



<u>Decision Ref:</u>	2022-0034
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complaint relates to a mortgage account to which the Complainants wanted to make a lump sum payment, to reduce the mortgage term.

The Complainants' Case

The Complainants' complaint concerns a mortgage account held by them with the Provider. The Complainants contend that they contacted the Provider by telephone on the **13 November 2019** to explore the option of paying a lump sum of €6,000 to their mortgage balance. The Complainants assert that the Provider advised that by taking this action, their mortgage term would be reduced to "16 years and 3 months" and that this would result in reducing their "overall term by 18 months". The Complainants say that during this telephone call they "agreed to this term & instructed [the Provider's representative] to go ahead with the payment".

The Complainants contend that following this telephone conversation, the Provider wrote to them advising that the mortgage term was "only reduced by 9 months". The Complainants state that the Provider has not supplied details of how the revised term was calculated and that it:

"did not share the information but think [we] should be happy to take their word that this new term is correct while they are blaming human error for the mistake in the first instance".

The Complainants assert that they made “5 telephone calls to [the Provider] between **25/11/2019 & 14/1/20** and that they “did not receive any phone call” in response, until the fifth call was placed on **14 January 2020**. The Complainants state that they:

“... never agreed to a 17 year term. When I [the First Complainant] made the arrangement to take the lump sum off the top of the mortgage I was told I was reducing my overall term by 18 months & was shocked when I received a letter from the bank showing it was only reduced by 9 months. The difference is huge.”

The Complainants want the Provider to honour the agreement that they entered into on **13 November 2019**, whereby the Complainants proposed paying a lump sum of € 6,000 off their mortgage, which the Provider confirmed would result in the terms being reduced to 16 years and 3 months.

The Provider’s Case

The Provider states in its Response letter dated **24 January 2020** that during the telephone call of the **13 November 2019**, the Complainants were “provided with an incorrect quote for the term remaining” by its representative but that this was an “approximate quote”. The Provider states that it is “sorry” that an incorrect quote was given and that:

“it is not our practice to save a quote given verbally, I [Provider’s Agent] concluded that an incorrect repayment amount was used when completing the calculation.”

The Provider states that the lump sum payment was applied on the **19 November 2019** not on the **13 November 2019** when the call was made by the First Complainant and the quote and payment were taken over the phone. The Provider acknowledges that the Complainant did not receive calls back and it confirmed that it had upheld the complaint regarding a below standard level of customer service. The Provider states that in relation to this aspect it made an offer of €100 to compensate the Complainants.

The Provider submits in its letter dated **19 February 2020** that:

“ As the quotes are not saved, I have been unable to access the information the quote was based on from the staff member involved. The quote was incorrect... Regrettable from time to time the human element does intervene to cause errors and I am very sorry for the annoyance this has caused to you.”

The Provider stated in this letter dated, **19 February 2020** that if the Complainants wanted a return of the lump sum payment of €6,000 this could be arranged and the mortgage term would be increased back to the original term on the mortgage account. The Complainants were asked to contact the Provider if they wished to do this.

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The Provider submits that it has carefully reviewed the matter and that the correct calculation (in applying the lump sum) would have meant that the Complainants' mortgage term would have been reduced to 17 years, not 16 years and 3 months. The Provider states that the lump sum was not processed until Tuesday **19 November 2019**, when it was actually applied to the Complainants' mortgage. The Provider says that its Agent only provided a quote during the **13 November 2019** call and that it cannot reduce the mortgage term by 9 months at the Complainants' request, as this is a *"significant request that is not warranted and in [its] view not fair and reasonable resolution considering the circumstances of the case."*

In response to questions as to how the initial quote was reached by its Agent the Provider states that it *"cannot confirm what parameters the staff member used."* but it is its:

"opinion that it may have been based on a higher monthly repayment figure being used in the calculation... a higher monthly repayment amount being used in the calculation would give a bigger term reduction".

The Provider states that the estimated sum as provided on Wednesday **13 November 2019**, was not saved on its system. The Provider asserts that because there is a copy of the recording of the call of the **13 November 2019** it maintains that only a quote was given which was in its view *"not confirmed information"* and therefore the Provider has not breached any regulations by not having the quote saved. The Provider submits that the:

"details of the actual term following the application of the lump sum was confirmed in the letter issued to the Complainants on 19 November 2019"

The Provider contends that it is *"fully satisfied that the 17 year term that the mortgage was reduced to on 19 November 2019 is correct"* and it states that it is happy that there is no breach in relation to this aspect of the complaint.

The Provider submits that the customer service the Complainants received in respect of the handling of the First Complainant's query is not what the Provider *"expect[s] customers to receive."* The Provider submits that in relation to this, it upheld the complaint and made an offer of redress initially of €100 which was increased during the investigation of this complaint to a final offer of € 2,500.

The Complaint for Adjudication

The complaint is that the Provider refused to honour the quote the Complainants received from the Provider on 13 November 2019, to reduce the term of mortgage by 18 months, on receipt of their lumpsum payment of €6,000.

The Complainants say in that regard that the Provider poorly communicated with them, gave them mis-information and poorly administered their mortgage account.

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 **4 January 2022**, 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 took out a mortgage with the Provider on the **24 January 2019**. The First Complainant contacted the Provider on the **13 November 2019** to enquire about the possibility of paying a lump sum off the mortgage balance. I note that at the time of doing this the term left on the mortgage, was 17 years and 8 months.

I note that on the basis of the Complainant's interactions with the Provider's staff member that day, the payment was taken over the phone with the First Complainant giving her debit card details to the Provider's Agent. I note that the Provider states that the payment was not applied until the **19 November 2019** and the letter issued that same day to the Complainants indicating that their term had been reduced to 17 years (as opposed to 16 years and 3 months as had been stated by the Provider's Agent during the phone call on the **13 November 2019**).

The First Complainant queried the discrepancy between what had been stated during the call, and what was written in the letter dated **19 November 2019**, by telephoning on **25 November 2019**, **4 December 2019**, and again on **16 December 2019**. The First Complainant was told that the Provider's Agent would revert back. However, no call was made to the Complainants.

I note that on **23 December 2019** the First Complainant, having still not received any correspondence from the Provider, called to make a formal complaint over not receiving a call back, as well as requesting a call back in relation to her query. The Provider states that an attempt to call the First Complainant, was made on the **31 December 2019** but that there was no answer and no option to leave a voicemail. The First Complainant states that she does not have any record of a missed call from the Provider and that she had only two missed calls from work that day. The Provider states that it issued a Complaint acknowledgement letter to the Complainants on the **2 January 2020**.

From the call on the **15 January 2020**, it appears that the First Complainant indicated that this letter was not received, and the First Complainant was informed that the Provider would follow up after further investigations of the complaint and would revert as soon as possible. I note that the Final Response letter issued on the **24 January 2020** and that a call by its Agent to the First Complainant on the **24 February 2020** went unanswered, but that a voicemail was left.

I have carefully considered the evidence submitted and in particular I note the contents of the first phone call on the **13 November 2019** as follows:

First Complainant: Can you tell me then if we take six thousand off the mortgage, will it, how it will alter the years?

Agent: Yeah so six thousand?

First Complainant: Yeah

Agent: [unintelligible] ... term 17 years 8 months down to 16 years and 3 months.

[My emphasis]

First Complainant: OK, brilliant and how do we actually go about doing that, do I go into my local branch and ask them or ... to do the lump sum over for me or how do I do that?

Agent: So you can .. online with IBAN/ BIC number and we can take card payment as well by debit card in branch as it suits yourself and I can get details if you are going to do that I can put through the instructions to adjust the term.

Complainant : Oh right ok and can you do that for me now if I ok it ? what do you need of me?

Agent: Just your card.

Complainant: Just my bank card number?

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Agent: Yeah, just debit card number if you're going to do it there's a separate payment system.

The Complainant appears to have gone to get her card while the Agent said he would "set the payment system". The Provider then proceeded to take the payment of €6,000 over the phone then stated:

Agent: Congratulations, what I'll do is I'll get that six thousand applied and I'll tell the team that you want to adjust the term, that isn't the case until we do.

First Complainant: Yes, absolutely.

Agent: We will maintain things as they are, we will take your balance by six thousand and we will write out to you to tell you what your new term is going to be.

First Complainant: Yes, you're saying its roughly about 16 years and three months.

Agent: Yes, I calculated it there for you, can't tell you the exact, more, or likely going to be the same.

First Complainant: Yes, yea might be a month or two that's OK.

Based on the above it is clear that the Agent did not inform the Complainant prior to processing the payment that his calculation was a quotation only. The Agent did state, after the payment had been taken that the Provider would maintain things as they were, and a letter would issue to state what the new term was going to be.

I note that the Provider in response to questions from this Office indicated that the Complainants were provided with an "approximate figure" however after careful consideration of the call I do not identify any communication prior to the payment being made, that the term indicated was an "approximate figure". In my opinion, it was reasonable for the First Complainant to understand that apart from "a month or two" either way, the Complainants should expect the term of their mortgage to reduce to 16 years 3 months, on foot of the payment made.

I note that it was only after this payment was made that the Agent informed her that he would get the payment applied and that things would be maintained as they were, until the Complainants were written to and advised of the exact new term. The Complainants agreed to this and indicated that if there was a deviation by a month or two from the term given, that that was "OK".

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I note the Mortgage General Terms and Conditions defines “*lump sum repayment*” as:

a repayment by the Borrower to the Lender of an agreed amount (not including an amount paid as Monthly Payment) which by prior agreement with the Lender leads to a permanent reduction in the Mortgage Balance.”

[My emphasis]

I note from the audio evidence that the Complainants were not informed before processing the payment, that the calculation offered to them verbally was a quote only. The audio recording of the call on the **13 November 2019**, in my view, lends some support the Complainants’ argument that there was an agreement reached between the Borrower and the Lender at that time. Even if however, the Provider had made it clear to the First Complainant that the details given were a quotation only, it is simply not acceptable that a quotation would be so incorrect. The Complainants were entitled to receive reliable information from the Provider to enable them to make an informed decision as to whether or not they would proceed with the lump-sum payment. In reliance on the information given on that date, the First Complainant then elected to proceed and facilitated the transfer of funds at that time.

I note that before the payment was applied on 19 November 2019, the Provider did not contact the Complainants to inform them of the error made and did not present the Complainants with revised options then available to them, with regard to the treatment of their lump sum and their mortgage term. This is disappointing.

The Provider maintains that it simply provided a quote on **13 November 2019** and it did not therefore have to communicate any further details, because the letter on the **19 November 2019** detailed the correct term; it does not accept that an error was made such as would have warranted contacting the Complainants. I note the Provider’s correspondence to this Office dated **2 March 2021** in which it states that:

“We apologise that the First Named Complainant was not informed during the telephone call of 13 November 2019 that it would take a number of days for the payment to the mortgage account to be processed”

I consider this position to be unsatisfactory. The Provider’s Agent at no point used the word “*quote*” in relation to the term calculated. Indeed, it appears that the Agent conducted calculations on the Provider’s system, and for that reason the Complainants were entitled to be able to rely on this communication. The First Complainant proceeded to make the payment with the Agent and prior to doing this she was not told that the term given was a quote.

I take the view that the provision of such incorrect information by the Provider’s Agent on the date in question was unfair to the Complainants, and was unreasonable and unjust within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, and indeed was improper within the meaning of **Sub-Section (g)**.

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I accept however the Provider's submission that, in fact, a lump-sum payment to the tune of €6,000 did not, as a matter of mathematical calculation, give rise to the reduction in the mortgage term of 18 months. It is disappointing that the Provider's Agent made such a significant error, but I do not believe that the Complainants should, on foot of that human error, have the benefit of a term reduction to which they were not contractually entitled, on the basis of the lump-sum payment of €6,000 at that time.

As regards the customer service made available by the Provider, I note that the Provider seriously delayed in returning the Complainants' calls and indeed, failed to respond, notwithstanding 4 different calls made to the Provider. The Provider has acknowledged that this standard of customer service made available to the Complainants was lower than it ought to have been. In all of these circumstances, I consider it appropriate to substantially uphold the Complainants' complaint against the Provider.

I do not consider it appropriate to direct the Provider to implement a term reduction on the Complainants' mortgage of the additional 9 month period, which the Complainants are seeking, because as a matter of mathematical calculation, the lump-sum payment which they made in November 2019, did not entitle them to such a reduction.

During the investigation of this complaint, the Provider made an offer to the Complainants of a compensatory payment of €2,500. This however was not accepted by the Complainants to resolve the matter.

Accordingly, to conclude this matter, I consider it appropriate to make the direction below to the Provider, to make a payment to the Complainants' mortgage account, to give effect to a reduction in the term, without any further direction, for compensation to be paid to the Complainants. It remains open to the Complainants of course, as indicated by the Provider, to request the repayment to them of the €6,000 lump-sum payment which was made in November 2019, though naturally, should they elect to call for that refund, the term of their mortgage will be lengthened, as appropriate. If they wish to call for that repayment it will be necessary for them to do so expeditiously, as the Provider cannot be expected to keep that option open to the Complainants on an indefinite basis.

Conclusion

- My Decision, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld on the grounds prescribed in **Section 60(2)(b)** and **(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider, within a period of 35 days from today, to rectify the conduct complained of by making a lump-sum payment of **€3,000** (three thousand euro) to the Complainants' mortgage thereby reducing the term of the mortgage by the appropriate period, on the basis of that payment of €3,000.

- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

26 January 2022

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.