



<u>Decision Ref:</u>	2021-0391
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Fees & charges applied (mortgage)
<u>Outcome:</u>	Rejected

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

This complaint concerns a mortgage loan account which the Complainants hold with the Provider

The Complainants' Case

The Complainants state that they sought to break out of the fixed rate applicable to their mortgage. The Complainants state that the breakage fee that they paid was €11,063.92 which they describe as “unjustifiable”. The Complainant state that “*this breakage fee is so significant because [the Provider] have used negative interest rates in the calculation*”.

The Complainants state that the Provider did not “*inform [them] that any breakage fee could be based on a negative interest rate. [We] believe they have an obligation to tell [us] in advance that [their] breakage fee would be impacted by negative interest rates*”. The Complainants contend that the breakage fee should cover the Provider’s costs for the breakage, but that “*negative interest rates create a scenario where [the Provider] receives an income for borrowing money and as such, the calculation results in an unjustifiable outcome*”.

The Complainants state that they had to contact the Provider *“at least 3 times to ask for the breakage fee to be provided. I believe the [Provider] should have responded quicker”*.

The Complainants want the Provider to recalculate the breakage fee to remove the negative interest rates, so that, by the Complainant’s calculation, the €11,063.92 fee would be reduced to €4,745.81.

The Provider’s Case

In response to the Complainants’ request to break out of the fixed rate on their mortgage, the Provider wrote to the Complainants on **19 September 2019** stating that they would have to pay a fee of €11,185.64 and this fee would be valid until **27 September 2019**.

In its Final Response Letter dated **18 November 2019**, the Provider states that its *“mortgage operations department (MOD)...have reviewed the breakage costs provided to you and have confirmed that the figure provided is correct. They have confirmed that the rate used in the breakage fee calculation and the manner in which the calculation is correct as this is the current fixed rate on your mortgage”*.

The Provider made submissions to this Office dated **25 November 2020** in response to the complaint. The Provider states that the Complainants entered into a fixed rate agreement with the Provider on **12 December 2016** for a period of 7 years, through their letter of loan offer, which clearly articulates that there would be a breakage cost if the Complainants elected to break out of their fixed rate or redeem their mortgage prior to the expiry of the agreed fixed rate period. The Provider states that the Complainants subsequently decided to move their mortgage to another lender and broke out of the fixed rate when their mortgage was redeemed as of the **31 March 2020**, only 3 years and 3 months after they had availed of the fixed rate. The Provider states that it provided the Complainants with a quotation in terms of the contract and the Complainant then decided to break the fixed rate and refinance elsewhere because they wanted to borrow additional funds. The Provider asserts that it has suffered a loss on this transaction since the cost to the Provider from the Complainants’ voluntary decision to break the fixed rate early was higher than the break cost actually paid by the Complainants.

The Provider submits that it would be unfair if the Complainants could avoid the breakage cost by calculating a lower break cost on the basis of their definition of one of the elements of the break cost clause which is not in any way supported by the terms of the contract which they agreed.

The Provider states that its records illustrate that the Complainants were provided with three breakage cost quotations during the period from **September 2019** to **April 2020** when the Provider wrote to the Complainants to confirm that their mortgage had been redeemed in full. On **19 September 2019**, the breakage cost provided was €11,185.64. On **12 March 2020**, the breakage cost provided was €11,063.92. On **30 March 2020**, the breakage cost was €11,063.92.

The Provider states that the mortgage was redeemed by the Complainants on **31 March 2020** for a figure of €613,718.42 which included a breakage cost fee of €11,063.92.

The Provider submits that the letter of loan offer dated **12 December 2016** outlines the special conditions and formula which apply in relation to the calculation of a fixed rate breakage cost and it states that it calculated the breakage costs in line with this formula and that it also calculated the figure for six months' interest. The Provider submits that six months' interest was the lower of the two figures. Therefore, the Provider is satisfied that the Complainants were provided with the correct breakage cost in line with the Terms and Conditions outlined in the loan offer which the Complainants signed on **20 December 2016**.

The Provider also noted that a "*worked example*" was contained within the terms and conditions, illustrating how a breakage cost would be calculated.

The Provider also submits that page 16 of the Letter of Loan Offer contains a warning note which states that "*if you choose a fixed rate mortgage: **WARNING: YOU MAY HAVE TO PAY CHARGES IF YOU PAY OFF A FIXED-RATE LOAN EARLY***".

In response to the Complainants' argument that a negative interest rate should not apply to their breakage fee, the Provider states that there is no basis for this. The Provider states that the formula makes it clear that R and R1 are calculated on the basis of money market rates and that the Complainants are seeking to rewrite the definition of R1 in a manner which is not supported by the Terms and Condition of the loan offer letter. The Provider states that the Complainants' calculation of the breakage fee has not utilised the negative interest rate and has "floored" the market rate at 0% and therefore is not a true reflection of market rates at the time and has not been calculated in accordance with the agreement between the Provider and the Complainants.

In response to the assertion by the Complainants that they contacted the Provider at least 3 times to ask for the breakage fee to be provided, the Provider notes that:

- The breakage fee request by the Complainants on **19 September 2019** was replied to on the same day;

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- The breakage fee request by the Complainants' solicitor on **9 March 2020** was replied to on **12 March 2020**;
- The breakage fee request by the Complainants' solicitor on **26 March 2020** was replied to on **30 March 2020**;

The Complaints for Adjudication

The complaints are that the Provider erroneously calculated its breakage fee to include negative interest rates and proffered poor customer service.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 5 October 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.

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In relation to the complaint that the Provider failed to correctly calculate the fixed rate mortgage loan account breakage fee, I note the following loan offer conditions, contained within the loan offer letter and mortgage terms and conditions entered into between the parties dated **12 December 2016**:

"In the event that you break out of your fixed rate early, a charge of either 6 months' interest, which is currently €11,840.00 or the Economic Breakage Cost applies, whichever is lower.

6 months interest formula: (Loan Amount x Interest Rate%) divided by 2. See the "Interest Rate" section of the Terms and Conditions for more details on the Economic Breakage Cost."

The Provider notes that the Interest rate section of the Terms and Conditions outlines the following:

Section 16:

(b) In the case of a fixed inters rate mortgage, the following conditions will apply:

(i) the fixed rate quoted shall be subject to variation prior to drawdown in accordance with any variations in the fixed rate offered by the company;

(ii) the Borrower on the expiry of the Fixed Rate Period may, by prior notice in writing to the Lender, opt not to choose a further fixed rate of interest for a certain period if such an option is made available by the Lender and on terms and conditions as may be specified by the Lender or, if available, where the Borrower fails to exercise the option, the interest rate applicable will be a variable rate of interest which may be increased or decreased by the Lender at any time, and in this respect, the decision of the Lender will be final and conclusively binding on the Borrower.

(iii) Where, during a Fixed Rate Period, the Lender accepts:

- (a) early repayment of the loan in full,*
- (b) a Lump Sum Repayment, or Part Redemption,*

(c) the conversion of a fixed interest rate loan to a variable interest rate loan (or other fixed interest rate loan) the Borrower must pay to the Lender a sum equal to the lower of (i) six months interest or (ii) a sum to be calculated in accordance with the following formula:

(Redeemed Amount x (R-R1) x Time remaining in days until the end of the fixed period) divided by 360 were:

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“Redeemed Amount” means the estimated average loan balance between the time of the proposed repayment or interest rate conversion and the end of the relevant Fixed Rate Period, assuming that no such repayment or interest rate conversion takes place and that all scheduled repayments of the loan are made by the Borrower under the terms specified in the Loan Offer;

Provided that where a Lump Sum Repayment is made, “Redeemed Amount” shall mean the amount of the Lump Sum Repayment;

“R” means the interest rate available to the Lender for funds placed in the money market on the date of the proposed early repayment, Lump Sum Repayment or interest rate conversion for the duration of the relevant Fixed Rate Period.

“R1 means the interest rate available to the Lender for funds placed in the money market on the date of the proposed early repayment, Lump Sum Repayment or interest rate conversion for the remainder of the relevant Fixed Rate Period. The rate applied is based on the remaining fixed rate term of the mortgage, rounded to the nearest month if less than one year to the nearest year if greater than one year.

“Time” means the number of days from the date of early repayment, Lump Sum Repayment or interest rate conversion to the end of the relevant Fixed Rate Period.

Six months interest is the estimated interest that would be payable in the six months following the proposed repayment of interest rate conversion.”

I also note the worked example provided in the Loan Offer Letter:

“Worked Example

In the example below, a customer took out a 5 year fixed mortgage at a rate of 5.00% on 1 January 2010. On 4 January 2011, the mortgage outstanding was €100,000 and the customer opts to break out of the fixed rate.

The breakage cost calculation is:

Redeemed Amount = €87,832.42

R (Market rate on 1 January 2010) = 2.849%

R1 (Market rate on 4 January 2011) = 1.713%

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Time = 1,457 days

Breakage Calculation = (Redeemed Amount x (R-R1) x Time) divided by 360

$$\begin{aligned} &= (\text{€}87,832.42 \times (2.849\% - 1.713\%) \times 1,457) / 360 \\ &= \text{€}4,038.22 \end{aligned}$$

Six Months Interest = €2,500

Therefore, in this case the customer would be charged the lesser amount of the six months interest, i.e. €2,500"

Bearing in mind the above, it is evident that from the outset of the loan the Provider furnished a clear and coherent explanation for the process/calculation that would be undertaken should the Complainants wish to break out of their fixed charge early and provided a worked example illustrating the breakage fee. I note that the Provider's submissions attached detailed calculations to explain the figures provided for the fixed rate breakage cost and having closely analysed these, I accept that those figures illustrate that the Provider charged the lower of 6 months interest or the economic cost of breaking the money market instrument which it entered into on the date the fixed rate was first applied to the Complainants' account.

In respect of the complaint that the Provider provided poor customer service to the Complainants, I note that no evidence to support this complaint has been submitted by the Complainants. As outlined above, the Complainants and their solicitors made three requests for breakage fees to be provided and those three requests were all dealt with promptly and accurately.

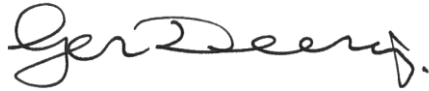
Therefore, based on the foregoing and on the basis that the breakage fee was correctly calculated and on the basis that there is no evidence of poor customer service, I do not uphold this complaint.

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.

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GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

29 October 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.