



<b><u>Decision Ref:</u></b>	2022-0057
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Personal Loan
<b><u>Conduct(s) complained of:</u></b>	Application of interest rate
<b><u>Outcome:</u></b>	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 complaint is in relation to the Complainant's loan accounts ending in 402 and 246 with the Provider.

The Complainant submits that she had a number of loans with the Provider and on occasion, she needed to avail of the online top-up facility associated with the loan accounts. The Complainant states that she was *"overcharged with loans taken out and also forced to take more than the original amount requested."*

The complaint is that the Provider failed to act as a responsible lender by wrongfully applying the incorrect top up amount to the Complainant's loan accounts over the course of a number of years, as a result of which the incorrect interest amounts were applied to the loans.

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

### 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).*

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- 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 stated 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 the compound interest.

The Provider additionally acknowledges and has explained an error in its top-up process that occurred in **2019**. It says that 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, but the Provider has applied a correction to the Complainant’s account of €16.05 (sixteen Euro and five Cent) in relation to the **2019** error.

In relation to this complaint, the Provider says that the Complainant held two accounts with it. The first was opened in **2015** and the second was opened in **2017**. In relation to the first account, one top-up suffered the incorrect calculation:

Credit Agreement Amount	Date of Top-up	Accrued Interest Correction	*Compound Interest Impact	**Compensatory Interest	Total Correction Amount
€4,838.40	15/12/2015	€107.54	€10.30	€0.14	€117.98

In relation to the second account, three top-ups were incorrectly executed by the Provider:

Credit Agreement Amount	Date of Top-up	Accrued Interest Correction	*Compound Interest Impact	Total Correction Amount
€4,097.95	01/03/2017	€40.32	€6.51	€46.83
€5,102.46	21/04/2017	€36.34	€4.98	€41.32
€6,620.15	02/09/2017	€103.89	€11.72	€115.61
Total		€180.55	€23.21	€203.76

The Provider states that the Complainant was advised in writing on **2 August 2018** that €11.49 (eleven Euro and forty-nine Cent) was available for her to drawdown from the second account, following this correction. However, the Complainant topped-up her account before withdrawing the funds. The Provider submits that the Complainant still benefitted from the refund as her balance was €11.49 (eleven Euro and forty-nine Cent) lower, when she topped up.

The Provider submits that when the error was identified, the Complainant was issued a cheque for €107.53 (one hundred and seven Euro and fifty-three Cent) in accrued interest, and with €10.30 (ten Euro and thirty Cent) in compound interest for the first account. It took the appropriate corrective action for the second account.

The Provider was asked by this Office if it accepted that these errors contributed to the Complainant's need to seek further top-ups, in order to meet loan payments. The Provider did not accept this suggestion. It stated that it "*did not find any evidence to suggest that the Complainant was experiencing financial difficulty*". The purpose recorded for the top-ups was 'personal expenses' or 'holiday', and the loans were topped up in quick succession. The Provider notes that a message appears when customers are topping up to contact the Provider if they are experiencing difficulty.

The Provider notes that it wasn't aware of the Complainant's other financial obligations and, as a result, it could not state whether the Complainant had been inconvenienced in other ways by the Provider's error. However, it noted that the overall impact of the errors would have had a "*minimal impact*" on the Complainant's loan accounts.

The Provider states that in relation to the first account, there was one impacted top-up, and the interest amount was returned to the Complainant. The Provider states that:

*“Therefore the repayment amounts were correct and would not have been reduced by the refund amount.”*

In relation to the account, the Provider recalculated the repayment for the relevant applications as follows:

Top up y/n	Credit Agreement Amount	New Credit Agreement Amount	Repayment Amount Correct?	Actual Repayment Amount	New Repayment Amount	Difference
N – original loan	€3,000.00	N/A	N/A	142.36	N/A	N/A
Y	€4,097.95	N/A	Y	85.74	N/A	N/A
Y	€5,102.46	€5,055.63	N	107	105.94	1.06
Y – not impacted	€5,634.13	N/A	N/A	117.87	N/A	N/A
Y	€6,620.15	€6,532.00	N	138.36	136.65	1.71

The Provider has submitted that it does not believe that the complaint should be upheld. However, it acknowledged that there had been a number of services failings and errors on the Complainant’s account, and apologised for these. When the error was identified, the Provider reviewed the impacted accounts and took steps to rectify the mistake by applying a refund. The Provider also offered a goodwill gesture of €500 (five hundred Euro) for any inconvenience that this may have caused to the Complainant.

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

I note from the evidence available that the Provider has acknowledged that this error occurred, on both of the Complainant's accounts. Indeed, the Provider drew the Complainant's attention to the error in the Provider's calculations when it sent a letter to her on **2 August 2018**.

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I note in that regard that the letter advised her as follows:-

*"I am writing to let you know that we made a mistake on your loan account [number redacted] when you got a top-up in the past.*

*We are sorry for this.*

*Let me explain what happened*

*...*

***How are we putting this right for you?***

*To correct this, we are reducing the amount owed on your loan by €203.76 and you will see this as a transaction on your account called "Interest Adjust". This amount is made up of:*

- 1. €192.27 in relation to interest amounts owed from previous loan top-ups. This is to bring your balance back to what it should be at, had the mistake not occurred.*
- 2. €11.49 is a refund of interest charged as a result of a higher balance on your account. You can withdraw this amount from your account in your local branch if you are up to date with your repayments.*

*..."*

I am satisfied that this communication to the Complainant explained in detail what had occurred and how the Provider had acted in order to put matters right.

I further note that the Provider, recognising that the issue had an impact on a number of customers, communicated with the Central Bank of Ireland in February 2018, in its capacity as the Regulator, with a view to rectifying the issue. It seems that in the context of these communications with the Regulator, the Provider arranged for the refund to its customers of the amount of the accrued interest (included in the credit agreement of the top-up application) along with a compound interest amount to the impacted account. I note the Provider's confirmation in that regard that all impacted customers (including the Complainant) had the incorrect calculations rectified, over two phases during the Summer of 2018, on 31 July and 1 August respectively.

Having considered the figures made available by the Provider by way of reply to the investigation of this complaint, I am satisfied that the Provider's error in the calculation of interest on the accounts, had a limited impact on the Complainant's finances.

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It is regrettable that added to the errors which occurred over a long period of time, and which were addressed in 2018, a further correction was required to the Complainant's loan account ending 218, according to the Provider "*following a top-up completed in May 2019 of €245.61.*" The Provider says that it issued the Complainant with a letter on 29 July 2019, to advise of this error. The Provider has acknowledged the number of service failings and errors over a number of years and has offered its apologies to the Complainant in that regard. Given the Provider's shortcomings, it has also offered the Complainant a goodwill payment of €500 for any inconvenience this may have caused her.

I note that in making this complaint, the Complainant has sought compensation from the Provider in order to redress the issue raised. I consider this offer of €500 from the Provider to be reasonable in the circumstances, and I am also conscious that the Provider offered this gesture to the Complainant in **September 2019** at the time when it sent its Formal Response to this investigation.

In those circumstances, on the basis that this offer remains open to the Complainant for acceptance, I do not consider it necessary to make any further direction nor do I consider it appropriate or necessary to uphold this complaint as the Provider has long-since rectified its errors and sought to suitably redress the Complainant. It will be a matter for the Complainant to communicate directly with the Provider if she wishes to accept the compensatory offer from the Provider which it is willing to make available to her in resolution of the 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

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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.

