



<b><u>Decision Ref:</u></b>	2021-0336
<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 calculations
<b><u>Outcome:</u></b>	Rejected

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

The Complainant holds a mortgage loan account with the Provider. In **June 2008**, the Complainant applied to convert his loan interest rate to a 10 year fixed interest rate. The Complainant believes that the Provider applied the incorrect interest rate to his account. The Complainant is also dissatisfied with the Provider's response to his requests for Early Breakage Fee calculations.

**The Complainant's Case**

The Complainant says he believes that he is being overcharged on his fixed interest mortgage loan and that he recently requested a copy of the original contract regarding the fixed rate term from the Provider. The Complainant says the contract provides for an interest rate of 5.24% but the Complainant has, and continues to be, charged a rate of 5.44% since **2008**.

On **12 May 2008**, the Complainant says he was offered a fixed rate of 5.24% and on **10 June 2008**, he signed a contract for a fixed rate of 5.24% for a 10 year period but this rate was never applied to the loan account. The Complainant says that on **9 August 2007**, he entered a 5 year fixed interest rate arrangement at a rate of 5.44%. The Complainant believes that after availing of the 10 year fixed interest rate option, the interest rate was never changed on the loan and remained at 5.44% instead of 5.24%. In **June 2008**, the Complainant submits that he signed a contract for a fixed interest rate of 5.24% for a 10 year period and not 5.44%.

In respect of the Provider's position that the applicable interest is stated on annual account statements in its letter of **24 January 2018**, the Complainant says this is not the case and, in fact, the first time the interest rate appears on an account statement is on the **2010** account statement which was a full 30 months after the Complainant agreed and switched to a rate of 5.24%.

On **27 November 2017**, the Complainant says he telephoned the Provider to request "a breakdown as to the calculations of the breakage fee." However, "[a]fter numerous phone calls, excuses & email requests for this information I have received nothing from [the Provider] ...." The Complainant says that "I am still at odds as to how I am being charged €5,114.09" and that he has questioned previous figures given to him by the Provider for breaking from the fixed rate agreement. The Complainant says that on **26 January 2011** he was given a figure of €27,954.

In resolution of this complaint, the Complainant states:

*"I am seeking refund of overpayments on my mortgage since the 10.06.08. I am also seeking the [Provider] calculations as to my current breakage fee & also how on the 26.1.11... they calculated it would cost me €27,954 to breakout of my fixed mortgage. I feel that had I been charged the rate of 5.24% as I had signed up to in 2008, I may have avoided going into mortgage arrears. I now question the breakage fees involved & wonder how accurate were & are they & if this led me some of the way into arrears as well. I believe financial compensation is appropriate."*

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

The Provider delivered its Complainant Response on **16 December 2020**. The first section of the Complaint Response contains a 9 page timeline of events. In respect of the period from **August 2007** to **November 2008**, the Provider says that on **9 August 2007** the Complainant sent in a completed 5 year Fixed Rate Application Form dated **9 August 2007** with a rate of 5.44% requested. The Provider says it reviewed this form but failed to apply the rate to the Complainant's loan account. On receipt of the form, the Provider says it "closed the task" due to human error and failed to take any further action.

Later in its Complaint Response, the Provider says the loan account remained on the standard variable rate up to **May 2008** when the rate changed to 5.33%. The Provider says the standard variable rate remained on the Complainant's loan account until it was converted to the fixed rate of 5.44%. The Provider says while it acknowledges that a rate of 5.44% was not applied to the loan account as per the request in **August 2007**, there was no financial loss incurred by the Complainant as a result because the standard variable rate remained below 5.44% during the relevant period which, the Provider says, was explained to the Complainant on **21 May 2008**.

On **30 April 2008**, the Provider says there was a note on file advising that the 5 year fixed rate of 5.44% was never applied to the loan account as per the form received on **9 August 2007**. The note also advised that the matter would be referred to the Retention Team. On **12 May 2008**, the Provider states it telephoned the Complainant regarding the fixed rate application form received in **August 2007** and advised the Complainant that the new fixed rates that were available were 5.21% for 3 years, 5.27% for 5 years and 5.24% for 10 years. The Provider says it sent out a new form to the Complainant along with a letter confirming the information imparted over the phone. On **21 May 2008**, the Provider's Retention Team telephoned the Complainant regarding interest rates that were available and sent forms to the Complainant to complete and return. On **29 May 2008**, the Provider says it's Network Office received a telephone call from the Complainant to complaint about the rate of 5.44% not being applied to the loan account following the **August 2007** application. The Provider says the Complainant requested a competitive 4 year fixed rate. The Provider says the staff member in the Network Office referred the matter to the Retention Team by email. The Provider says it acknowledges that a complaint should have been logged on behalf of the Complainant and apologises that this did not happen. The Provider has also set out the Retention Team's response to the Network Office email.

On **10 June 2008**, the Provider says the Complainant sent a fixed rate form to the Network Office requesting a 10 year fixed rate with a rate of 5.24%. On **11 June 2008**, a completed fixed rate form was received by the Network Office and returned to the Provider stamped as **13 May 2008** with a hand written note stating the rate that was agreed. The Provider says it acknowledges that the stamp date placed on the form by the Network Office does not match the date the form was received and the Provider apologises for this error. On **12 June 2008**, the Provider says it contacted the Complainant by telephone to advise that the rate of 5.24% was no longer available and the 10 year fixed rate that could be applied to the account was 5.44%. The Provider says the Complainant agreed to this new rate and that it agreed to apply the rate on this date. On **18 June 2008**, the Provider says it applied the fixed rate of 5.44% and sent a confirmation letter to the Complainant.

On **24 June 2008**, the Provider says the Complainant contacted it requesting a copy of the confirmation letter regarding his fixed rate and that it be sent to his property address. The Provider says a further letter was sent to the Complainant on **24 June 2008** confirming the application of the 10 year fixed rate of 5.44% at the property address. On **25 June 2008**, the Provider says a further request was received from the Complainant that the confirmation letter be sent to the property address as he did not live at the postal address anymore. On **1 July 2008**, the Provider says it issued a further confirmation letter. On **12 November 2008**, the Provider says it received a telephone call from the Complainant and on this call, the Provider confirmed the rate that was applicable to the loan account.

The Provider says the Complainant was first offered the rate of 5.24% on **12 May 2008** and the Complainant returned the completed application form on **10 June 2008** requesting a 10 year fixed rate of 5.24%. The Provider advises that due to a change in the fixed rates that were being offered, the rate changed on **13 May 2008** and the rate of 5.24% was no longer available. The Provider says the new rate of 5.44% was applicable from **13 May 2008**.

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The Provider also refers to the following paragraph from the application form:

*"I/We understand that in the event of there being a change in interest rates before [the Provider] have converted our loan rate, [the Provider] will apply the fixed rate currently available. If there is no other fixed rate available, the appropriate variable rate may apply. Unfortunately, [the Provider] cannot inform customers individually of changes in interest rates prior to converting their loan rate."*

The Provider says the rate change which occurred on **13 May 2008** was prior to the Complainant signing his new application form and returning it on **10 June 2008**. Therefore, the above statement was applicable to the Complainant and the Provider applied the fixed rate that was available at the time.

Referring to the confirmation letter dated **24 June 2008**, the Provider says that the letter advised the Complainant that his monthly repayments for the 10 year fixed rate was €1,339.74. The Provider advises that had the fixed rate been 5.24% rather than 5.44%, monthly repayments would have been €1,308.78.

The Provider says that all annual account statements confirm all interest rate changes that take place in any given month. The **2008** statement the Complainant received states the Interest rate Change from 5.33% to 5.44% on **18 June 2008**. From **2010**, the Provider says the layout of annual loan statements changed which had the rate stated on the front of the statement under rate and other details. Prior to this, the Provider says the **2009** annual loan statement also called out the rate, however it was listed on the last page of the statement underneath the description of the transactions that had taken place throughout the year.

In respect of the Complainant's requests regarding breakage fees, the Provider says that the Complainant first contacted it on **27 November 2017** where he was verbally advised of the Early Breakage Fee. Following this, the Provider says the Complainant followed up with further requests for a breakdown of how the Early Breakage Fee was calculated. The Provider says it provided the Complainant with a standard letter that confirmed the formula used when calculating the fee. However, the Provider says it failed to provide the Complainant with a breakdown of the calculation in respect of the figures relevant to his loan account rather than a worked example.

The Provider sets out each of the requests for breakage fees as follows. On **11 December 2017**, the Provider says it received a request to send the Complainant a written response in relation to the Early Breakage Fee for his loan account and the Complainant also requested that the Provider confirm how the fee was calculated. On **11 December 2017**, the Provider says it verbally confirmed the Early Breakage Fee was €5,146.87 and on **12 December 2017**, a letter issued to the Complainant advising of the Early Breakage Fee of €5,114.09. The Provider says the letter did not contain information as to how this figure was calculated as per the Complainant's request.

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On **15 December 2017**, the Provider says the Complainant contacted the Network Office requesting an explanation of the Early Breakage Fee. The Complainant advised the letter he received only contained the amount. The Provider says the Complainant was advised that he would need to send in a written request in order to obtain this detailed information. The same day, the Provider says the Complainant sent an email requesting a detailed breakdown of how the Early Breakage Fee was calculated. Within this email, the Provider says, the Complainant referred to numerous requests for this information and the delays experienced. The Provider says the Network Office created a task on its system for the above request to be issued to the Complainant.

On **18 December 2017**, the Provider says it received an email from the Complainant wishing to log a complaint regarding the overcharging of interest.

On **19 December 2017**, the Provider says it received a letter from the Complainant dated **18 December 2017** requesting a detailed breakdown of how the Early Breakage Fee was calculated but was not responded to immediately.

On **24 January 2018**, the Provider says a Final Response letter issued to the Complainant, but the letter did not speak to the Early Breakage Fee on the fixed rate issue. The Provider says it acknowledges and apologises for this error.

On **21 February 2018**, the Provider says the Complainant advised that he was not happy with the Final Response letter as he felt only half of his query was dealt with and that the Provider had still not addressed the issue regarding the Early Breakage Fee. The Provider says it logged a further complaint on the Complainant's behalf. On **22 February 2018**, the Provider says the Network Office created a request for Head Office to carry out a calculation of the Early Breakage Fee. On **23 February 2018**, a Final Response letter issued to the Complainant where it was acknowledged that the Provider did not address the Complainant's request for a detailed breakdown of the Early Breakage Fee. The Provider says the letter contained a formula for calculating the Early Breakage Fee and an explanation of the terms of the formula. The Provider says the letter did not contain the figures relevant to the Complainant's loan account and that it acknowledges and apologises for this error. On **6 March 2018**, the Provider says a further letter was sent to the Complainant containing the same information as the letter of **23 February 2018**.

On **22 March 2018**, following receipt of a complaint from this Office, the Provider says it provided a detailed breakdown of the Early Breakage Fee to the Complainant through this Office. The Provider has also set out, in its Complaint Response, the standard wording issued to customers regarding the calculation of an Early Breakage Fee and the manner in which the Early Breakage Fee was calculated in respect of the Complainant's loan account as at **12 December 2017** and as set out in its letter of **22 March 2018**.

The Provider says it acknowledges that while the breakage fee amount was advised to the Complainant, the information around the calculation was provided by way of a worked example and the formula given was the Provider's practice at the time.

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The Provider says it apologises for failing to provide a breakdown of the Complainant's own figure in response to his specific requests.

The Provider says that in the review of this complaint and preparation of its Complaint Response, it acknowledges service failings in not providing a detailed breakdown of the Early Breakage Fee. The Provider also acknowledges that while two complaints were recorded in this regard, the Final Response letters issued did not fully address all elements of the complaints received. The Provider says the Complainant's request for a breakdown for of the Early Breakage Fee was only responded to in full when it was provided through this Office.

The Provider advises that is unable to provide recordings of the above telephone conversations as call recording was not in place prior to **2015**. The Provider further advises that it does not have call recording facilities at branch level.

### **The Complaints for Adjudication**

The complaints are that the Provider:

Applied an incorrect interest rate to the Complainant's loan account during the fixed rate period from **10 June 2008**; and

Failed to respond to requests for early breakage fee calculations from **27 November 2017**.

### **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.

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A Preliminary Decision was issued to the parties on 7 July 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, both parties made further submissions, copies of which were exchanged between the parties.

Having considered these additional submissions and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

### **The Fixed Interest Rate Application**

The Complainant completed a 'Fixed Rate Mortgage Conversion Form' dated **9 August 2007** wherein the Complainant requested that the Provider convert the current interest rate applying to his loan account (which appears to have been the Provider's standard variable rate) to a 5 year rate of interest fixed at 5.44%. As can be seen, this conversion did not occur and the Complainant's loan remained on the standard variable rate.

Having been made aware of this by the Provider and following further communication between the parties, the Complainant applied again to convert the loan interest rate to a fixed rate in **2008**. To this end, by letter dated **12 May 2008**, the Provider wrote to the Complainant enclosing a further fixed rate conversion form. The letter contained three fixed rate options from which the Complainant could choose: 3 years at 5.21%; 5 years at 5.27%; and 10 years at 5.24%. The letter further advised that once the form was completed and returned, the Provider would adjust the interest rate on the loan account to reflect the chosen rate. In a Provider file note dated **29 May 2008**, it is recorded that one of the Provider's staff members spoke to the Complainant on **21 May 2008** and "*offered applicable rates*".

The Complainant completed and signed the conversation form which is dated **10 June 2008**. The first page of the form states, as follows:

***"Declaration***

*I/We wish to apply to convert the balance of my/our loan account to a fixed rate of 5.24% for the next 10 year(s) of my/our mortgage.*

...

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**Important**

*I/We understand that in the event of there being a change in interest rates before [the Provider] have converted our loan rate, [the Provider] will apply the fixed rate currently available. If there is no other fixed rate available, the appropriate variable rate may apply.*

*Unfortunately, [the Provider] cannot inform customers individually of changes in interest rates prior to converting their loan rate. ...”*

A Provider file note dated **12 June 2008**, records the following contact with the Complainant:

*“re fixed rate form – spk to mem and advised that the 5.24% rate is no longer available and the 10yr fxd rate that can be applied to the account is 5.44% mem agreed and i applied the rate to the account today”.*

It is the Provider’s evidence that the 10 year fixed rate of 5.44% was applied to the Complainant’s loan account on **18 June 2008** and that a letter confirming this was also issued to the Complainant. However, a copy of this correspondence does not appear to have been furnished in evidence.

By letter dated **24 June 2008**, the Provider wrote to the Complainant (at the same address as provided by the Complainant on his Complaint Form to this Office), as follows:

*“Thank you for your recent application to fix the rate on your account at 5.44% over 10 years. I am writing to you to confirm that your account has been converted to this rate as requested. ...”*

A further letter in identical terms was sent to the Complainant on **1 July 2008**.

**Analysis**

When the Provider wrote to the Complainant on **12 May 2008**, the 10 year fixed interest rate, as stated in this letter, was 5.24%. Following this, it appears that telephone conversations took place between the Provider and the Complainant in **May** and **June 2008**.

The evidence suggests that the available interest rates were discussed during a telephone conversation which took place on **21 May 2008** and that issues surrounding the non-execution of the fixed rate conversion request in **August 2007** and any available 4 year fixed interest rate options were discussed during the telephone conversation which took place on **29 May 2008**.

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In its Complaint Response, the Provider says that the fixed interest rates on offer changed on **13 May 2008** and the rate applicable to the 10 year fixed rate option changed to 5.44%. However, a file note dated **29 May 2008** states that fixed interest rates had risen since **21 May 2008**. Although it is not entirely clear when the change in fixed interests occurred, it appears that these changes took place during **May 2008** and after the Provider's letter of **12 May 2008**.

On the basis of the available evidence, it is my opinion that had the 10 year fixed rate increased to 5.44% at the time of the **21 May 2008** telephone conversation, this is likely to have been discussed with the Complainant. As such, the Complainant is likely to have been aware, at this point, that the 10 year fixed interest rate was no longer 5.24%. However, based on evidence in respect of the **29 May 2008** telephone call, it is not clear if the current 10 year fixed interest rate was discussed in the course of this conversation.

The Complainant completed a Fixed Rate Mortgage Conversion Form dated **10 June 2008** and although this was completed after the increase in the 10 year fixed interest rate, the Complainant requested an interest rate of 5.24% which was previously on offer by the Provider.

The basis for the Complainant's position that the Provider applied the incorrect interest rate to his loan account is that he was offered a fixed rate of 5.24% on **12 May 2008** and that he signed a contract in **June 2008** for a 10 year fixed interest rate of 5.24%.

However, the evidence does not support the assertion that the Complainant was offered a fixed rate of 5.24% in the manner suggested. The Provider's letter set out three fixed interest rate conversion options it was offering to customers, which included a 10 year fixed interest rate of 5.24%. It was open to the Complainant to choose the option he wanted and then apply to the Provider to have his loan account converted to the chosen option.

Further to this, the evidence does not indicate that the Complainant signed a contract in **June 2008**. The Complainant completed and signed a Fixed Rate Mortgage Conversion Form. This was an application to convert to a fixed rate of interest and not an agreement that required the Provider to apply the rate that the Complainant was applying for.

Significantly, the form expressly stated that in the event of a change in interest rates before the requested conversion taking place, the Provider would apply the currently available fixed interest rate. In such circumstance, as the 5.24% was no longer available at the time the Complainant submitted the conversion form, I do not accept that the Provider was required to apply this rate to the Complainant's loan account. In line with the position communicated on the conversion form, which was signed by the Complainant, the Provider applied the then current available rate of 5.44%.

I note the conversion form expressly stated that the Provider could not inform customers of any changes to interest rates prior to implementing the requested interest rate conversion.

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I find it disappointing that the Provider had a policy of not informing borrowers of this important information.

However, although this was position stated on the conversion form, it appears that the Provider nonetheless contacted the Complainant to inform him of the current 10 year fixed interest rate which stood at 5.44% prior to executing his conversion request. The Provider's file note dated **12 June 2008** suggests that the Provider identified that the Complainant applied for an interest rate that the no longer available. This file note states that telephone contact was made with the Complainant to explain this and that the Complainant agreed to the current available rate of 5.44% being applied to his loan account.

Therefore, it is reasonable to expect the Complainant to have been aware that the interest rate he was applying for may not be the interest rate that would ultimately be applied to his loan account, and to be aware that the rate actually applied was 5.44%.

Following the conversion of the Complainant's loan to a fixed interest rate of 5.44%, it appears that at least two letters were sent to the Complainant which advised that the interest rate being applied to his loan account was 5.44%. However, there is no evidence to suggest that the Complainant contacted the Provider on foot of this correspondence to inform the Provider that he believed that it had applied the incorrect interest rate.

Therefore, having considered the evidence, I do not accept that the Provider applied an incorrect interest rate to the Complainant's loan account.

### **The Early Breakage Fee**

It appears from the evidence that the Complainant first requested a breakdown of the Early Breakage Fee from the Provider during a telephone call on **27 November 2017** and again on **11 December 2017**. It appears that the Complainant was provided with the breakage fee figure by the Provider's staff member during each of these conversations.

The Provider wrote to the Complainant on **12 December 2017** regarding the Early Breakage Fee, as follows:

*"We wish to confirm that the Early Breakage Fee (EBF) on your above mentioned loan account as of 12<sup>th</sup> December 2017 is, €5,114.09. This figure is valid for five business days.*

*We trust the above is in order. Should you have any queries on this or any other matter regarding your loan account, please do not hesitate to call our Customer Contact Centre ...."*

A further telephone conversation took place on **15 December 2017** where the Complainant requested an explanation regarding the calculation of the Early Breakage Fee. This was followed by email from the Complainant to the Provider dated **15 December 2017**, which states, as follows:

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*"This is just a quick mail to confirm my conversation with you earlier today. I am requesting the following documentation please.*

*1. A breakdown on your calculation as to the cost of breaking out of my fixed mortgage and how this figure has been calculated.*

*2. A mortgage statement.*

*I had made this request on the 27.11.17 by way of telephone call and again on the 11.12.17. This is my 3 phone call making this request.*

*I have received nothing to date other than a copy of my repayments for the year and a letter stating the cost of breaking out of my fixed mortgage. It is was (sic) only during todays phone conversation that I was informed that I must make this request in writing. I cannot understand why I was not given this piece of information before today as this is further delaying you meeting my request."*

Responding to the same day, the Provider advised the Complainant, in respect of Early Breakage Fees, that:

*"We were informed by the Loans Administration Team that a letter is required by the borrower if you require a detailed breakdown of how the breakage fee is calculated I will however scan this E Mail and set up the task to try to expedite the issue for you, but if you could get the letter into me at your earliest convenience ...."*

The Complainant emailed the Provider on the morning of **18 December 2017** to make a complaint regarding the interest rate being applied to his loan account, as follows:

*"Following recent requests it would appear I have been overcharged on my fixed interest rate mortgage. I am due to complete a 10 year fixed term on my mortgage account ... during June 2018 some 6 months from now. I have been paying a fixed rate of 5.44% since June 2008 but following the recent receipt of documents relating to the contact signed on 10/06/2008 to my great annoyance I can clearly see that I signed for a fixed rate of 5.24% on the fixed rate agreement.*

*I now wish to make an official complaint in relation to this matter as for the past 9 years and 6 months it would appear I have been paying 0.21 more on my repayments than required. ..."*

By way of handwritten letter dated **18 December 2017**, the Complainant wrote to the Provider requesting information regarding the calculation of the Early Breakage Fee, as follows:

*"Just a quick letter to put in writing as requested by Loans Admin to request a written calculation as to the figure of €5,114.09 which I have been informed is the early breakage fee for my mortgage ...."*

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*A breakdown as to how this figure has been achieved would be very much appreciated."*

On **24 January 2018**, the Provider issued a Final Response letter in respect of the complaint raised by the Complainant regarding the overcharging of interest and set out the basis as to why it considered the correct interest rate had been applied to the loan account.

It appears that a further complaint was logged on **21 February 2018** as the Complainant expressed dissatisfaction that the Provider had yet to address his requests regarding the Early Breakage Fee. On **23 February 2018**, the Provider issued a Final Response letter to the Complainant in respect of the Early Breakage Fee, as follows:

*"The calculation of the early redemption charge definition of terms are as follows:*

*The Early Breakage Fee for your account as of today the 23/02/2018 is €2917.59*

**Amount (A):** *Amount being repaid early or the amount being converted to a variable rate or the another fixed term*

**Original Cost of Funds:** *The costs of funds for [the Provider] for the fixed rate period at the time the fixed rate period commenced.*

**Cost of Funds for the Fixed Rate period remaining:** *Fixed rate period. The cost of funds used will be as 5pm on the day pervious to the request to calculate the early redemption charge.*

**Remaining term in days (U):** *Remaining numbers of days left before the fixed rate is due to expire divided by 365*

**Difference in cost of funds (D):** *The difference between the original cost of funds and the cost of funds for the fixed rare period.*

*Therefore the formula to calculate the early redemption charge is:*

*(A) x (U) x (D%) Set out below is a worked example of how an early redemption charge would be calculated:*

**Worked Example:** *Assume a 5 year fixed rate loan. Full repayment of €100000.00 After 3 years (A), Difference in Cost of Funds 2% (D), Remaining Term 2 (U). The Early Redemption Charge would be as follows: (A) 100000.00\* (D) 2% \* (U) 2= 4000.00*

*..."*

The Provider wrote to the Complainant again on **6 March 2018** advising that the Early Breakage Fee was €2,586.08 and explained how the fee was calculated and provided a definition of relevant terms.

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The Provider has also provided a copy of an email sent to this Office on **22 March 2018** which sets out the calculation of the Early Breakage Fee specifically in respect of the Complainant's loan account.

### ***Analysis***

It appears that the Complainant contacted the Provider on **27 November 2017** to request the Early Breakage Fee in respect of the fixed interest rate arrangement operating on his loan account together with a breakdown of the calculation of this fee. While the Early Breakage Fee amount was provided to the Complainant, it appears that the Complainant's request for a breakdown of the calculation of this fee was not responded to. It appears the Complainant requested this information again during a telephone conversation on **11 December 2017**.

The Provider first wrote to the Complainant on **12 December 2017**, providing only the Early Breakage Fee amount. However, no information as to how this fee was calculated either on an illustrative basis or specifically by reference to the Complainant's loan account was provided. When the Complainant telephoned the Provider on **15 December 2017**, the evidence indicates that he was advised to submit a written request in order to receive information regarding the calculation of the Early Breakage Fee for his loan account.

While I am satisfied that requests for information regarding the calculation of Early Breakage Fee were likely to have been made by the Complainant on **27 November** and **11 December 2017**, if, as appears to be the case, a written request for this information was required, this should have been communicated to the Complainant on **27 November** and **11 December 2017**. It is disappointing that it was not until **15 December 2017** that the Complainant appears to have been first advised of the need to make a written request. Furthermore, I can see no reason why the Provider did not accept a request by e-mail to be a written request. I fail to understand why the Complainant was required to submit a letter.

The Complainant submitted a written request for a breakdown as to how the Early Breakage Fee for his loan account was calculated on **18 December 2017**. However, it appears that it was not until **23 February 2018** that the Provider responded to this request - as part of its complaints process. However, the manner in which the Complainant's written request for information regarding his Early Breakage Fee was being handled by the Provider prior to the complaint being logged on **21 February 2018** is not clear nor does it appear that the Provider has furnished any evidence to show how this request was being addressed prior to **21 February 2018** and outside of the complaints process.

In the letter of **23 February 2018**, the Provider set out the method of calculation for Early Breakage Fees, explained the relevant terms and provided an illustrative example as to how the fee was calculated. Although this was helpful information, the Provider did not address the Complainant's request for a breakdown of the calculation in respect of his specific loan account. The exact same information was conveyed to the Complainant again on **6 March 2018**. Although it is not clear from the evidence why this letter issued.

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Having considered the evidence, it is quite clear that the Provider failed to recognise and/or respond to the Complainant's specific request for information regarding the calculation of the Early Breakage Fee. This was compounded by the fact that the Provider failed, on a number of subsequent occasions, to recognise these requests.

Therefore, it is my opinion that the Provider failed to properly address and respond to the Complainant's requests for information regarding the calculation of the Early Breakage Fee for his loan account. More disappointing, however, is that it was not until a complaint was made to this Office that the Provider, on **22 March 2018** furnished the Complainant, through this Office, with the information originally requested in **November 2017**.

Separate to this, I believe that a very clear expression of dissatisfaction regarding the adequacy of the Provider's response to the Complainant's requests for information was communicated to the Provider in the Complainant's email of **15 December 2017**. In such circumstances, I believe that it was reasonable to expect the Provider to have logged a complaint on foot of this email or at the very least, contact the Complainant and enquire as to whether he wished to make a formal complaint. However, this did not occur.

Finally, in his Complaint Form, the Complainant states that he is seeking *"calculations as to my current breakage fee & also how on the 26.1.11 [the Provider] calculated it would cost me €27,954 to breakout of my fixed mortgage."*

It appears that the Complainant is seeking an explanation regarding the difference between the Early Breakage Fee provided in **2011** and fees provided in **2017/2018**. Insofar as concerns the Early Breakage Fee and the present complaint, the complaint for adjudication concerns the Provider's conduct in failing to provide information regarding the calculation of the Early Breakage Fee on the Complainant's loan account and not any failure to provide explanations regarding the difference between the various Early Breakage Fees provided over time. Further to this, I note that there does not appear to be any evidence of the Complainant seeking an explanation from the Provider as to the reason for the difference in the Early Breakage Fees or that a formal complaint was made regarding any failure on the part of the Provider to provide explanations in this regard. While the Provider should endeavour to respond to such requests in an appropriate and prompt manner, I do not consider that it is appropriate to seek such an explanation as part of this complaint. I think it is advisable that the Complainant contact the Provider and request an explanation and, if he is dissatisfied with the Provider's response, it is open to him to engage the Provider's complaints process.

### **Goodwill Gesture**

In its Complaint Response, the Provider states that:

*"In recognition of the Customer Service failings identified and the time and effort put in by the Complainant in following up his requests, the Bank apologises for any inconvenience or upset caused. As a result the Bank wishes to offer a gesture of goodwill in the amount of €3,250.00 in full and final settlement of this dispute."*

/Cont'd...



I consider this goodwill gesture to be a reasonable sum of compensation for the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainant, 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**

28 September 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.