



<u>Decision Ref:</u>	2021-0431
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Fees & charges applied Failure to provide correct information Failure to provide product/service information
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Provider's administration of the Complainants' accounts.

The Complainants' Case

The Complainants state that, in **2017**, they applied for a top-up loan to their existing mortgage with the Provider. The Complainants state that this process involved applying through one of the Provider's subsidiary companies, and "*there was no choice in this regard*". The Complainants attest that, after the top up loan had been drawn down, "*I discovered that fees and charges previously waived on our current account no longer applied as our mortgage was paid to*" the Provider's subsidiary.

The Complainants say that, during the application process for the top-up loan, they asked the Provider whether there would be any "*impact or concern*" from operating the mortgage top-up through the Provider's subsidiary company, and the Provider "*never advised (prior to the top up) that we would be forgoing rights to fees and charges*" that had previously been waived. The Complainants state that they wish to query, as the subsidiary company is "*still owned and operated*" by the Provider, whether they "*ultimately hold*" a mortgage with the Provider.

The Complainants want the Provider to reinstate the 'No Fees Mortgage Benefit'.

The Provider's Case

The Provider states that *"principal private dwelling house mortgage customers benefit from maintenance and transaction fee free banking on the mortgage funding [Provider] personal current account. Therefore as you no longer have a mortgage with us, this benefit is no longer available to you"*.

The Provider says that it sent a letter to the Complainants on **1 March 2018** *"to let you know that as you no longer had a mortgage with us, you would not be eligible for free banking on your current account"*. The Provider states that *"I understand from speaking with you that you did not receive this letter and I am sorry for this"*.

The Provider states that while the other provider is related to the Provider, *"they are two separate entities and operate independently of each other. Therefore, any benefits each entity offer are separate"*. The Provider states that the letter of **1 March 2018** explained that *"you could still avail of fees free banking by maintaining a minimum daily balance of €2,500 in your account, This is still available to you"*.

In its response to the questions raised by this Office, the Provider acknowledged that its *"records in 2017 are incomplete"* and that *"it cannot offer a definitive explanation as to why the Complainants' top-up was not completed or drawn down with the Provider and instead a refinance was completed with the Subsidiary"*.

On this basis, the Provider indicated that it was prepared to reinstate the benefit to the Complainants' current account and to refund all maintenance and transaction fees charged since the mortgage top-up which it calculated in the amount of €370.40. The Provider also offered an additional figure of €629.60 as an offer of goodwill, such that the overall offer was in the amount of €1,000.

The Complaint for Adjudication

The complaint is that the Provider failed to disclose to the Complainants that the *'No Fees Mortgage Benefit'* that the Complainants availed of with their original mortgage would no longer apply following the top-up, and that this was not explained during the application process.

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 **27 October 2021**, outlining the preliminary determination of this office 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, the final determination of this office is set out below.

The Complainants are aggrieved that a policy operated by the Provider which they formerly benefited from (whereby certain current account maintenance and transaction fees were waived) ceased to be available to them when they secured their mortgage top-up loan from a subsidiary of the Provider. The Complainants contend that they were not made aware that this would happen, and they also maintain that they had “*no choice*” in terms of applying to the subsidiary for the top-up.

I note that the Provider operates a policy whereby mortgage account holders who pay their mortgage repayments on their mortgage account held with the Provider by way of a standing order from a current account held with the Provider, benefit from a waiver in terms of maintenance and transaction fees that would otherwise be applicable to the current account. In this instance, the Provider maintains that the Complainants ceased to be eligible for this waiver benefit once they opened their top-up mortgage account with the subsidiary, which resulted in the redemption of their previous mortgage account with the Provider.

In terms of notice of the non-availability of the waiver benefit to customers in the Complainants’ position, the Provider highlights the terms of the letter under the cover of which the waiver benefit was originally notified to the Complainants. This issue however took on a more limited importance in light of the Provider’s response to the investigation by this Office.

The Complainants would appear to have initially sought to apply for the mortgage top-up themselves personally through their local branch. There is evidence of the necessary documents being submitted by the Complainants however the Provider is not in a position to establish why this initial application was not advanced. Had this application been advanced and approved by the Provider, the Complainants’ top-up mortgage, once approved, would have remained with the Provider itself rather than with the subsidiary. This would have resulted in the Complainants retaining the waiver benefit.

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In the event, the Complainants' personal application was not advanced (for reasons which have not been explained) and the Complainants submitted a second top-up application through an intermediary. The Provider notes that "*the Subsidiary only deals with applications from mortgage intermediaries*". The result of this was that the top-up mortgage ultimately obtained by the Complainants was with the Provider's subsidiary company and therefore the Complainants lost the waiver benefit.

In light of its inability to explain why the Complainants' original top-up application was not advanced or processed, the Provider has, quite rightly and reasonably in my view, agreed to place the Complainants in the position they would have been in had their personal application been processed and approved. This involves the reinstatement of the waiver benefit to their current account, as well as the refund of all maintenance and transaction fees charged since the waiver benefit was rescinded. An additional amount of €629.60 has also been offered as a gesture of "*goodwill*".

I view the resolution offered by the Provider as wholly appropriate and adequate. I note that if the Complainants accept this offer from the Provider, they will have thereby achieved precisely what they sought when they originally made their complaint to this Office, in addition to the recovery of additional compensation from the Provider, in the context of the issue which arose.

In those circumstances and noting that the Provider recognised the position of the Complainants in early course, when it submitted its formal response to the investigation of this Office, and on the basis that this offer remains open to the Complainants to accept, I do not consider it appropriate or necessary to uphold this complaint. Rather, it will be a matter for the Complainants to make direct contact with the Provider if they wish to accept that offer in order to bring the matter to a conclusion.

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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 November 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—

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- (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.**

