to his account he would need to place a reference on the payments that the Provider called "deal product number". He was given the deal product number of ending in 5992 for the tracker portion of his mortgage, and ending in 8211 for the variable rate portion.

The Complainant advised that he wished to make a standing order payment "off" of his mortgage, he would need to set up a transfer to "the holding account" or set up a standing order to that account, then once it goes to that holding account it would have a reference number, and that would then come "directly off" the deal product that he had chosen.

The Complainant was told that he needed to make a transfer to the holding account (for which he was given IBAN details on the phone); he was then told:

*“so, when you’re setting up the standing order, you set up the standing order to go to that account... you set up the standing order to go to that holding account and then as the reference, right, firstly you need to have your mortgage account number that you called out to me [calls it out], and once you have that in, and eh then after, you also include that deal product number I gave you for whichever one you want””.*

[my emphasis added]

The Complainant asked if he was just to let the account run as it is currently running, and simply set up a standing order to make overpayments, is that the way to do it? It was confirmed that that would be how to do it. The current monthly repayments to each account were confirmed to him.

On the basis of this telephone call, it was clearly advised to the Complainant that if he wished to make an out of course payment and apply it to reduce the capital balance, he should make a transfer into the holding account with the reference in the form “[mortgage account number] [deal product number]”.

In fact, on **8 November 2018** the Complainant made a payment into the holding account with the “DEAL PROD ending in 4482” as narrative 1 and “PREFERENTIAL PAYM” as narrative 2. On **12 December 2018** the Complainant made another payment using the same narratives. On **24 December 2018** the Complainant made a payment with “DEAL PROD ending in 4482” as narrative 1 and “DEAL PROD ending in 8211” as narrative 2. None of these references were in the format [mortgage number][deal product number] which he had been advised to use.

On **2 January 2019** the Provider contacted the Complainant as it had received what it describes as an “unallocated” payment. It states that this is standard when it suspects that such a payment relates to a certain customer but cannot identify it based on the reference provided in the transfer. The Complainant returned this call. The Complainant was told that the call from the Provider was in relation to the 24 December payment, to confirm if it was in fact the Complainant that had made it. He was told that the Provider needed a reference number on payments in order to apply them correctly.

The Complainant stated that it had referenced “PREFERENTIAL PAYMENT” and should go off the correct mortgage account. The Complainant stated that he didn’t believe he had to include the mortgage account. He was advised that the holding account is used to receive payments for multiple mortgage accounts, so the mortgage account number is required to allocate payment correctly. The Complainant then asked the Provider to check whether his previous payments of 8 November and 12 December had been received and correctly allocated.

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The Provider advised that those payments had not been applied to his mortgage account but were in the holding account. The Complainant insisted that he made the payment to the holding account as instructed, and that he should not have to explain this to the Provider. It was explained to him that the correct information is required on the payments. The Provider and the Complainant discussed what information was actually provided with the payments in November and December. The Provider's agent told the Complainant that he would contact the relevant teams and ensure the payments got applied to his account.

The Provider's agent then advised *"just for the next one just if youre gonna continue to do this just include the mortgage reference number as well as your deal product number"*. The Complainant asked what was meant by that. He was advised: *"I can give you your mortgage reference number, so obviously in your reference you had your deal product number, so you have this one loan under one number..."* The Complainant interjected to ask whether the Provider had a document that sets this process out. He was told that there was no such document. The Complainant did not accept this and asked to know why there was no such document. He was told it was not the Provider's procedure. The Complainant asked why the Provider could not just email him a document telling him exactly what to do.

The Complainant was frustrated as he felt that the Provider was not allocating payments in the manner that he intended, and was concerned that other payments he would make would not be applied to his account.

Ultimately, the Provider's agent apologised for the fact that there was no document, and explained to the Complainant that he needed to include the number (a number which can be referred to as the agreement number, the mortgage number, the mortgage account number). The Complainant was given this number. The Complainant asked to receive confirmation when the payments had been allocated to the account.

It was repeated to the Complainant that the payments were not correctly allocated because the payments did not have the correct reference numbers. He was told that he would receive a receipt for the payment when allocated.

On **2 January 2019**, apparently after this telephone call, the Complainant made a transfer to the holding account bearing "DEAL PROD ending in 8211" and "PREFERENTIAL PAYME" as narratives 1 and 2 respectively. This was not the information he had been advised to include as the reference with the payment.

On **11 January 2019** three letters issued to the Complainant acknowledging receipt for the relevant payments and confirming that they had been applied in reduction of the capital balance for account ending *"/2"*.

On **25 January 2019** the Complainant telephoned the Provider to enquire whether his payment of 2 January had been allocated in reduction of his capital balance.

The Complainant made another 2 payments on **4 February 2019** and **8 February 2019** containing the same narratives as the 2 January repayment.

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On **12 February 2019** the Provider confirmed by letter that the credit balance which had built up had been applied to reduce the capital balance.

It appears that amongst the out of course repayments that the Complainant attempted to make, one (of €1,000) was ultimately allocated against the capital balance of the tracker account (/1) rather than the variable rate account (/2) as the Complainant had ultimately instructed. The Provider has apologised for this error, reversed and re-applied the payment towards the correct account, and offered €200.00 as a goodwill gesture.

In November 2019 the Complainant contacted the Provider and was informed that a capital balance had built up on his account. The Complainant forwarded a complaint to this office. The Final Response Letter of **18 December 2019** stated that €2,018.42 of a credit balance had built up on the account (due to unallocated out of course repayments), that this was accruing interest at the same rate that interest accrued to the debit balance, and that he could contact the Provider with instructions that this be paid off the capital balance (or applied to a specific product).

After initially forwarding his complaint to this office, the Complainant discovered that an out of course payment he had made on **10 December 2019** had been returned to his payer account.

The Provider has since advised that it changed its processes in late 2019 such that, if a payment is received to the holding account that is not properly referenced, it is returned to the payer rather than remaining in the holding account.

### **Analysis**

The Complainant wished to make out of course payments to his mortgage account.

The Complainant's contentions that he had any sort of formal arrangement in place for these repayments, or that he was advised that any ad hoc payment he made would be applied to the capital balance, are not supported by the evidence before me.

It was clearly explained to him on 8 October 2018 that in order to do so, he would have to make a payment into a "holding account" and include specific reference information ([mortgage number] [deal product number]) in order that payment be correctly allocated. He proceeded to make payments using the incorrect references on 3 occasions.

Following a telephone call on 2 January 2019, in which the instructions to include a specific payment reference ([mortgage number] [deal product number]) were repeated, the Complainant proceeded to make 3 more out of course payments using the incorrect references.

The Complainant continued to make payments without using the payment references he had been advised to use. Therefore, the Provider was unable to allocate the payments.

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While his payments were allocated as a “credit balance” to his account, they were accruing interest at the same rate that interest was applied to his mortgage accounts. Therefore, he has suffered no loss by virtue of them being applied (albeit temporarily, until the Complainant provided the requisite instructions) as a “credit balance” rather than applied to reduce the mortgage balance.

There is no evidence of any wrongful conduct on the part of the Provider in applying the Complainant’s payments in the manner it did. Unfortunately, though the Provider explained how to make the payments on a number of occasions, the Complainant did not manage to follow these instructions.

I am at a loss to know why the Provider was not in a position to issue written instructions which set out the correct reference to include, when it was requested to do so by the Complainant on 2 January 2019.

I note that since this complaint was forwarded to this office, the Provider has changed its procedures such that payments that are received without the correct reference information are now returned to the payer rather than sitting in the holding account or being applied to a credit balance on an account.

While this is to be welcomed, it is an indication that the process is causing difficulty for its customers. It would seem that if the Provider would furnish customers with clearly written instructions, at least some of those difficulties might be avoided.

On one occasion the Provider allocated a payment to the Complainant’s tracker rate account instead of his variable rate account. Whilst this likely arose initially from the Complainant’s failure to reference the payment properly, the Provider has accepted wrongdoing and offered €200 as a goodwill gesture for this failure.

In all the circumstances of this complaint, I do not deem €200 to be sufficient compensation for the inconvenience caused.

I believe the Provider ought to have been in a position to furnish instructions in writing to the Complainant as to how to make the payment he was seeking to make.

For the reasons set out in this Decision, I partially uphold this complaint and direct that the Provider pay a sum of €500 in compensation to the Complainant. For the avoidance of doubt, this sum of €500 includes the €200 already offered by the Provider.

I also direct the Provider, in accordance with **Section 60 (4)(c) of the Financial Services and Pensions Ombudsman Act 2017**, to review the manner in which it gives information to customers in relation to the process that gave rise to 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)(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 pay a sum of €500 in compensation to the Complainant. For the avoidance of doubt, this sum of €500 includes the €200 already offered by the Provider. This sum is to be paid into 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.

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.

I also direct the Provider, in accordance with **Section 60 (4)(c) of the Financial Services and Pensions Ombudsman Act 2017**, to review the manner in which it gives information to customers in relation to the process that gave rise to this complaint.

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 February 2021

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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.

