



<u>Decision Ref:</u>	2021-0514
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Fixed Rate
<u>Conduct(s) complained of:</u>	Failure to provide product/service information Delayed or inadequate communication Failure to provide accurate account/balance information Failure to provide correct information
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a joint mortgage account.

The Complainants' Case

The Complainants submit that **on 5 September 2018**, they commenced discussions with the Provider to change their mortgage interest rate from a 10 year fixed rate of 3.9%, to a short-term fixed rate. The Complainants state that they opted for a three-year fixed rate at 2.8% and they submitted the appropriate signed paperwork to the Provider in early **December 2018**. The Complainants state that they were advised by the Provider that there would be a €1,500 breakage fee. The Complainants say that they received no breakdown of the calculation of the breakage fee.

The Complainants submit that on **14 December 2018**, they requested the Provider to move their mortgage account to a five-year fixed rate instead of the three-year fixed-rate they had applied for. The Complainants state that on **17 December 2018**, the Provider contacted them to advise that they had been approved for a five-year fixed rate at 2.9% and there would be a breakage fee of €5,537.

The Complainants submit that in **January 2019**, the Provider broke the 10 year fixed rate and applied a five-year fixed rate. The Complainant state that their monthly repayments were then charged at the three-year fixed rate and the breakage fee that was incurred was

added to their mortgage account. The Complainants attest that within a number of days, the Provider moved their mortgage rate back to the 10 year fixed rate and refunded the breakage fee.

The Complainants argue that the Provider had visibility of the macro economic environment during the four-months that the Complainants engaged with it, in respect of moving from their 10 year fixed rate to a shorter term fixed rate mortgage. They argue that if the Provider had given them an indication of the macroeconomic environment at that time, they would not have delayed their decision to move to a shorter term fixed rate and they would have moved to the shorter term fixed rate at that earlier time. They argue that they were not adequately informed by the Provider.

The Complainants argue that on **12 November 2018**, the second Complainant requested that breakage fee for the mortgage. They argue that they never received this information.

The Complainants further argue that on **14 December 2018**, the second Complainant requested an update on the new mortgage paperwork to be signed and submitted and on the breakage fee that would be applied for a move to a three-year fixed rate. They argue that their decision to opt out of a longer fixed rate of five years, was made on **14 December 2018** without receiving the actual breakage rates. The Complainants argue that they did not receive an update on what the breakage rates were until **17 December 2018**. They argue that if they had been provided with that information on **14 December 2018**, the second Complainant would not have issued a change request to the Provider. They argue that they would have simply opted to continue with the three-year fixed rate at that time.

The Complainant argue that if the Provider had sent the breakage fees on the mortgage as requested on **12 November** and **14 December 2018**, they

“would have immediately seen a significant jump in breakage rates and would have opted to progress with the agreed and signed 3yr option.”

In response to submissions on behalf of the Provider, the Complainants argue that throughout the “key period” between **September 2018** and **December 2018**, they dealt only with a branch member and relied solely on that individual. They argue that two critical requests for information on breakage fees were made by emails dated **12 November** and **14 November 2018** and this information was not provided as requested in writing.

The Complainants argue that had both requests been complied with, they would have progressed with a three-year fixed-rate as originally planned. They argue that no breakage rates were sent after the request of **12 November 2018**. They further argue that the breakage rate requested on **Friday 14 December 2018** was not received until **Monday 17 December 2018**, at which point the Complainants had requested a change to a five-year fixed rate. They argue that if the Provider was acting in their best interests, it would have sent the breakage rate by email as requested, particularly given that the breakage rates were increasing significantly in the final quarter of 2018.

In response to the Provider’s submission that on **12 November 2018** in response to his email seeking breakage rates, its representative provided the second Complainant with a

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telephone number and advised him to call the Provider's Administration Department, the Complainants say that the Provider failed to provide them with the breakage fee, upon request to do so in writing.

The Complainants say that added to this, is the fact that the Provider was fully aware of the macroeconomic environment and yield curves and the effect this was having on breakage rates during the period. They argue that they were completely unaware and in the dark on this. They say that if the Provider had supplied them with the information when formally requested to do so in writing, they could have made an informed decision at that time. They argue that if they had received the relevant rates as requested, they would have realised that breakage rates had increased significantly. Instead, they say that they were continuing to operate on the premise that rates were largely unchanged from their initial engagement with the Provider. They say that they were not seeking advice from the Provider, they merely wanted information on the breakage rates that they requested.

The Complainants want the Provider to:

- reinstate the three-year fixed rate of 2.8%;
- refund the breakage fee of €5,537 charged to their mortgage account; and
- reimburse the difference between the 10 year fixed rate and the three-year fixed rate monthly repayments for 15 months totalling €3,412.50 (€227.50 x 15).

The Provider's Case

The Provider has submitted a detailed timeline of its engagement with the Complainants in respect of the fixed rate options. The Provider submits that the Complainants attended its branch on **10 September 2018** in connection with breaking the 3.95% 10 year fixed rate and were provided with a breakage fee quote of €,1694 and a range of rates available to them.

The Provider submits that they were offered a discounted three-year fixed rate of 2.8% on **15 November 2018**. It submits that the Complainants accepted the three-year discounted fixed rate on **14 December 2018** but cancelled this instruction the following day, **15 December 2018**. The Provider states that the Complainants then asserted that they wished to implement a five-year fixed rate.

The Provider submits that the mortgage was changed to a three-year fixed rate on **18 December 2018** and a breakage fee of €5,811 was applied but this was reversed on **2 January 2019** in light of the revised instruction which had been received by it on **15 December 2018**. The Provider argues that it offered a discounted five-year fixed rate of 2.9% to the Complainants by letter dated **18 December 2018** and later agreed to extend the period of the offer from **18 January to 2 February 2019** as the Complainants were concerned about the breakage fee. The Provider submits that although it provided breakage fee quotes to the Complainants on multiple occasions during **2019 and 2020**, the Complainants did not opt to break the 10 year fixed rate for any of the other fixed-rates available.

The Provider argues that it has at all times been transparent in the provision of information to the Complainants regarding the application and calculation of a breakage fee where they opted out of a fixed-rate early.

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The Provider says that it never attempted to conceal its formula for calculating the breakage fee, from the Complainants. The Provider refers to clause 7(c) of the General Conditions of the Mortgage Loan Offer Letter dated **14 September 2017** which explains the application of the breakage fee and provides a formula for its calculation.

The Provider argues that this explanation and formula is repeated in the “*Regulatory Notices*” part of the offer letter under the heading “*Early Repayment or Ending a Fixed Rate Early*”. It says that the Complainants were advised by it to seek legal advice in respect of the offer letter and their attention was drawn to the Regulatory Notices.

Further, the Provider argues that it provided a full explanation of the breakage fee and the relevant formula in Section D of the Mortgage Form of Authorisation (**MFA**) which was sent to the Complainants on their request to change their fixed rate. The Provider argues that an MFA, including the relevant condition, was signed and accepted by the Complainants on **5 December 2018**.

The Provider argues that it sent a letter to the Complainants dated **10 January 2019** which included an explanation as to why the Provider charges a breakage fee for exiting early from a fixed rate, as well as a detailed explanation of the calculation of those fees. The Provider further submits that specific calculations relating to the advised breakage fees were sent to the Complainants on **15 November 2018, 18 December 2018 and 2 January 2019**. The Provider submits that it inserted the breakage fee formula in various documents issued to the Complainants, to illustrate how the funding fee for breaking out of the fixed interest rate is calculated.

The Provider submits that the breakage fee is the difference between the cost of the Provider’s borrowing to fund the fixed rate loan and the investment return the Provider can receive from the date the customer breaks the fixed rate contract with the Provider. It submits that the breakage fee is calculated using the average balance of the loan over the period, the cost of funds when the rate was fixed, the investment rate at the date of breaking the fixed rate and the number of days remaining on the loan. The Provider submits that, as a result, it can only produce indicative figures based on “*today’s rates*” using its formula. The Provider states that the breakage fee provided to the Complainants on **10 September 2018** was €1,694 and the breakage fee applicable on **17 December 2018** was €5,537.

The Provider submits that it is not obliged to provide financial advice or otherwise comment on the customer’s decision to select a fixed rate of interest. The Provider argues that the extent of its advises are limited to discussing the advantages and disadvantages of a selection of suitable products and where it recommends a particular product from that selection, it must provide the reasons why the product was most suitable. The Provider submits that a Statement of Suitability issued to the Complainants on **14 April 2017** in which their attention was drawn to the potential for a breakage fee to be charged in circumstances where the Complainants opted out of a fixed rate early.

The Provider submits that the breakage fee is based on underlying market conditions, which were extremely volatile at the time when the Complainants sought to break from the existing fixed rate and caused the breakage fees to fluctuate on a daily basis.

The provider also says that the increasing trend in breakage fees were the consequence of poor economic growth and low inflation in the Eurozone, and this was not something the Provider could predict.

In addition, the Provider submits that quite apart from whether or not it could have predicted the increasing trends in breakage fees, it cannot assume the role of financial adviser and must exercise caution not to influence a customer's financial decisions, as such decisions should only be taken with the benefit of independent advice. The Provider argues that in respect of the prospective rate change on **10 September 2018**, its correspondence recommended that the Complainants discuss the rate change with a financial adviser or solicitor before proceeding. The Provider argues that a customer's decision to select a specific interest rate is a decision made entirely of their own volition and one which the Provider has no involvement in.

In terms of the disclosure of relevant information, the Provider submits that fixed rate breakage fee quotes were issued either verbally or in writing to the Complainants on 12 separate occasions between **10 September 2018** and **14 October 2020**. The Provider further refers to its contractual documentation which sets out an explanation of a breakage fee and the formula that would be applied.

The Provider argues that it is not in a position to compensate the Complainants for the higher interest rate that they have been on or to amend their interest rate to the lower interest rate that was on offer to them in **December 2018**. The Provider submits that it carried out the instructions of the Complainants in relation to the proposed amendments to the applicable fixed interest rates. The Provider submits that there was no requirement on it at any stage to inform its customers of potential fluctuations in funding fees, whether upwards or downwards once they committed to fixing their rate.

The Provider submits that its representative has confirmed that when the Complainants requested a breakage fee on **12 September 2018**, he provided the Complainants with a contact number for a central department to provide the breakage fee, as he would be out of the office in the afternoon. The Provider argues that as the Provider furnished the Complainants with clear instructions for requesting a breakage quote, it cannot be held responsible where they elected to make decisions, in the absence of such a quote.

In respect of the breakage fee request of Friday **14 December 2018**, the Provider's representative confirms that he provided the Complainants with an updated breakage fee on Monday **17 December 2018**. In the meantime, the second Complainant had submitted an MFA request to change to a three-year fixed rate and then subsequently revoked that instruction. The Provider submits that it responded to both requests in a reasonable and timely manner.

The Provider submits that if it had actively advised the Complainants that the daily breakage fee was increasing or otherwise provided commentary on the market trends, this would

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have been tantamount to providing advice to the Complainants, which the Provider is not in a position to do.

Further, the Provider argues that the second Complainant's instruction not to proceed with the three-year fixed-rate selected in **December 2018** was made freely and of the Complainants' own volition, irrespective of whether or not the Complainants anticipated that additional information in respect of rates and/or breakage fees would be forthcoming.

The Provider does not accept the argument that if the Complainants received the breakage rates requested on **12 November 2018**, they would have realised that the rates were increasing and would have acted on the information. The Provider argues the Complainants were provided with details of the breakage fee on **17 December 2018** by email and although the breakage fee was consistently increasing over the following 12 month period, the Complainants chose not to take any action to change their rate.

The Complaint for Adjudication

The complaint is that the Provider:

- provided inadequate information on breakage fees, when requested;
- reinstated the Complainants' 10-year fixed rate without consultation; and
- did not act in a fair and transparent manner or provide the Complainants with the necessary information to make an informed decision.

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 **23 November 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

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additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that the Complainants' mortgage was drawn down on **11 May 2017** on a fixed rate of 3.95% for a period of 10 years. The mortgage Loan Offer letter dated **14 April 2017** was signed and accepted by the Complainants. The Loan Offer letter confirmed that a fixed rate of 3.95 % would apply to the mortgage for the first 10 years and that a variable rate would apply thereafter.

I note that Clause 7(c) of the General Conditions of the loan sets out that where a borrower wishes to change from a fixed rate to a subsequent fixed rate or variable interest rate, they are liable to pay a sum calculated in accordance with a formula set out (the **breakage fee formula**). A worked example of the operation of the breakage fee formula is also provided. The same information is provided under "*Regulatory Notices*" under the heading "**Early Repayment or Ending a Fixed Rate Early**". I note that on **27 April 2017**, the Complainants accepted the mortgage loan offer, including this relevant condition.

I note that some 18 months later, on **10 September 2018**, the Complainants attended a branch of the Provider and advised that they were considering breaking the 10 year fixed rate. The Provider's representative confirmed that a breakage fee would apply and that the fee would be subject to change. The Provider submits that the breakage fee quoted on that occasion was €1,694. The recording of the internal call between the branch representative and the Provider's Administration Department during which the breakage fee was confirmed, has been submitted in evidence.

The Provider issued a letter dated **10 September 2019** to the Complainants detailing the range of rates available if they wished to break the 10 year fixed rate. The letter advised the Complainants that if they ended their current fixed rate before its expiry, it was likely they would have to pay compensation to the Provider using the breakage fee formula which was set out and explained in the Mortgage Form of Authorisation (**MFA**) included with the letter. The Complainants were given an expiry date of **24 September 2019** before which to choose from the rates set out.

By email to the second Complainant on **12 September 2018**, the Provider's representative referred to a call between the parties that day and confirmed that the Provider could not waive the breakage fee on the fixed rate, as it was a "*real cost to the bank*". He set out several fixed rates on offer if they were willing to pay the breakage fee. I note that there was subsequent email communication between the parties in respect of rates and competitor offerings, and an offer of a 2.8% fixed rate for 3 years, was made to the Complainants.

On **12 November 2018**, the second Complainant wrote to the representative as follows:

"Thanks for supporting us here. We're happy to move to this option. Please apply this rate and issue the paperwork. We'll fix the mortgage for 3 yrs. What is today's breakage fee? Can the breakage fee costs be recovered monthly through our monthly mortgage repayment?"

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I note that the representative replied as follows:

“That’s great I will have the new rate paperwork issued. The breakage fee will be applied to mortgage balance (sic) so can be paid through monthly instalments.

I am out of the office for the day as have to attend a funeral, I can have breakage fee calculated tomorrow when I return or you call our central mortgage department on xx-xxxxxxx and they can provide for you over the phone today.”

The second Complainant does not appear to have replied to this email or followed up with the Provider’s Administration Department directly for the daily breakage rate. Likewise the representative did not follow up the following day with the breakage fee. I note that the representative in question had to ring the same telephone number in order to obtain a breakage fee, so this Department was in fact the source of the breakage rates in any event.

The Complainants have not denied that the Provider’s representative provided the second Complainant with the direct telephone number, to obtain the breakage fee, but they have sought to argue that because their request for a breakage rate was made in writing, the Provider should have responded in writing with the relevant breakage cost.

While it would have been best practice for the representative in question to have followed up with the second Complainant the next day, I do not accept that there was any wrongdoing or unreasonable behaviour by the representative in the response to the Complainants’ email of **12 November 2018**. The second Complainant was given the opportunity to call the relevant number in response to his request for a breakage rate. There is no indication of the second Complainant having raised any objection to this at the time, or otherwise suggested to the representative that he was having difficulty in contacting the Administration Department or that he would simply prefer for the representative to come back to him directly when he was back in the office.

It appears that the second Complainant did not call the relevant number, or follow up in respect of the breakage rate, even when the relevant documentation issued. I note that the number was called on a number of subsequent occasions by the Complainants to seek the daily breakage fee without any apparent difficulty. I appreciate that the reply from the representative was ambiguous in that it set out two options (ie that the representative would reply with the breakage fee the next day or the second Complainant could contact the number directly) but I am satisfied that a simple pathway to the relevant information was provided by him and there was no response from the second Complainant to indicate that he would prefer a direct response to his query.

On **15 November 2018**, the Provider sent a letter to the Complainants offering a discounted three-year fixed rate at 2.8%, which was valid for one month. Included with the letter was an MFA in which the Complainants could authorise the Provider to impose the three-year fixed discounted rate of 2.8%.

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I note that the MFA contained the following under a section entitled “*Acknowledgement and Agreement*”:

*“3. If you use this form to end a fixed interest rate before the end of the period for which the rate was fixed in order to change to the selected rate, it is likely that we will suffer a loss and that you will have to pay us compensation. The formula used for calculating such compensation as described in Section D under the heading “Early Repayment or Ending a Fixed Rate Early”. **Please consider carefully before using the form for such a purpose.**”*

I note that an explanation of the breakage fee formula and the formula itself, including worked examples, was set out in Section D of the MFA. There does not appear to have been any further communication between the parties for almost a month thereafter.

On **14 December 2018**, the signed MFA was then received from the Complainants dated **5 December 2018** selecting the option of the discounted three-year fixed rate of 2.8%.

I note that the second Complainant sent an email that same day, on **14 December 2018** to the representative he had been dealing with, confirming that the MFA had been submitted and requesting the breakage cost. It appears that there were further emails between the parties after this, during which the second Complainant advised that they did not in fact wish to have the new three-year rate applied and instead they wished to implement a five-year fixed rate. An internal log of **15 December 2018** confirms that an instruction to cancel the selection of the three-year fixed rate had been received from the Complainants.

On **18 December 2018**, the Complainants’ mortgage was switched to the three-year fixed rate at 2.8% on foot of the MFA received on **14 December 2018** and a product switch letter was issued to the Complainants outlining the agreed changes. These changes were then reversed by the Provider on **2 January 2018** in line with the Complainants’ revoking instruction of **15 December 2018**. This included a reversal of the interest rate change back to the 10 year fixed rate of 3.95%, and a reversal of the breakage fee that had been charged of €5,811.

No explanation has been submitted by the Provider as to why it switched the Complainants’ account to a three-year fixed rate on **18 December 2018** having already received a cancellation instruction on **14 December 2018**. Further, no explanation has been submitted by the Provider to explain the delay between **18 December 2018** and **2 January 2019** in reversing the product switch. I appreciate that Christmas closures would have impacted the Provider’s correction of the product switch but this timeline appears somewhat lengthy. I note however, that the short-term switch and the short delay in reversing it, does not form part of the present complaint.

Rather, the complaint made by the Complainants is that the return of their borrowing to the 10 year fixed rate, was implemented by the Provider without consultation with the Complainants in **January 2019**.

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It appears to be accepted by all parties that the Complainants' request to switch from the 10 year to three-year fixed rate was cancelled by them on **14 December 2018**, the very day the Provider received the signed form of authorisation. Accordingly, I accept that it was appropriate for the Provider to reverse the switch, once the relevant department became aware that the request to change to the three-year fixed rate had in fact been cancelled. I do not accept that any consultation with the Complainants was required at this point, as they had clearly indicated their instruction to cancel the requested switch from a 10-year to the three-year fixed rate. In the absence of any other choice, the original 10-year fixed rate was the only one that the Provider could reasonably apply, by way of undoing the Complainants' switch request.

As set out above, the second Complainant's email of **14 November 2018** also requested a breakage fee and the subsequent emails seem to have discussed available rates. A breakout cost was given to them by the Provider's representative by email on **17 December 2018** in the sum of €5,537. It was also confirmed that the Complainants had been approved for a five-year fixed rate and that the relevant paperwork would issue in the coming days.

Furthermore, on **17 December 2018**, a letter issued from the Provider to the Complainants offering a range of fixed-rate options available to them at standard rate prices. The letter included a warning that if they were ending a fixed rate prior to expiry, it was likely that compensation would have to be paid to the Provider using the breakage fee formula. An MFA was included which contained the standard acknowledgements and warnings in respect of the early breakage fee.

Two letters were then sent to the Complainants on **18 December 2018**, the first confirming that the letter of **17 December 2018** offering standard rates had issued an error and the second offering them a discounted five-year fixed rate at 2.9%. The second letter advised that the offer of the discounted five-year fixed rate would remain open until **18 January 2019** and this also contained warnings about ending a fixed rate early, and the application of the breakage fee formula.

It appears that during a telephone call on **2 January 2019**, the second Complainant advised the Provider that he was going to return the signed MFA for the five-year fixed rate, but as the breakage fee was high at that time, he requested that the rate not be applied until the cost of breaking came down. No call recoding has been submitted in evidence. In response, the Provider issued a letter of **2 January 2019** to the Complainants offering the same five-year fixed rate of 2.9% and extending the acceptance date until **2 February 2019**. An MFA was included with the letter.

The Complainants contacted the Provider by telephone on **7 January, 11 January and 23 January 2019** requesting breakage fees which were quoted at €7,749, €7,186 and €8,259 respectively. During the call of **23 January 2019**, the Provider informed the Complainants that the application of the breakage fee was merely the Provider passing on the costs of breaking the fixed term to the customer.

I note that multiple requests were made by the Complainants for breakage fees over the next year and a half as the breakage fee had increased significantly to over €25,000 by **September 2019** and remained at a similar level thereafter. The relevant breakage fees were provided instantaneously by the Provider's Administration Department, on request.

In addition, by letter dated **10 January 2019**, the Provider set out an explanation of why it charges breakages fees and set out the relevant formula with worked examples. The letter explained that the Provider will incur a cost if a customer decides to break from a fixed contract and that the breakage fee to be imposed was the actual cost to the Provider of breaking the fixed rate contract. In its letter of **10 January 2019**, the Provider set out the breakages fees that were applicable to the Complainants' mortgage on **15 November 2018, 18 December 2018, and 2 January 2019** showing the breakdown of the cost and the application of breakages fee formula on each date.

A complaint was raised by the Complainants to the Provider by letter dated **9 December 2019**, stamped as received by the Provider on **19 December 2019**. The complaint was acknowledged by letter dated **24 December 2019** and a final response issued to them by letter dated **3 January 2020**. The complaint not upheld and the Provider's response to the complaint mirrors its submissions to this Office in response to the present investigation.

In respect of the complaint that the Provider failed to provide adequate information on breakage fees to the Complainants, I am not satisfied that the complaint is made out on the evidence before me. As set out in some detail above, the Provider explained the application of the breakage fee, and provided the breakage fee formula with worked examples in all of its written correspondence with the Complainants in the course of their enquiries about the various fixed-rate options available to them. The formula and the explanations had originally been set out in the Mortgage Letter Offer.

In addition, a detailed explanation of the rationale for breakage fee and its application to the Complainants' mortgage account was provided to the Complainants by letter dated **10 January 2019**. I am satisfied that the Complainants were all times made aware that a breakage fee would be imposed by the Provider if the Complainants opted to break their fixed rate prior to the expiry of the 10-year term and further that the fee that would be imposed by the Provider, was based on a particular formula.

In respect of the two incidents in which the Complainants allege that the Provider failed to quote them with a daily breakage fee on request, I am satisfied that on **12 November 2018** the Complainants were informed by the Provider's representative from whom the breakage fees was requested that they could contact the Administration Department directly, as the representative would be out of the office for the rest of the day. They were provided with the relevant telephone number so that they could call for the breakage fee. The Complainants have argued that the breakage fee should have been provided to them in writing on their request.

While I have some sympathy with the Complainants' position, especially in light of the ambiguous wording of the Provider's email of **12 November 2018**, I am satisfied that the Provider's response in providing the contact information for the Department that actually issues the breakage rates, was appropriate in the circumstances. If the Complainants preferred the option of having the representative come back to them directly, they could have sent a simple email in reply, to that effect, but they did not do so.

In respect of the request of **14 December 2018**, a request was made for a breakage fee on **14 December 2018** and the request was responded to in writing on **17 December 2018**, with a weekend intervening between the two dates. Given that the Complainants also seem to have changed their minds on **14 December 2018** on the product change request they had just submitted (for a three-year fixed rate) and they intimated instead a preference for a five-year fixed rate, the short delay by the Provider in issuing the relevant breakage fee was unfortunate. I cannot accept however, that the failure of the Provider to provide the breakage fee on that day it was requested (ie on Friday **14 December 2018**) rather than on the next working day, had any effect on the Complainants or on their decision.

Having received the breakage fee on **17 December 2018**, it was open to the Complainants to once again change their minds and request that the three-year fixed rate be re-applied to their mortgage account immediately. They had already submitted the relevant paperwork. It ought to have been apparent to them by **17 December 2018** that the breakage fee for the 10-year fixed rate had increased significantly between **September and December 2018**.

For their own reasons, the Complainants chose not to break from the fixed rate, on that day, but instead followed up in respect of a five-year fixed rate and made multiple requests for daily breakage fees, during the subsequent months.

I can readily appreciate that the Complainants may have been concerned at the level of the breakage fee that would be imposed on **17 December 2018** considering that it had jumped by almost €4,000 between **September and December 2018**. I can further understand their concern during the following weeks, as the fee increased rapidly. In those circumstances, I can appreciate that the Complainants may have been reluctant to commit to a breakage fee of over €5,000 in the hope that the fee would decrease back to its **September 2018** level.

This was a risk taken by the Complainants, however, and unfortunately for them, the breakage fee continued to rise, and rise steeply, rather than fall as they had (presumably) hoped it would. The Provider cannot however be blamed for the Complainants' reluctance to commit to a breakage fee on any given date. Further the daily breakage fee is not something the Provider can control. The decision to break from a fixed rate and select a particular interest rate was a matter for the Complainants alone.

I accept the Provider's argument is that it is not obliged to offer any advice in respect of fluctuations in the money markets or the predicted impact fluctuations this may have on daily breakage fees. The Provider was obliged to provide the Complainants with relevant and material information in respect of breakage fees, both generally and on request. I am of the view that this information was made available by the Provider to the Complainants on multiple occasions, and in a reasonable and timely manner.

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I accept that no breakage fee quote was provided after the request of **12 November 2018**, but the Complainants were given the opportunity to themselves seek the information directly and they did not do so, nor did they follow up with the representative in question.

In all of the circumstances, I am unable to uphold this aspect of the complaint. I am satisfied that the Provider acted in a fair and transparent manner in respect of the Complainants and provided them with the necessary information on multiple occasions, to enable them to make an informed decision.

Finally, and for the reasons outlined, I do not accept that the Provider was obliged to consult with the Complainants before reinstating their 10-year fixed rate on **2 January 2019** when it processed their **15 December 2018** instruction to rescind their instruction of 5 December 2018, received the previous day, selecting the three-year fixed rate.

Accordingly, for the reasons explained in detail above, I take the view that there is no reasonable basis upon which this complaint can be upheld.

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

15 December 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.