



<b><u>Decision Ref:</u></b>	2021-0233
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Savings Account
<b><u>Conduct(s) complained of:</u></b>	Misrepresentation (at point of sale or after) Application of interest rate Failure to provide correct information
<b><u>Outcome:</u></b>	Rejected

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

The complaint relates to the amount of interest applied to the Complainant's savings account for the year ending **2019**.

**The Complainant's Case**

The Complainant opened his savings account in **2016** and the savings account had an interest rate of 1.25%. The Complainant submits that he was aware, at the time of opening the account, that there was a €40,000 threshold set on the account and where that threshold was exceeded interest would accrue at standard deposit account rate. The Complainant, however, contends that he was led to believe that the threshold had increased, in respect of his savings account, to €50,000 according to a brochure he had perused which was published on the Provider's website in **May 2019**.

As a result, the Complainant states he had saved up to approximately €49,000 by the year ending **2019** and stopped saving beyond that threshold so as to not exceed €50,000.

The Complainant expected a net amount of approximately €500 interest to have accrued on his savings account (after deduction of deposit interest retention tax). He submits that he was surprised when he received a smaller than expected interest rate of €4.02 in respect of his savings account. He says that the Provider investigated this for him and informed him that the reason why such a low interest amount had accrued on this account was because his savings account balance had exceeded €40,000 and that the interest rate at that point switched from the 1.25% rate to a standard deposit account interest rate, which he says is almost 0%.

The Complainant acknowledges that he had in fact, at that time, read the threshold in respect of a different type of savings account, however, he submits that the differing accounts had not been distinguished or made clear within the brochure published by the Provider on its website. He says that the Provider subsequently revised and re-published its deposit rate brochure, as of **March 2020**, which now clearly distinguishes the differences that apply to different types of savings accounts. He contends that the fact that the Provider revised its interest rates brochure is indicative that the published brochure was misleading between **May 2019** and **March 2020**.

The Complainant states that as a result of the misleading brochure published by the Provider, he exceeded his savings account threshold and suffered a financial loss of approximately €495.98.

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

The Provider issued its Final Response Letter on **18 February 2020**. The Provider states that the Complainant contacted it on **10 February 2020** to complain about the amount of interest applied to his Extra Regular Saver Account for the year ending **31 December 2019**. The Provider states that this prompted a query to be raised by the Provider on the Complainant's behalf with the Provider's Deposit Products Team who stated that the Complainant had exceeded the set threshold of €40,000 for his account and as a result had accrued interest at the prevailing Standard Demand Deposit Account interest rate from **November 2018** onwards when the balance exceeded €40,000. The Provider states that it relayed this information to the Complainant on **10 February 2020** by telephone call at which point the Complainant requested that the matter be investigated.

In its Final Response Letter, the Provider notes that the Complainant applied for his Extra Regular Saver Account on **12 May 2016** and states that he was provided with a copy of the terms and conditions applicable thereto. The Provider states that these terms and conditions outline the following in relation to the €40,000 ceiling:

*"84.11 Extra Regular Saver*

*84.11.8 If the Account balance exceeds €40,000 (including interest credited to the Account), the entire balance will earn interest at the then prevailing Standard Demand Deposit Account Interest rate as per our Personal Deposit Rate Matrix. Your Standing Order(s) will continue to fund your Extra Regular Saver Account"*

The Provider made submissions to this Office on **27 July 2020** in response to this complaint. In these submissions the Provider reiterates that when the Complainant set up his Extra Current Account and Extra Regular Saver Account on **12 May 2016** he was provided with a copy of the terms and conditions applicable hereto.

As well as the forementioned term and condition '84.11.8', the Provider also brings attention to:

*"85.11.9 The maximum account balance is €40,000. Once the balance in the Extra Regular Saver reaches €40,000 the entire balance will earn interest at the then prevailing Standard Demand Deposit Account interest rate as per our Personal Deposit Rate Matrix. Your Standing Orders will continue as normal to your Extra Regular Saver."*

The Provider explains that the Extra Regular Saver Account is an optional feature of the Extra Current Account which provides customers with a preferential interest rate once the account is operated within the terms and conditions of the product.

The Provider does not accept that the rate matrix as it applied in **2019** was unclear. The Provider states that the rate matrix available on its website in **May 2019** did not include a reference to the Extra Regular Saver Account and that details of that type of account were instead contained on the portion of its webpage that dealt with the Extra Current Account as the two accounts were linked. The Provider states that when a customer accesses the Extra Current Account webpage, the maximum balance threshold for the Extra Regular Saver Account is explicitly stated as follows:

*"Max balance €40,000 – Once the balance reaches €40,000 (including interest credited to the account), the full balance will earn interest at the then prevailing Standard Demand Deposit Account interest rate"*

The Provider acknowledges that the rate matrix available on its website was revised in **March 2020** and included details of the Extra Regular Saver Account, following the decommissioning of some of the regular saver bonus accounts.

The Provider also notes that the Complainant has acknowledged that he was initially aware that the maximum threshold balance for the Extra Regular Saver Account was €40,000 as set out to him in the terms and conditions provided to him when the account opened and that it was in **May 2019** that he was led to believe that the ceiling had increased. The Provider emphasises these points because it states that the Complainant has offered no explanation as to why he continued to increase the funds into the account above €40,000 in **November 2018**, some 6 months prior to the Complainant stating he believed the threshold to have changed.

Furthermore, the Provider states that the Complainant does not appear to have monitored his account to ensure the balance remained below the threshold, as the funds in the account clearly rose above the threshold in **November 2018**. It also states that it has no record of the Complainant contacting the Provider in relation to the balance or checking if the threshold had been increased, despite being informed, in the form of the annual statement, that the balance had exceeded the maximum balance of €40,000.

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Finally, the Provider states that the Complainant was furnished with an annual statement for the year **2018**. This statement clearly shows the names of the account type as the “Extra Regular Saver Account” which does not correspond to the “Regular Saver Account” on the rate matrix.

### **The Complaints for Adjudication**

The complaint is that the Provider’s published brochure was misleading and misled the Complainant.

### **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 16 June 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.

I note that in his complaint form to this Office, the Complainant states he “*was aware of the 40,000 Eur ceiling when [he] signed up for the account [being the Extra Regular Saver Account] in 2016*”.

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I also note that the limit of €40,000 was clearly set out at clause 85.11.9 of the Personal Banking Terms and Conditions sent to the Complainant when he opened the account in **2016**.

After viewing the **May 2019** rate matrix/brochure submitted into evidence by the Complainant, I cannot accept that it is misleading. The €50,000 threshold clearly applies in respect of the Regular Saver Account and does not reference the Extra Regular Saver Account at all. In those circumstances, there was no basis for the Complainant to assume that the €50,000 threshold applied to the Extra Regular Saver Account. I also note that it was open to the Complainant to check the area of the Provider's webpage which did deal with the Extra Saver Regular Account or to contact the Provider and clarify the threshold applicable to the Extra Saver Regular Account, neither of which options appear to have been undertaken by the Complainant.

Furthermore, I note that the deposit account statement submitted into evidence by the Complainant, evidences that he was over the threshold of €40,000 in **November 2018**, 6 months prior to **May 2019** when the Complainant asserts that he was led to believe that the ceiling was €50,000 from the misleading online brochure/rate matrix.

Contrary to the final response letter sent by the Provider, I note that clause 84.11.8 identified by the Provider as forming part of the Terms and Conditions of the Extra Regular Saver Account in **2016**, was not part of the **2016** Terms and Conditions. In its further submissions to this Office dated **27 July 2020**, the Provider identifies clause 84.11.8 as being contained within the most recent Terms and Conditions.

On 19 April 2021 I wrote to the Provider pointing out that in its formal response to this Office dated 27 July 2020 it referred to the inclusion of a "*copy of the Terms and Conditions dated from 2016 when the account was opened*". I pointed out that having reviewed those Terms and Conditions, I could not see a provision 84.11 or 84.11.8 only 84.1 and 84.2 in relation to "Deposit Account Statements".

I asked the Provider to confirm if it is its contention that there was a provision 84.11.8 in the Terms and Conditions furnished to the Complainant as at the date he opened the account the subject matter of this complaint or, if the Provider contends that it was in another version furnished to the Complainant, to furnish such other version to this Office together with evidence of how and when those Terms and Conditions were furnished to the Complainant.

The Provider responded as follows on 21 April 2021:

*"It is not the Provider's contention that there was a provision 84.11.8 in the Terms and Conditions (T&Cs) furnished to the Complainant at the date he opened the Extra Regular Saver Account (ERSA). As set out in our response to the Schedule of Questions, provision 85.11.9 was the relevant condition in the T&Cs (March 2016 version) furnished to the Complainant at the date he opened the ERSA.*

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*a. As stated above there was no provision 84.11.8 in the March 2016 version of the T&C's.*

*b. Provision 85.11.9 (extract below) can be found on page 38 of the March 2016 T&C's (copy provided for ease of reference). It was this version of the T&C's that the Complainant received at the date the ERSA was opened.*

*2. The Terms and Conditions are reviewed on an ongoing basis for the reasons set out in Provision 18 of the March 2016 T&Cs, as accepted by the Complainant, as follows;*

*a. Following such amendments in December 2017, the information originally set out in Provision 85.11.9 was then detailed under Provision 84.11.8.*

*At the date of our response to the Schedule of Questions, Provision 84.11.8 was relevant and was effective from February 2018.*

*b. We have provided a copy of the March 2016 T&C's which include Provision 85.11.9.*

*c. We have provided the T&C's relevant at the time of our submission in July 2020 which include Provision 84.11.8.*

*d. The Complainant accepted Provision 85.11.9 in signing the following declaration..."*

A copy of the declaration signed by the Complainant was included with this correspondence.

The Provider goes on to state:

*"In accordance with our commitment as set out in Provision 18 above, customers were informed of the changes to the referenced T&C's by way of advertisement in two national newspapers and on our website in December 2017.*

*e. As previously explained, the Provision relevant to this complaint was included in the original T&C's as accepted by the Complainant in 2016. It is not the case that a new provision was included after the account start date which the Complainant was required to accept. While the number reference of the original Provision has changed, the pertinent information has not. The option to reject any changes to the wording of the T&C's was available to the Complainant as set out in Provision 18.3.*

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*In this respect we are satisfied that the Complainant accepted that Provision 85.11.9 was binding on him and he also accepted Provision 18 (Amendments and Variations) meaning Provision 84.11.8 was binding at the time of our submission in July 2020, as were all subsequent changes and as will all future amendments be unless the Complainant rejects the amendments in which case the account should be closed.”*

Based on the evidence and submissions supplied, I cannot accept the Complainant’s contention that the Provider’s online brochure/rate matrix was misleading. The unfortunate reality of the situation is that the Complainant did not appear to monitor the level of funds in his account in late **2018**/early **2019** and then appears to have misunderstood the online brochure/rate matrix in **May 2019**, leading him to believe that the threshold for his account was €50,000 instead of €40,000.

For the reasons set out 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**

9 July 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,

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**(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.**

