



<b><u>Decision Ref:</u></b>	2022-0083
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to provide correct information Dissatisfaction with customer service Fees & charges applied Failure to provide calculations
<b><u>Outcome:</u></b>	Partially upheld

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint concerns the calculation of a break funding fee for the Complainant's mortgage. The Complainant also contends that incorrect information was provided to him by the Provider.

#### **The Complainant's Case**

The Complainant opened a mortgage loan account with the Provider in **January 2018**, entering the 10 year fixed rate arrangement. The Complainant moved to sell the mortgage property in **July 2020**. The Provider furnished the Complainant's representatives with details of the break funding fee.

On **09 July 2020**, the break funding fee was determined by the Provider to be **€10,452.65** (ten thousand, four hundred and fifty two euro and sixty five cent). The sale of the mortgage property was delayed due to unrelated circumstances, and an updated break funding fee was issued to the Complainant's representative on **17 August 2020**, of **€10,851.53** (ten thousand, eight hundred and fifty one euro and fifty three cent).

The Complainant contacted the Provider, and submits he spent a considerable "*number of hours*" over multiple telephone calls seeking clarification of the calculations used to formulate the break funding fee. The Complainant asserts "*I was repeatedly told it is too complicated (it's actually very simple) to provide and I never received it until my lawyer requested it.*"

The Complainant refers to the Provider's letter dated **17 August 2020** and contends the Provider has erroneously used a value for component "W" of - 0.36, in circumstances where the Complainant submits *"once used in the formula "W" becomes +1.11%."* The Complainant contends that if component "W" is - 0.36, the break funding fee would *"equal zero"*. The Complainant contacted the Provider to contend:

*"The agent on the phone claims that there was no record of the letter dated 17/08/2020 And that the break funding fee is actually €11,233.60. At this stage I was trying to close the sale of my property and the opacity and volatility of course from the [Provider] was causing considerable anxiety to me."*

The Complainant also sought the source of the "Wholesale Rate" used by the Provider in the break funding fee calculation used in or around during **August 2020**. During a telephone call with the Provider's agent, the Complainant asserts he was informed *"these are simply provided from the Central Bank of Ireland."* The Complainant contends this is not accurate.

The Complainant made a formal complaint to the Provider on **17 August 2020**.

When asked to specify the desired resolution of his complaint, the Complainant submits:

*"I will consider this case resolved once I receive my full break funding fee back as well as appropriate compensation. Considering the details I've provided them in highlighting their own errors I would consider appropriate compensation to include 10 hours of labour at a fee of €300 per hour corresponding to the minimum cost of hiring the similar consulting expertise required to correct these errors"*

### **The Provider's Case**

In the Provider's final response letter dated **9 October 2020**, it stated that the redemption figure of €10,881.53 issued to the Complainant's representative in **August 2020** was accurate and correct at that date. The Provider acknowledged and apologised for an incorrect break funding fee quoted by the Provider's agent during a telephone call held with the Complainant on around **14 August 2020** and apologised for providing incorrect information in relation to the source of the wholesale rate, and offered a customer service payment of €250 (two hundred and fifty euro), which was declined by the Complainant.

In a later submission to this Office, the Provider stated that it regretted that its correspondence dated **17 August 2020** also had an incorrect value of minus 0.36% for the Wholesale Rate. It stated that the correct value should have been 1.11%, but noted that the correct value was entered in the actual formula (which was included in the letter under the incorrect value), resulting in an accurate demonstration of how the break funding fee was calculated. It offered its sincere apologies for the confusion caused by this *"genuine human error"*. It stated that because 1.11% was the correct value for the wholesale rate at the redemption date, this was a lower rate, than the rate on the date the rate was set, and therefore a break funding fee applied.

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### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully and repeatedly miscalculated the break funding fee applicable to the Complainant's mortgage loan account, provided incorrect information to the Complainant, and unreasonably delayed furnishing requested documentation to the Complainant.

### **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 **14 February 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.

In the Provider's mortgage information pack which is typically issued prior to the completion of a mortgage, it sets out how the break funding fee is calculated. The Provider's initial letter of offer to the Complainant dated **29 September 2016**, included at pages 21-22 a warning of costs and charges which also set out the break funding fee calculation. This stated:

*"If, during a Fixed Rate Period, the Borrower repays early the whole or any part of the Loan or switches the whole loan or any part of the loan into a variable rate or another fixed rate, the Borrower may be liable to pay a "break funding fee" to the lender on the date (the "switching/redemption date") that such repayment or switching takes place.*

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If, at the switching/redemption date the Wholesale Rate is higher than the Wholesale Rate at the date the existing fixed rate applying to the loan was set, no break funding arises. If, however, at the switching/redemption date the Wholesale Rate is lower than the Wholesale Rate at the date the existing fixed rate applying to the loan was set, then a break funding fee will be chargeable. The break funding fee will be calculated by reference to the following formula:

$$B = (W - M) \times T / 12 \times A, \text{ where:}$$

$B$  = break funding fee

$W$  = the Wholesale Rate prevailing at the date the existing fixed rate applying to the loan was set.

$M$  = the Wholesale Rate prevailing at the date the switching/redemption date for the unexpired time period of the Fixed Rate Period.

$T$  = period of time in months to the end of the Fixed Rate Period.

$A$  = principal amount which is subject to existing fixed rate and which is being switched or redeemed.

'Wholesale rate' means the rate per cent per annum which the Lender determines to be the market rate applying to an appropriate interest rate swap for the relevant time period.

The following are examples of the calculation of the break funding fee:

a) Where Wholesale Rate increases over the term of the loan:

Wholesale Rate at the date existing fixed interest rate applying to the loan was set ( $W$ ): 7%

Wholesale Rate at switching/redemption date ( $M$ ) 8%

Break funding fee €0

b) Where Wholesale Rate decreases over the term of the loan:

Wholesale Rate at the date existing fixed interest rate applying to the loan was set ( $W$ ): 8%

Wholesale Rate at switching/redemption date ( $M$ ) 7%

Break fund rate 1%

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<i>Unexpired Fixed Rate Period (T)</i>	<i>Six months</i>
<i>Break funding fee (per €1,000 loan amount)</i>	<i>€5.00</i>
<i>Break funding fee = (8% - 7%) x 6 / 12 x 1,000 = €5.00 per €1,000.00"</i>	

I am satisfied that the Complainant was on clear notice of these provisions when he drew down his mortgage loan in early 2018.

On **11 August 2020**, the Complainant telephoned the Provider and sought information regarding the break funding fee for his mortgage (which was quoted to him on the same day). He stated during this call that the figure he was quoted was far higher than he expected. The Provider's agent stated that he would have to refer the matter to the Provider's breakage team and have someone call the Complainant back. The Complainant communicated the urgency of his request, explaining that the sale of his property was the same week.

I note that on the following day, **12 August 2020**, the Complainant again telephoned the Provider about the break funding fee and stated to the agent that he had been told he would get a call back and again he reiterated the urgency. The Provider's agent stated that the reason for the high rate was the fact there were 8 years left on the mortgage fixed rate period and set out the basis for the calculation.

The Complainant stated that the *"key to it being high is if the rate has actually fallen since I signed up"*, to which the agent responded *"not necessarily no...it goes into a lot of different considerations..."*

The Provider's agent stated that the Provider was waiting for the finance team to get back to them with the wholesale rate from the day *"you requested the fee"*, which had been requested the day before.

On **14 August 2020**, the Complainant again telephoned the Provider about the break funding fee and stated to the agent that he had been told he would get a call back, following the finance team providing the figure, and he again reiterated the urgency involved. The Provider's agent quoted a break funding fee of €11,233.62 (eleven thousand, two hundred and thirty three euro and sixty two cent) and after this was queried by the Complainant he stated that *"there is not one letter in front of me that has a figure of €10,000 for break funding fee."* The Provider's agent, after checking, stated that the Provider was still awaiting the figures.

On **17 August 2020**, the Complainant telephoned the Provider's agent, who stated it was still awaiting the break funding fee figures. On the same day, the Complainant's solicitors sought the redemption figures as the sale of the property was due to close. The Provider's agent stated *"the calculation is correct"* and stated he could only provide the figures over the phone and not by email.

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He stated the wholesale rate was 1.11, therefore indicated the following calculation:

$$(1.11 - (-0.31)) \times 90 / 12 \times \text{€}101,892.26.$$

$$7.5 \times 0.0142\% \times 101,892.26 = \text{€}10,851.53.$$

The Provider's agent stated to the Complainant's solicitor that the Complainant could contact the Provider by telephone directly himself at any stage. However, after some further discussion, it was agreed that the Provider's agent would try and have the figures sent out to the Complainant.

Later that day on **17 August 2020**, the Complainant telephoned the Provider stating he had received the figures from his solicitor. He asked the Provider's agent how the wholesale figure was arrived at. The Provider's agent stated that the Provider gets its wholesale rates from the Central Bank, which provides it to the Provider's finance team. The Complainant sought the basis for the figures that led to the wholesale rate, and after checking, the Provider's agent stated again that the Central Bank gives the figures to the finance team, which gives them to the Provider's operations team, which inserts the figures and sends them out to the customers. The Complainant made a formal complaint during this call, which the agent logged.

In a letter also dated **17 August 2020**, the Provider issued the calculation figures to the Complainant, which stated as follows:

$$B = \text{€}10,851.53 \quad W = -0.36, \quad M = -0.31, \quad T = 90, \quad A = \text{€}101,892.26$$

However, the letter included the calculation under this line as follows:

$$\text{€}10,851.53 = (1.11 - (-0.31)) \times 90 / 12 \times \text{€}101,892.26$$

Therefore, the wholesale figure was different in the two calculations in the letter, with  $W = -0.36$ , but then in the line under, with the actual calculation,  $W = 1.11$ .

In the Provider's final response letter dated **09 October 2020**, it stated that the letter of **17 August 2020** "contained accurate and correct information based on [the Provider's] 4 eye review policy" which included the break funding fee of  $\text{€}10,851.53$ . This letter set out the formula, as outlined in the terms and conditions of the original loan, which had been accepted by the Complainant on **29 January 2018**. The Provider inserted the figures as follows:

$$B = \text{€}10,851.53 \quad W = -0.36, \quad M = -0.31, \quad T = 90, \quad A = \text{€}101,892.26.$$

It is noted that the wholesale figure was again incorrect.

In an email dated **21 August 2020**, the Complainant stated that the figures set out in the **17 August 2020** letter contradicted themselves and based on the figures, the break fee fund would have been  $\text{€}0.00$ .

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The letter also asserted that there was an unwillingness on the part of the Provider to provide details on how it arrived at the figures, until his solicitor became involved. The letter sought details about (i) the bond yields, upon which the fixing rates were derived and (ii) how the Provider's financial loss was equal to the break funding fee.

Following a holding letter of 11 September 2020, ultimately the Provider issued a final response letter dated **9 October 2020**, which included the details it had quoted in the letter of 17 August 2020 which are outlined above. The final response letter then went on to offer the following:-

*"Example for illustration purposes:*

*Day 1-10yr wholesale rate is 0% i.e. the rate [the Provider] would earn if placed into market/rate at which [the Provider] pay to hedge the risk;*

*Day 79-90 months – 7yr wholesale rate is -0.31% the rate [the Provider] would now earn if placed into market/rate at which we receive from market hedge;*

*The above results in a financial loss of 31 basis points for the final 7yrs of the fixed rate period (this excludes the loss of interest expected from the mortgage holder).*

*In respect of wholesale rates, these are obtained from Reuters information system based on EURO Annual versus 6 month Euribor taking the mid swap plus 2 basis points (bps). [the Provider's] Treasury Department retrieve the rate from Reuters and the only variable [Provider] make are mid swap plus 2 bps."*

The final response letter dated 9 October 2020 apologised for the error made by its agent during the telephone call of **14 August 2020** when he incorrectly quoted a break funding fee of €11,233.62. The Provider stated that *"the Agent should have referred to the redemption quotation which included the correct figure after a 4 eye review."*

On **25 May 2021**, the Provider, when responding to the formal investigation of this Office, set out the meanings for underlying bond yields, interest rate swaps and basis swaps. The letter again stated that the wholesale rates are obtained from Reuters information system based on EURO Annual versus 6 month Euribor, taking the mid swap plus 2 basis points (bps). The Provider asserts that the Complainant can independently verify information on the wholesale rates used by the Provider using Reuters or Bloomberg.

The Provider submits the **17 August 2020** letter had an incorrect value of minus 0.36% for the wholesale rate. It states that the correct value should have been 1.11%, but notes that the corrected value was entered in line one of the actual formula, resulting in an accurate demonstration of how the break funding fee was calculated. It has stated *"We accept that there was a typographical error in our correspondence date [sic] the 17<sup>th</sup> August 2020..."* The Provider submits that its figures became manually calculated when it introduced a 10-year fixed rate. Its procedure had a sign off process which was completed before the quotes are issued.

This policy adopted a “Four-eye policy” which involved a Provider’s agent preparing the calculation and then referring this calculation to a line manager to sign off. As some of the figures are system generated (not the wholesale figure, which is always done manually), the figure of €11,233.62, which was quoted in error, was the system generated figure and should not have been provided to the Complainant.

The Provider has also submitted that the reference to the wholesale rate of 0% in its earlier final response letter was used for illustrative purposes only, in an attempt to demonstrate the basic scenario where a break funding fee may apply. The Complainant queried how, if this was merely illustrative, why the exact figure was used in the present dispute, and he says that this confused the situation.

### **Analysis**

Provision 4.2 of the 4.1 of the Consumer Protection Code (CPC 2012) states:

*“A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following: a) the urgency of the situation; and b) the time necessary for the consumer to absorb and react to the information provided.”*

The Provider has stated that the request for a breakdown at the break funding fee is not a standard request and therefore the time taken from when it was first requested on **11 August 2020** to the date on which it was provided on **17 August 2020**, indicates that it was provided in a timely manner (within four working days). The Provider also states that this information could have been sought in July 2020 when the initial break funding fee of €10,452.65 was quoted to the Complainant.

The Complainant submits that this assertion by the Provider was “*partially fair*” as his legal representative failed to inform him of the redemption fee from **July 2020** until a later stage. He stated however that he still only received the figure once his lawyer requested it on **17 August 2020**. I accept that the Provider managed to source the breakdown for the figures after the Complainant’s initial phone call on **17 August 2020** and I do not accept that it was withholding these figures until his solicitor made contact. Although there was somewhat of a delay in getting these figures (four working days) in light of the urgency in closing the sale, ultimately, I am satisfied there was not a breach of Provision 4.2 of the CPC 2012 in circumstances where the Complainant waited until **August 2020** to seek the figures - when he could have sought them in **July 2020** after being quoted the redemption fee.

Provision 4.54 of the CPC 2012 states that prior to providing a product or service to a consumer:

*“a regulated entity must:*  
*a) provide the consumer, on paper or on another durable medium, with a breakdown of all charges, including third party charges, which will be passed on to the consumer;*  
*and*



*b) where such charges cannot be ascertained in advance, notify the consumer that such charges will be levied as part of the transaction.”*

Provision 4.25 of the CPC 2012 states

*“Where a regulated entity: a) offers credit on a fixed interest rate to a personal consumer; or b) offers a personal consumer the option to fix their rate or to switch to a fixed rate, on an existing credit agreement; the regulated entity must provide, in the credit documentation, a worked example specific to the personal consumer of the early redemption charge in monetary terms and details in relation to the calculation of this charge.”*

Regulation 17 of European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (“2016 Regulations”) also states that:

*“Adequate explanations*

*17. (1) A creditor and, where applicable a mortgage credit intermediary, shall provide adequate explanations to the consumer on the proposed credit agreement and any ancillary services, in order to place the consumer in a position enabling him or her to assess whether the proposed credit agreement and ancillary services are adapted to his or her needs and financial situation; this and the next following paragraph are subject to paragraph (3).*

*(2) The explanations shall, where applicable, include:*

*(a) the pre-contractual information to be provided in accordance with:*

*(i) in the case of creditors, the information specified in Regulation 15;*

*(ii) in the case of mortgage credit intermediaries, the information specified in Regulations 15 and 16;*

*and*

*(b) in all cases—*

*(i) the essential characteristics of the products proposed;*

*(ii) the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer;...”*

Schedule 2 of the 2016 Regulation, provides the details of the European Standardised Information Sheet (ESIS) sheet to be provided to consumers pursuant to Regulation 15 before entering into a relevant mortgage agreement (Part A of the Schedule 2).

This ESIS must be given to consumers before entering into the mortgage and should contain the following regarding early repayment:

*"Section '9. Early repayment'*

- (1) The creditor shall indicate under what conditions the consumer can repay the credit early, either fully or partially.*
- (2) In the section on exit charges the creditor shall draw the consumer's attention to any exit charge or other costs payable on early repayment in order to compensate the creditor and where possible indicate their amount. In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the compensation will be calculated and provide the maximum amount that the charge might be, or where this is not possible, an illustrative example in order to demonstrate to the consumer the level of compensation under different possible scenarios."*

Regulation 26 states:

*"Early repayment*

*26. (1) A consumer has a right to discharge fully or partially his or her obligations under a credit agreement prior to the expiry of that agreement. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.*

*(2) A creditor shall be entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment, but shall not impose a sanction on the consumer, and any such compensation shall not exceed the financial loss of the creditor.*

*(3) Notwithstanding paragraph (2) and without prejudice to paragraph (4), a creditor's entitlement to compensation under this Regulation shall arise only in the circumstances where the borrowing rate provided for in the credit agreement:-*

*(a) may not be changed, or*

*(b) may not be changed over a period of at least one year, or*

*(c) may not, for a period of at least five years, exceed the rate applicable on the date of the making of the credit agreement by more than two percent.*

*(4) A creditor shall not in any event be entitled to compensation under this Regulation in respect of—*

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*(a) subject to subparagraph (b), any period of the credit agreement that remains after early repayment,*

*(b) if the case is one falling within subparagraph (b) or (c) of paragraph (3) and the early repayment occurs before the expiry of the period referred to in that subparagraph, any period of the credit agreement that remains after the expiry of the period so referred to.*

*(5) Where a consumer seeks to discharge his or her obligations under a credit agreement prior to the expiry of the agreement, the creditor shall provide to the consumer without delay after receipt of the request, on paper or on another durable medium, the information necessary to consider that option. That information shall at least quantify the implications for the consumer of discharging his or her obligations prior to the expiry of the credit agreement and clearly set out any assumptions used. Any assumptions used shall be reasonable and justifiable.*

*(6) A creditor who contravenes a provision of this Regulation commits an offence.*

I note that the “borrowing rate”, in relation to a credit agreement under the 2016 Regulation means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down.

What Regulation 26 means is that the Provider may only seek “*fair and objective compensation*” for the breakage fee when there is a fixed interest rate on the mortgage and for the period up until the date of breakage. Under Regulation 26(5), the Provider is obliged to also set out:

*“the information necessary to consider that option [of breakage from mortgage]. That information shall at least quantify the implications for the consumer of discharging his or her obligations prior to the expiry of the credit agreement and clearly set out any assumptions used.”*

The evidence shows that the Provider’s initial letter of offer to the Complainant dated **29 September 2016**, at page 21 of the terms and conditions set out the calculation for the Provider’s break funding fee and the consequences for breaking from the mortgage rate. This was also set out at page 14 of the Provider’s general mortgage information pack.

I therefore am satisfied that the calculation of the breakage fee was sufficiently set out in the documentation sent to the Complainant prior to entering the mortgage loan agreement and this complied with Provisions 4.25, 4.54 of the CPC 2012, and Regulation 17 (1),(2),(3),(4),(6) and Schedule 2 of the 2016 Regulations.

I note the Complainant has raised Regulation 26(2). In particular, he makes reference to other providers in this industry. The practices of other providers is however, outside the scope of this investigation which concerns only the conduct of the Provider in its dealings with the Complainant.

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I note the Provider's calculation  $[(1.11 - (-0.31)) \times 90 / 12 \times \text{€}101,892.26 = \text{€}10,851.53]$ , and the information given in its submission of 1 June 2021 regarding interest rate swap and EURIBOR. There is no evidence to show that there has been any penalty imposed by the Provider and therefore I do not accept this contention. I accept the Provider's submission that it has used the market rate in its calculation formula and that the formula in use, seeks to calculate the Provider's loss when a customer ends a fixed rate period agreement.

I note the Provider apologised for its agent's error during the **14 August 2020** telephone call when he incorrectly quoted a break funding fee of €11,233.62. I accept that the Provider's agent had used a system generated figure by mistake, which should not have been given to the Complainant. I also note that during this telephone call, the same agent stated "*there is not one letter in front of me that has a figure of €10,000 for break funding fee*" as he could not locate the redemption figure letter of **11 August 2020**.

I note that the Provider accepted that there was a typographical error in its correspondence dated **17 August 2020** where the wholesale figure was different in the two calculations in the letter, with  $W = -0.36$ , but then in the line under with the actual calculation,  $W = 1.11$ . I note that this error was again repeated in the final response letter dated **9 October 2020**, which again used  $-0.36$  for the wholesale figure. However, unlike the **17 August 2020** letter, this did not have an accurate calculation in the line under it to correct error. Indeed, the "*Example for illustration purposes:*" section it stated "*Day 1-10yr wholesale rate is 0% i.e. the rate [the Provider] would earn if placed into market/rate at which [the Provider] pay to hedge the risk*".

In my opinion, this greatly confused matters as the figure of  $-0.31$  for M was used, thus adopting the exact same figure as the Complainant's mortgage breaking fee. Therefore, I do not accept that it was in any way obvious that it was illustrative only, when the exact figures are used. This unnecessarily confused an already difficult situation where there were continuous errors.

I also note that in section 5 of the Provider's evidence from its **May 2021** submission to this Office, it stated that the wholesale rate was 1.10% (and not 1.11%).

Although I note that the correct figures were presented to the Complainant's solicitor on **17 August 2020** during the telephone call, and in part of the letter of the same day (in the line under the incorrect figures), ultimately the evidence shows that the Provider continuously provided inaccurate figures for the wholesale amount. This supply of inaccurate information made an already complex situation worse, and was arguably only picked up by the Complainant because he has financial experience in this area. In addition, the inaccurate information provided by the Provider's agent on **14 August 2020** was unacceptable, in circumstances where he was able to quote unverified system generated figures for the break funding fee, but was adamant about there being no **11 August 2020** letter with "*figure of €10,000 for break funding fee*".

Moreover, these numerous errors were in breach of Regulation 17 (5) of the 2016 Regulations, which states that the information required to be given to the Complainant before he discharged his obligations under the mortgage:

*“... shall at least quantify the implications for the consumer of discharging his or her obligations prior to the expiry of the credit agreement and clearly set out any assumptions used. Any assumptions used shall be reasonable and justifiable.”*

I take the view that if the wholesale figure was incorrect in calculating the break fee figure, the assumptions provided were not therefore reasonable or justifiable, similar to the incorrect information given during the call on **14 August 2020**.

I am satisfied that the Provider breached its obligations under 4.1 and 2.1 of the CPC 2012 and Regulation 17(5) of the 2016 Regulations for provision of this incorrect information. I am also satisfied that the Provider’s various errors constituted conduct which was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

I note that the Complainant has asserted that the same error has been “systematically occurring” at the Provider, subjecting customers to “fraudulent fees”. No evidence whatsoever has been made available to this Office of errors systematically occurring, to substantiate this assertion, but it is of course open to the Complainant to raise such an issue directly with the Central Bank of Ireland as the regulator, should he wish to do so.

I note that the Provider offered €250 in “full and final settlement” for providing “incorrect information”. The Complainant rejected this. In my opinion, the amount of €250.00 is insufficient compensation for the Provider’s conduct. In those circumstances, noting the numerous errors of the Provider in its dealings with the Complainant, I take the view that it is appropriate to partially uphold this complaint and to direct the compensation detailed below, in order to conclude.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €750 (seven hundred and fifty euro) to an account of the Complainant’s choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

- 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**  
**Financial Services and Pensions Ombudsman (Acting)**

8 March 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.