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| <u>Decision Ref:</u> | 2022-0056 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Personal Loan |
| <u>Conduct(s) complained of:</u> | Application of interest rate |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the Provider's miscalculation of the Complainant's top-up loan balances.

The Complainant's Case

The Complainant held two loan accounts with the Provider. The Complainant submits that a number of years ago, he noticed that whenever he received a top-up on his loan, he was provided with a credit figure higher than his request. As a result, his interest payments on the loan became higher.

The Complainant submitted in a letter to this Office of **26 October 2018** that he phoned the Provider on a number of occasions to discuss this matter. He stated that he was "*brushed aside and told there was nothing wrong*".

On or around **30 July 2018**, the Complainant received a credit to his account for €15.52 (fifteen Euro and fifty-two Cent). The Complainant phoned the Provider to enquire about the sum, as he had not received correspondence concerning the credit. The Complainant submitted that he was "*passed from person to person*" and was told that the Provider was simply carrying out a survey on selected customers.

On or about **2 August 2018**, the Complainant received a credit for €2,174.48 (two thousand, one hundred and seventy-four Euro and forty-eight Cent). The following day, he received correspondence from the Provider explaining that there had been an error in the calculation of the top-up loan amounts. The Complainant submits that the Provider knew about this issue from **January 2018**, but did not inform him of the error until **August 2018**.

The Complainant submitted that he struggled with making the higher payments, and was under pressure to ensure that he did not miss a payment. The Complainant says he relied on his spouse to ensure that no arrears built up. The Complainant stated that the Provider *“failed us and lied to us as a responsible lender”*.

In reply to the Provider’s final response to this Office, the Complainant made further submissions on **20 September 2019**. The Complainant refuted the Provider’s submission that it did not have evidence that the Complainant was experiencing financial difficulty. He stated that the receipt of 16 top-ups in four years showed a *“pattern”* on his account, and that it was *“clear”* that he was borrowing more than he should, to cover the repayments.

The Complainant stated that he called the Provider on at least three occasions to inform it that he could not afford the repayments. He asked the Provider to freeze the repayments, with interest included. The Complainant stated that the last phone call took place on **13 August 2019** at 4PM, and his request was refused. The Complainant submitted that he asked to have this answer in writing, and the Provider answered *“no, ring your branch”*. He stated that he phoned the branch numerous times, but his calls were not answered.

The Provider’s Case

The Provider says that in **February 2018**, it became aware of an error that had occurred on its loan top-up process, extending back to **1999**.

The Provider explained that interest accrues daily on its customer’s loan balances, and it is posted to the loan account quarterly. When customers apply for a loan top-up, the Provider’s practice was to include the accrued interest, which had not yet been applied to the loan, into the *“illustration of the loan application”*, in order to calculate the overall Credit Agreement amount.

The Provider then made an error in transferring the amount of the loan sought, together with an amount equal to the accrued interest, to its customers as part of the loan draw-down process. The latter amount should have remained in the loan account to cover the amount of accrued interest that was due to be charged. Therefore, when interest was charged to the account, it would reflect the higher Credit Agreement amount, and the customers would have to make additional payments to clear the remaining balance.

The Provider provided an illustration of the error:

- *“The customer had an existing loan in respect of which the ledger balance outstanding was €100 (the “Old Loan Balance”).*
- *Accrued but unapplied interest of €10 (the “Accrued Interest Amount”) was due on that existing loan – this sits in the background and does not form part of the €100 Old Loan Balance.*
- *In total the Customer owes the bank €110 (€100 (Old Loan Balance) + €10 (Accrued Interest Amount))*
- *The customer wished to borrow an additional €100 (the “New Monies Sought”) by way of top-up.*
- *The Bank agreed to advance a further €110 by way of a top-up loan with the intention that it would be applied as follows;*
 - *€10 in paying the Accrued Interest Amount unapplied; and*
 - *€100 to the customer to meet his need of a further loan of €100.*
- *The Bank contracts through a Credit Agreement with the Customer for €210 (the “New Loan Amount”). This is made up (sic) the €100 Old Loan Balance + €100 New Monies Sought + €10 Accrued Loan Amount.*
- *The Credit Agreement does not specific (sic) the New Monies Sought (€100), it only states the New Loan Amount (€210).*
- *Accordingly the amounts of the scheduled repayments of principal and interest on the combined loans were based on the figure of €210 and this is what the credit agreement reflected.*
- *In error, as part of the loan booking process the full €110 (the “Top-up Amount Advanced”) was advanced to the customer and the additional amount of €10 was not applied against the Accrued Interest Amount.*
- *As a result, the loan balance increased to €220, made up of €100 (Old Loan Balance) + €10 (Accrued Interest Amount) + (€110 Top-up Amount Advanced).*
- *Accordingly, the total amount repayable was €220 but no adjustments were made to the amount of the scheduled repayments to take account of the failure to pay the Accrued Interest Amount. The customer was not advised of the discrepancy.*

- *As a result, when all the scheduled repayments were made, a balance of €10 (plus any compound interest which had accrued on that sum in the meantime) (the “Residual Balance”) remained unpaid.”*

The Provider says that it raised this error with the Central Bank of Ireland (CBI) in **February 2018**. To rectify the issue, the Provider refunded the amount of accrued interest included in the Credit Agreement of the top-up application, along with compound interest.

The Provider additionally acknowledges and has explained an error in its top-up process that occurred in **2019**. This matter was also referred to the CBI, and customer redress was completed on **29 July 2019**. It is not the subject of the present complaint.

In relation to this complaint, the Provider says that the Complainant held two accounts with it. One account was opened in **2014**, topped up in **December 2014**, and repaid and closed the following year. The Provider identified the following information for the account:

| Credit Agreement Amount | Date of Top-up | Accrued Interest Correction | *Compound Interest Impact | **Compensatory Interest | Total Correction Amount |
|-------------------------|----------------|-----------------------------|---------------------------|-------------------------|-------------------------|
| €5,135.00 | 30/12/2014 | €14.58 | €0.91 | €0.03 | €15.52 |

For the Complainant’s second account, opened in **2015**, the Provider made an error in applying the incorrect top-up balance to nine of the 12 top-ups in the period from **2015** to **2018**.

| Credit Agreement Amount | Date of Top-up | Accrued Interest Correction | *Compound Interest Impact | Total Correction Amount |
|-------------------------|----------------|-----------------------------|---------------------------|-------------------------|
| €6,395.55 | 02/12/2015 | €126.52 | €55.87 | €182.39 |
| €7,534.50 | 12/02/2016 | €129.85 | €51.57 | €181.60 |
| €12,488.76 | 08/04/2016 | €60.53 | €16.25 | €76.78 |
| €14,351.85 | 09/09/2016 | €271.21 | €57.58 | €328.79 |
| €15,228.48 | 29/10/2016 | €159.05 | €29.65 | €188.70 |
| €16,113.00 | 10/02/2017 | €203.89 | €32.91 | €236.80 |
| €17,713.00 | 30/05/2017 | €297.87 | €40.84 | €338.71 |
| €18,722.00 | 15/09/2017 | €386.24 | €43.57 | €429.81 |
| €18,333.61 | 03/05/2018 | €202.05 | (€8.85) | €210.91 |
| Total | | €1,837.21 | €328.42 | €2,174.48 |

The Provider says that the Complainant was advised in writing on **1 August 2018** that €328.42 (three hundred and twenty-eight Euro and forty-two Cent) was available for him to drawdown from the second account, following this correction. However, the Complainant topped-up his account before withdrawing the funds. The Provider submits that the Complainant still benefitted from the refund, as his balance was €328.42 lower, when he topped up.

The Provider was asked by this Office to respond to the Complainant's submission that he had brought the error to the Provider's attention in the past. The Provider stated that it had examined its notes and records and had found no evidence to confirm the Complainant's submission, in that regard.

The Provider was asked by this Office to respond to the Complainant's submission that he had to rely on his spouse to meet his loan repayments. The Provider stated that it "*did not find any evidence to suggest that the Complainant was experiencing financial difficulty*". It noted that the Complainant had a strong credit record with no arrears, and it says that he should have contacted the Provider if he was experiencing difficulty.

The Provider states that it did not accept the Complainant's allegation that its errors contributed to his need to obtain further top-ups, in order to meet his loan repayments. It calculated that the overall impact of the errors resulted in an average repayment difference of €24 (twenty-four Euro) per month.

The Provider submits that the Complainant topped-up his account regularly over the relevant period, and that the purpose of the top-ups was chosen as 'personal expenses'. The Provider did not find evidence that the Complainant was experiencing financial difficulty, and it notes that a message appears when customers are topping up, to contact the Provider if they are experiencing difficulty.

The Provider says that it wasn't aware of the Complainant's other financial obligations and, as a result, it could not state as to whether the Complainant had been inconvenienced in other ways by the Provider's error.

In relation to the complaint procedure, the Provider submitted that it complied fully with the **Consumer Protection Code 2012**.

The Provider has submitted that it does not believe that the complaint should be upheld. However, it has acknowledged that there were a number of service failings and errors on the Complainant's account, and it has apologised for such. When the error was identified, the Provider reviewed the impacted accounts and took steps to rectify the mistake by applying a refund. In September 2019, the Provider offered a goodwill gesture of €1,000 (one thousand Euro) for any inconvenience that this may have caused to the Complainant.

In response to the Complainant's submission of **20 September 2019**, the Provider stated that, while it *"regrets the customer circumstances, the bank was unaware that the Complainant was in financial difficulty"*. It reiterated its prior submissions on this point.

In relation to the phone call of **13 August 2019**, the Provider states that it has reviewed the call and that the Complainant did not state that he was experiencing financial difficulty. He had noted that he had an open complaint with this Office and requested that interest be suspended until the adjudication of the complaint. The Provider's Agent stated that this could not be done. It was not the Provider's policy to freeze interest on accounts that are the subject of an investigation by the FSPO. When the Complainant asked for a letter to that effect, the Provider's Agent directed the Complainant to request this letter from his local branch. In regard to the Complainant's submission that his calls to his local branch went unanswered, the Provider stated:

"we are surprised and disappointed to hear this as the Bank's branch telephone lines are connected to our Phone Banking agents to prevent a call remaining unanswered. We apologise that this occurred."

The Provider reiterated its submissions in relation to its refund of the interest and its goodwill offer of €1,000 (one thousand Euro).

In further submissions to this Office of **16 October 2019**, the Provider addressed additional arguments that had been made by the Complainant. It acknowledged that the Complainant had been provided with a top-up loan amount higher than that requested by him, due to the incorrect interest calculation. It clarified again that it could not locate evidence that the Complainant had brought this to the Provider's attention before the Provider's own review in **2018**.

The Provider says that the Complainant has sought information, including all correspondence, on how this matter was reported to the CBI. The Provider stated that it could not give this information out, as it was confidential and commercially sensitive. It stated that its reporting obligations were fully met. It has noted that in **September 2020**, the Complainant made a data access request to the CBI for records relating to his personal data. The CBI did not have any records relating to the Complainant. On this basis, the Complainant has argued that the Provider did not report the matter to the CBI, but the Provider has explained that it did not send personal data relating to the Complainant, when notifying the CBI of the error in **2018**.

The Complaint for Adjudication

The complaint is that the Provider failed to act as a responsible lender insofar as it wrongfully applied the incorrect top up amount to the Complainant's loan accounts over the course of a number of years, as a result of which, incorrect interest was applied to his loan accounts.

The Complainant wants to be compensated by the Provider for the errors and stress caused over the years.

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.

A Preliminary Decision was issued to the parties on **20 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.

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

The Complainant says that the Provider wrongfully applied the incorrect loan balances to his top-ups, and as a result, charged the Complainant incorrect interest amounts. In this respect, I note that the Provider has acknowledged that this error occurred on 10 occasions over both of his accounts. Indeed, I note that the Provider brought these errors to the Complainant's attention in August 2018.

The Provider has disagreed with the Complainant's contention regarding the effect of this error on the Complainant, and whether the Complainant brought this to the attention of the Provider, prior to the review in **2018**.

In respect of the effect on the Complainant, I have had regard to the Provider's submissions that the total miscalculation applied to both of the accounts together, over a period of four years, was €2,190 (two thousand, one hundred and ninety Euro). The frequency of the top-ups and the phone call of **13 August 2019** support the Complainant's account that he was suffering financially, but there is no evidence to suggest that the Complainant directly informed the Provider that he was having trouble keeping up with the loan payments.

I am conscious in that regard that the average over-payment from the Complainant over that period according to the Provider was €24/month. Whilst this may seem to be a limited impact, given that it equates to some €6 per week, nevertheless it also equates to a figure of €300 per year which, in my opinion is not insignificant.

I have had regard to the Complainant's account, and his submissions that he had to rely on his spouse to keep up with payments. I take the view that the Provider's error inevitably contributed in some respect, to this difficulty, whatever its extent.

The Complainant submits that he contacted the Provider on this issue before 2018, and the Provider states that it has no evidence to suggest that this took place. The Complainant appears to have been conscientious in the maintenance of his account. He never fell into arrears, and consistently made applications for top-ups over the course of four years. As a result, I believe he could have been aware of some inconsistency in his account, and I note his contention that he contacted the Provider in this respect, though it would be remarkable if the Complainant had fully understood the nature of the error before the Provider's audits and checks identified how the miscalculation had occurred. I also take the view that given the Complainant's conscientiousness, he is likely to have written to the Provider if indeed he had become aware of the nature of the particular error, but there is no evidence that he made any written communication with the Provider in the period leading up to 2018.

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On an ancillary point, the Complainant submitted to this Office that when he called the Provider on or about **30 July 2018** to query the credit in his account, he was informed that the Provider was conducting a survey. I have listened to the recording of this phone call, which contains the Complainant speaking to an Agent of the Provider, the Agent then putting the Complainant on hold and discussing the matter with another Agent, and then transferring the Complainant's call to the second Agent. Unfortunately, there is no recording of the Complainant's conversation with the second Agent. However, the conversation between the two Agents, which is recorded, shows the second Agent's full understanding of the present matter. I therefore consider it unlikely that this second Agent did not explain the situation to the Complainant, along the lines indicated in the recorded call.

I note the Complainant's arguments regarding the Provider's reporting to the CBI, but I accept the Provider's explanation that the matter was reported, and I do not consider the Complainant's submission regarding his data access request to the Central Bank of Ireland to be persuasive of the contrary. The Provider's obligations to report a systemic error of this nature is not dependent upon its supply to the Central Bank of Ireland of the personal data of all potentially impacted account holders.

I am satisfied that the evidence supports the Complainant's complaint that the Provider incorrectly calculated his top-up balance on a number of occasions. Indeed, the Provider acknowledges this and it wrote to the Complainant in 2018 to provide him with details of the error which had been made.

In determining whether or not this complaint should be upheld, I am conscious that not only did the Provider write to the Complainant to let him know about the error, but in addition it ensured that the appropriate refunds were promptly applied (as part of its actions in redressing all of the impacted accounts). This financial redress was put in place before the Complainant proceeded to make a complaint to this Office and I am also conscious that in its response to this investigation, in **September 2019**, the Provider also recognised that there may have been general inconvenience to the Complainant and, to that end, offered a goodwill gesture of €1,000 with a view to resolving the complaint.

I am cognisant of the fact that when this complaint was made, the Complainant indicated that the redress sought was a compensatory measure. I am also mindful of the early offer of an appropriate compensatory measure which I believe to be reasonable. In my preliminary decision on 20 January 2022, I indicated that, on the basis that this compensation remained open to the Complainant for acceptance, I did not consider it necessary or appropriate to make any further direction or to uphold the complaint.

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I note that since that time, it seems that the Complainant has been in direct communication with the Provider which has recently confirmed to this Office that the payment in question was made to the Complainant on 7 February 2022.

Accordingly, for the reasons outlined above, I do not consider it appropriate to 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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

11 February 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.