



<u>Decision Ref:</u>	2018-0075
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Fixed Rate
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This Complaint concerns the application of tax relief at source (TRS) to the Complainants' mortgage account.

The Complainants' Case

The Complainants holds a mortgage account with the Provider. The mortgage was drawn down in 2006.

The Complainants are eligible for tax relief on their repayments. This is to be applied at source. In other words, the mortgage loan account receives rebates in line with the applicable level of tax relief.

The Complainants did not receive TRS from mortgage inception. They have taken steps to receive it from 2013 onwards. The Complainants state that the Provider was under a duty to advise them that in order to benefit from TRS they had to apply directly to revenue. They state that the loan terms and conditions (and the lack of cogent advice from the Provider at drawdown) led them to believe that the Provider would administer TRS itself and they did not need to take any active steps themselves.

The complaint is that the Provider has failed to apply TRS to their mortgage account from inception, causing them a loss. They would like to be refunded this loss plus interest, which they calculate at €7,807.

The Provider's Case

The Provider has stated that it was/is the responsibility of the Complainants to apply for TRS from Revenue, and that it would then have acted on instructions received from Revenue to implement TRS. The Provider states that it cannot implement TRS unless the customer applies for it through Revenue.

The Bank's position in relation to this complaint is the Complainants should have advised Revenue of their new property and home loan. While the Bank as a qualifying lender, administers the Mortgage Interest Relief TRS scheme on behalf of Revenue, it is the responsibility of the borrower to establish eligibility and apply for participation in the scheme. Revenue then advise the Bank of the percentage of interest that can be claimed and the maximum threshold that can be paid to a customer. The Bank pays refunds to a customer based on the information given to the Bank by Revenue. The Bank will continue to pay refunds on monthly payments as long as the customer makes their monthly repayment covering their monthly interest charge. The Bank are then repaid by Revenue for payments made to each customer.

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 21 August 2018, 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, my final determination is set out below.

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Tax relief for mortgage interest on a home loan is tax relief given to mortgage holders based on the interest paid on a qualifying mortgage on their home – a new mortgage for a home, a top-up loan used for the purposes of developing or improving a home, a separate home improvement loan, a re-mortgage or a consolidation of existing qualifying loans, secured on the deeds of the home.

Since the 1st of January 2002, the relief is paid at source (called tax relief at source or TRS) by the mortgage provider rather than the relief having to be claimed back at the end of the year from the Revenue Commissioners. The mortgage interest relief is given at source, by the mortgage provider, either in the form of a reduced monthly payment or a credit to the mortgage holder's funding account. The mortgage Provider is then refunded by Revenue.

From 2014 Revenue instructed all lenders to only pay TRS on the actual interest paid to a mortgage account. Where an account falls into arrears, any repayments are first applied to the date when the arrears first occurred. This may not be within the same calendar year, and thus repayments made within the calendar year may not necessarily be paid towards the interest accruing in that year.

Based on the TRS entitlement as confirmed to it by Revenue, the Provider will then subtract this amount from the gross monthly repayment each month.

Mortgage holders are obliged to apply directly to Revenue for TRS. Currently mortgage interest relief can only be applied for on-line by the mortgage holder. The complaint here is that the Provider failed to advise the Complainants of their obligation to apply to Revenue for tax relief on their mortgage.

The mortgage was drawn down in 2006. The following terms and conditions in relation to TRS applied to the loan:

“10.4 Tax relief on home mortgage interest is granted at source instead of being given through the tax system. This means that the tax relief at source ('TRS') refund will be given to a borrower on each occasion the repayment of interest is made on a qualifying mortgage or loan account, subject to the TRS limit set by the Revenue Commissioners. The value of the TRS refund will be determined by the Revenue Commissioners based on eligibility of the borrower to participate in the scheme and the tax circumstances of the borrower. Further information on the criteria for participation in the TRS scheme and the operation of the TRS scheme is provided in the TRS Explanatory Leaflet which is available from our branches or by contacting the Revenue Commissioners at...

10.5 We as a qualifying lender will administer the TRS scheme on behalf of the Revenue Commissioners for our own customers and will process TRS refunds based on TRS limits set by the Revenue Commissioners.”

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Analysis

The relevant mortgage terms are paragraphs 10.4 and 10.5, as set out above. Under those terms the Provider is obliged to:

- (a) refund TRS to the borrower on each occasion the repayment of interest is made on a qualifying mortgage or loan account, the value of which is determined by the Revenue Commissioners;
- (b) administer the TRS scheme on behalf of the Revenue Commissioners for its customers and process the refund.

These contractual obligations are triggered by instruction from the Revenue Commissioners. In this instance that instruction was not received as the Complainants made no application to the Revenue Commissioners for tax relief and so the Provider's obligations under paragraphs 10.4 and 10.5 did not arise.

While I understand the predicament of the Complainants, and their complaint that they ought to have been advised of the onus upon them to apply to the Revenue Commissioners for TRS, I do not believe I can hold the Provider responsible for the Complainants' tax situation or accept that the Provider should have known their eligibility or otherwise for TRS.

For the reasons outlined above, I do not uphold this complaint.

Conclusion

The Provider has not acted in breach of contract, and I am not in a position to investigate the nature of advice given in 2006.

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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

19 September 2018

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.