



<u>Decision Ref:</u>	2021-0110
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Dissatisfaction with customer service Failure to provide accurate account/balance information Errors in calculations
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the mortgage held jointly by the Complainants with the Provider since **June 2018**.

The Complainants' Case

The Complainants took out a mortgage with the Provider in **June 2018** at which time, according to their complaint form, they fixed the level of their repayments for an initial period of one year.

The Complainants explain also that they made an “*ad hoc*”, or once-off, payment to their mortgage loan account shortly afterwards. While the Complainants have not specified the amount of that “*ad hoc*” payment, the Provider, in its Final Response Letter dated **16 July 2019** has stated this payment to be in the sum of €4,012.00 which was lodged on **19 June 2018** and credited to the account the following day. The Complainants say that they then continued to make their ongoing mortgage repayments without any issue.

In their complaint form, the Complainants state that they received what they describe as an “*extremely aggressive*” letter from the Provider in **March 2019** indicating that the Provider had “*undercharged us and we had underpaid the mortgage account by €1,379.35.*”

They say that, “[w]e have sent two letters to [the Provider] on the issue and they have still not been able to resolve it. The issue was raised by us on March 22nd 2019 and we have a significant amount of concerns which have not been answered”.

The Complainants say that they wrote to the Provider on **22 March 2019** to set out their complaint about the error, which they argue was one made by the Provider. In that letter, they assert that the Provider’s letter of **15 March 2019** is “*confusing, misleading and the direct opposite of being customer focused*”. The Complainants state that:

“There is no indication in the letter if our credit bureau rating has been impacted. You have calculated the additional interest up to a point in time. You have not calculated the additional interest associated with your options 1 or 3.

You did not advise us to seek financial advice as I’m assuming options 1 & 3 would trigger a new contract.

You state ‘you have underpaid the capital on your mortgage’. That is incorrect, you have undercharged me.

I find your compensation offer of 5 cent embarrassing and insulting.”

The Complainants’ argument is that as the mistake was one made by the Provider, “*the resolution sits with [the Provider]*”. In addition, they set out details of their required response.

The Complainants wrote to the Provider again on **25 May 2019** in response to a letter from the Provider dated **17 May 2019**.

In their letter of **25 May 2019**, the Complainants complain about the terms of the Provider’s correspondence to them and about the delay in obtaining a response from the Provider, which they argue has also caused them “*a lot of stress and anxiety*”. In that letter also, the Complainants set out particulars of two specific issues that were causing them disquiet and indicated that they were now seeking financial compensation as a result of “*the additional cost of us being trapped in a mortgage [with the Provider] at a rate of 3% versus a 2 year fixed offering with [Provider B] at a rate of 2.3%*” and “*the confusion and stress this incident has caused us*”.

The Complainants complain also in their letter dated **19 July 2019** to this Office about the manner in which the Provider put in place one of the options for which the Complainants were offered a choice in its letter to them of **15 March 2019**. They argue that the Provider did so in conjunction with their election to fix the level of the repayments on their mortgage, for a further year, in **June 2019**, as follows:

“If we were not rolling off a fixed rate, then [the Provider] would not have been able to resolve this issue.

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The monthly payments wouldn't have adjusted and the shortfall on the account would still be there. They used this event, to then adjust our monthly payments and claim the issue as being resolved".

In that letter, the Complainants state also that *"we were looking to switch mortgage, however, we felt under pressure to renew as this situation was not resolved"*. They complain also about the conduct of the Provider and also the length of time taken by it to resolve their complaint.

The Complainants claim that they have suffered considerable stress and anxiety as a result of the foregoing.

Ultimately, the Complainants want *"€1,379.35 applied to the mortgage account to clear the shortfall, €1,000 for the amount of hassle this has caused us, along with an additional €800 which amounts to the difference in interest charged between the mortgage [with the Provider] at a rate of 3% and the mortgage with [Provider B] at a rate of 2.3% on a €444k mortgage between the dates of March 22nd and June 24th."*

The Provider's Case

The Provider wrote to the Complainants on **15 March 2019**, stating that it, *"did not recalculate your monthly repayment amounts correctly following an update to your account on 21 June 2018"*. The Provider stated that it was correcting the interest overcharged to the Complainants (€1.60) and crediting them with €0.05 as compensation for its error. The Provider set out three options from which the Complainants were required to choose one, in order to rectify the situation.

"Option 1: Increase your monthly repayments

You can increase your monthly repayments by €6.85, which will bring your new repayment amount to €2,148.61 per month.

Option 2: Pay a lump sum now

You can repay the capital underpayment in a single payment now. The amount is €1,379.35.

Option 3: Alternatively, keep your current monthly repayment and extend the term of your loan.

You can extend the term of your mortgage and pay the outstanding amount at the end of your previously agreed term. This will avoid any increase in the amount of your current monthly repayments"

This letter from the Provider did not seek to explain, in precise terms, how the “error” that had led to the “undercharge” had arisen.

The Provider has set out its response to the Complainants in its Final Response Letter dated **16 July 2019**. It acknowledged that it had set the monthly repayments lower on the Complainants’ account than the required amount to clear the Complainants’ loan on its maturity date and that any overcharge of interest had already been credited to the Complainants’ account. It attempted to explain the circumstances leading to the miscalculation of the monthly repayments as follows:

“Your mortgage account drew down on an interest rate of 3.00% and a term of 288 months. The monthly repayment amount was calculated as €2,163.55.

On 20 June 2018 a manual lump-sum payment of €4,012.00 was lodged to your mortgage account (value dated to the date of lodgement on 19 June 2018), and the repayments were recalculated accordingly.

On 21 June 2018, the fixed rate funding fee of €2.00 was charged to the mortgage account and the repayments were again recalculated.

On 20 June 2018 and 21 June 2018 the repayments were calculated based on a term of 289 months (one month more than the 288 month term) as the system to calculate the repayments assumes that a repayment will be made within 30 days, as would normally happen on a mortgage account.

The mortgage account drew down on 1 June 2018 however the first repayment was due 27 July 2018 as we allow a full calendar month before taking a payment for our customers’ convenience. In the Illustrative Amortisation Table for simplicity the payments commence in month one however in reality they commence in month two.

Due to this error the repayment amount (based on a term of 289 months instead of the 288 month term), was calculated as €2,141.76 on 21 June 2018.

The error resulted in an underpayment of capital impacting the balance owing on the account which the Bank contacted you to resolve by letter dated 15th March 2019.”

The Provider went on to explain that it had recalculated the level of repayments required to ensure clearance of the mortgage in line with the maturity date of their mortgage, in conjunction with (on **4 June 2019**) amending the rate on the mortgage account to the 1 year fixed rate of 2.90% as per the Complainants’ signed Mortgage Form of Authorisation (MFA). The Provider states that the new repayment of €2,127.69 was calculated and a letter issued to advise the Complainants of the new repayment amount. The Provider also stated that the issue had not had an effect on the Complainants’ Irish Credit Bureau reporting and that a redemption quote letter was issued to the Complainants on **5 April 2019**. The Provider accepted that it had not met the level of customer service that it aims to provide but declined to make any further payment of compensation to the Complainants.

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In its submissions to this Office dated **17 September 2020**, the Provider states that due to a complaint made by a customer in **September 2017** and the identification of an error concerning that customer's monthly repayment amount being understated, the Provider engaged in a review of all mortgage loan accounts which were due to have a residual shortfall at maturity (approximately 13,000 loans), to determine whether the shortfall occurred due to a miscalculation by the Provider on that mortgage loan account. The Provider states that correspondence issued to customers whose accounts were affected by the review in **March 2019**. This included the Complainants.

The Provider states that in order to rectify the errors that occurred in recalculating the repayments of those accounts that were impacted it updated its transaction codes on the mortgage system to automatically recalculate the correct repayment amount to prevent any potential shortfalls at maturity and furthermore, its procedures were updated to reflect these new system changes in **November 2018**.

The Provider states that it is *"not satisfied that the compensatory payment of €0.05 sufficiently compensates the Complainants for the inconvenience caused by the Provider's error in the calculation of the Complainants' repayments in **June 2018**. As a result, the Provider wishes to make an offer of €25.00 to the Complainants by way of further compensation"*.

The Provider accepts that there is a typographical error in its Final Response Letter in respect of the response to Option 3. The Final Response Letter reads, *"Any additional interest due on Option would depend on what the maturity date was set to"*. It should read: *"Any additional interest due on Option 3 would depend on what the maturity date was set to"*.

In respect of the Complainants' request to have a sum of €1,379.35 applied to their mortgage account to clear the shortfall, the Provider states that *"this sum forms part of the capital balance of the loan, i.e. part of the sum that was actually loaned to the Complainants, without any addition of interest. The Complainants drew down the mortgage loan on 1 June 2018, and in doing so, agreed to be bound by the terms and conditions of the Offer Letter."* The Provider points to General Condition 4(a) of the terms and conditions of the Offer Letter stating:

"Unless otherwise stated herein or agreed by the Lender in writing, the repayment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit mandate. For an annuity, or other repayment loan, repayments shall be comprised of principal and interest and any other amounts payable..."

The Provider states that the Complainants are under a contractual obligation to repay both the capital and interest applicable to the mortgage loan account and the error made by the Provider does not negate this.

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The Provider feels that the request to clear the €1,379.35 they owe as a capital underpayment is *“entirely unreasonable having regard to the nature of the error made by the Provider”* given that the error *“had the effect of leaving the Complainants at a loss of the total sum of €1.60”*.

The Provider rejects the contention that at any stage the Complainants were prevented from moving *“to a lower rate of mortgage in the market”* by virtue of the issues raised in respect of the letter of **15 March 2019** and asserts that the Complainants were at all times free to seek to move to another mortgage Provider. The Provider states that even when the Complainants chose to move to a further fixed period after the expiry of the initial period, there was nothing to prevent the Complainants moving to another mortgage Provider, provided that the Complainants paid the fixed rate breakage fee to the Provider in accordance with General Condition 7(c) of the Offer Letter.

The Provider states while it is *“sympathetic to any stress or anxiety felt by the Complainants in dealing with the error that occurred due to the Provider’s miscalculation, the Provider notes that the first Complainant occupies a senior position in the Financial Services Sector, and that similarly the second Complainant is a Solicitor with one of the leading firms in Ireland. In the Provider’s view, the Complainants, given their professional backgrounds, ought reasonably to have been able to understand the issues arising from the Provider’s letter of 15 March 2019”*.

The Provider rejects the assertion that the Complainants were under pressure to renew their 1 year fixed rate. It states that a product review notice was automatically generated and issued to the Complainants as customers whose mortgage loan account was due to come off a period of fixed rate interest, or interest only repayments. The Provider states that the letter is purely to give a customer an opportunity to avail of whatever interest rates were offered by the Provider in or around the time of the expiry of the fixed rate or interest only period. The Provider states that the only consequence of not selecting a further rate is that the loan account would move to the ‘default’ rate as mandated in the Offer Letter, namely a standard home loan variable rate.

The Provider accepts that making a recalculation error, such as the error it made means that it did not act with *“due skill, care and diligence”* as per Provision 2.2 of CPC 2012. However, the Provider states that it is satisfied that the letter of **15 March 2019** clearly communicated the error by the Provider and sought to bring the Complainants back to the position they would have been in should the error not have occurred. The Provider is further satisfied that the letter of **15 March 2019** evidences efforts to comply with Provision 2.1 of CPC 2012, namely that it acted *“honestly, fairly and professionally in the best interest of its customers and the integrity of the market”*, having identified that the error affected the Complainant’s account. The Provider states that there is no evidence that the Provider misled the customers in contravention with its obligations under Provision 2.3 of the CPC 2012 as this error was an error in calculation, not a reckless or negligent error in advices given on a product or service.

The Provider recognises that it did not comply with the requirements of provision 2.4 of the CPC 2012 to employ “*effectively the resources, policies and procedures, systems and control checks, including compliance checks*” required to comply with the provisions of CPC 2012. The Provider confirms that it notified the Central Bank of the error as required by provision 10.3 of the CPC 2012 and further confirms that it did not benefit from the error made (Provision 10.4 of the CPC 2012).

The Complaints for Adjudication

The complaints are:

- That the Provider wrongfully miscalculated the level of repayments on the Complainants’ mortgage loan in **June 2018**, the consequence of which was that an effective underpayment had arisen in the period from **June 2018 to March 2019** in the amount of €1,379.35;
- That the Provider wrongfully failed to bear responsibility for the financial consequences of what it accepts was an error on its part;
- That the Provider, in communicating the error to the Complainants, failed to do so in a clear and transparent manner, such that they could fully understand the reason for the error, any additional interest payable as a consequence of two of the options being offered by the Provider, any consequences that the issue might, or might not, have had on their Irish Credit Bureau record, and any requirement to seek legal advice in relation to the options being made available to them by the Provider;
- That the Provider used the Complainants’ decision to fix their mortgage repayments for a further year, in **June 2019**, to effectively put in place the first of the options offered to them, at a time when their complaint, that the Provider ought to bear responsibility for the shortfall of €1,379.35 was still unresolved.
- That the Provider failed to deal with the Complainants’ complaint in a timely manner, in particular that the Complainants made their complaint to the Provider on **22 March 2019** and did not receive the Provider’s Final Response Letter until **16 July 2019**. In this regard, the Complainants complaint that they were effectively unable to switch mortgage provider while the matter remained outstanding.

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.

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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 8 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.

Following the issue of my Preliminary Decision, the Provider made a submission under cover of its letter to this Office dated 22 January 2021, a copy of which was transmitted to the Complainants for their consideration.

The Complainants advised this Office under cover of their e-mail dated 25 January 2021 that they had no further submission to make.

Having considered the Provider's additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

In respect of the Complainants' complaint that the Provider wrongfully miscalculated the level of repayments on the Complainants' mortgage loan in **June 2018**, the consequence of which was that an effective underpayment had arisen in the period from **June 2018** to **March 2019** in the amount of €1,379.35, I note that the Provider accepts this and has given a full explanation for the reasons why the miscalculation occurred.

However, I note that the submissions and attitude adopted by the Provider in dealing with this miscalculation error and complaint evidence its failure to fully accept or understand the significance or impact of the error it has made. Nowhere is this more evident than in the Provider's derisory offer of €0.05 as compensation for this error, made in a letter of **15 March 2019** to the Complainants. In my Preliminary Decision I had also noted that even "*the Provider's most recent offer of €25, made to the Complainants in its submissions to this Office dated 17 September 2020, while representing a figure which is a multiple of 500 times more than its initial offer, still falls far short of adequate compensation for the Complainants*".

The Provider has, in its post Preliminary Decision submission, detailed that it *“can confirm that this was a typographical error and this should have read €250 and not €25. [The Provider] “apologises for this error and that it was not corrected at an earlier opportunity through oversight on [the Provider’s] behalf. [The Provider] wishes to correct this error in the interest of frankness to both your Offices and the Complainants and to confirm an offer of €250 was in fact [the Provider’s] intention”.*

While I acknowledge and welcome the fact that the Provider has clarified its intention regarding its offer of compensation, it remains in my view that nowhere in the Provider’s submissions does it acknowledge the reality that for the vast majority of homeowners, their mortgage payment is one of, if not the most, significant expense that they incur every month. To miscalculate a mortgage repayment, given the ramifications, is an error of significant seriousness. Furthermore, I note that the typographical error in the Provider’s Final Response Letter added further confusion to the matter and made uncertain the options available to the Complainants in response to the miscalculation. On the basis of the foregoing, I accept that the Provider has acted unreasonably.

I note that the Provider’s correspondence to the Complainants was at all times clear that the Complainants’ Irish Credit Bureau record would not be affected and I also accept the Provider’s submission that there was nothing to prevent the Complainants moving to another mortgage provider notwithstanding their existing complaint with the Provider.

In respect of the complaint that the Provider failed to deal with the Complainants’ complaint in a timely manner, I note that the Complainants issued their letter of complaint on **22 March 2019** and a 5 day acknowledgement letter was issued by the Provider on **26 March 2019**, in compliance with provision 10.9(b) of CPC 2012. A 20 day letter was then issued on **16 April 2019**, in accordance with provision 10.9(c) of CPC 2012 and a 40 day letter was issued on **17 May 2019** in accordance with provision 10.9(d) wherein the Provider stated that it would write to the Complainant no later than **19 June 2019**. I note that by letter dated **19 June 2019**, the Provider wrote to the Complainants to advise them that the complaint was still being investigated, and the Provider would contact them again not later than **17 July 2019**. I note that the Provider’s Final Response Letter issued on **16 July 2019** in accordance with provision 10.9(e) of CPC 2012. Based on the foregoing, I accept that the Provider dealt with the Complainants’ complaint in accordance with the CPC.

Bearing in mind the error in miscalculation made by the Provider and noting the seriousness of the error as well as the failure of the Provider to make an adequate offer of compensation to the Complainant, I accept that the Provider has failed to act reasonably in relation to its responsibility for the financial consequences of its error.

It is important to stress that this does not in any way negate the fact that the Complainants are bound to repay both the capital and interest applicable to the mortgage loan account pursuant to General Condition 4(a) of the Terms and Conditions of the Offer Letter, rather it reflects the conduct of the Provider in relation to the Complainants.

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For the reasons outlined in this Decision, I partially uphold this complaint and direct the Provider to pay the sum of €500 in compensation to the Complainants for the inconvenience caused.

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)(b) 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 make a compensatory payment to the Complainants in the sum of €500, 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.

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

21 April 2021

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.

