



<u>Decision Ref:</u>	2019-0148
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Fixed Rate
<u>Conduct(s) complained of:</u>	Application of interest rate Delayed or inadequate communication
<u>Outcome:</u>	Rejected

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

Background

This complaint arises out of the mortgage and relates to an alleged overcharging by the Bank at the end of the fixed rate period

The Complainants' Case

The Complainants jointly hold a mortgage with the Bank which they took out in August 2009 at a variable rate of 2.6% repayable over a 30 year period. They state that in February 2010, they accepted an offer of a new two-year fixed rate period. The Complainants state that at the end of the two-year fixed rate period in February 2012, the Bank increased the interest rate to a 4.35% variable rate without notice or option. The Complainants state that they received no correspondence from the Bank and did not realise the position until December 2017. The Complainants state that the Bank reduced the rate to 3% at that point. The First Named Complainant states that he wrote to the Bank requesting information as to why they had not been offered an alternative rate when the two-year fixed rate period finished in February 2012. The Complainants state that the Bank replied that they did offer an alternative rate in January and February 2012, but the Complainants state that they have no record of receiving such correspondence. The Bank states that these letters are no longer retrievable.

The complaint is that in February 2012, the Bank failed to exercise reasonable care and skill in its dealings with the Complainants by overcharging them at the end of a two-year fixed-rate period. The Complainants believe they have been overcharged by approximately €42,800.

The Bank's Case

The Bank rejects that the Complainants were overcharged or that it failed to correspond with the Complainants at the end of the fixed-rate period in 2012 or failed to offer them alternative rates.

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 25th April, 2019, outlining my preliminary determination 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.

Following the issuing of my Preliminary Decision, the Complainants made a further submission by letter dated, 26th April, 2019, a copy of which was transmitted to the Provider for its consideration. The Provider under cover of its letter dated 9th May, 2019, advised this Office that it did not wish to make any further submission.

Having considered all the evidence including the Complainants' further submission, I set out below my final determination.

I have been provided with a copy of the mortgage offer letter dated 24 August 2009. The Bank, among other things, has highlighted the following clauses:

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6. Variable Interest Rates

- (a) *Subject to clause 6(c), at all times when a variable interest rate applies to the loan the interest rate chargeable will vary at the lender's discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the loan without penalty.*

7. Fixed Interest Rates

- (b) *The lender shall have sole discretion to provide any further or subsequent fixed rate period. If the lender does not provide such a further or subsequent fixed rate period or if the lender offers the borrower a choice of interest rate at the end of any fixed rate period and the borrower fails to exercise that choice, then in either case the interest rate applicable to the loan will be a variable interest rate.*

It is common case that the Complainants moved to a two-year fixed rate of 3.15% in February 2010. This was executed by jointly signing a Mortgage Form of Authorisation (MFA).

The Complainants state that they have no record of receiving any correspondence from the Bank at the end of this fixed rate period in February 2012 offering them alternative rates and that they did not discover the variable rate they were paying until 2017. The Bank, on the other hand, states that in anticipation of the end of the two-year fixed rate period, it wrote to the Complainants on 25 January 2012, setting out what rates were available to them at the time and enclosing an MFA to enable the Complainants make their choice.

The Bank states that it is no longer able to retrieve a copy of this letter. However, the Bank has provided a screenshot from its system showing the letter history details in relation to this account. This shows a record of letters having been sent on 25 January 2012 and a further letter on 24 February 2012.

I have been provided with recordings of telephone calls between the Second Named Complainant and the Bank, including a telephone call between the Second Named Complainant and the Bank on 1 February 2012. In that call, the Second Named Complainant telephoned the Bank. In answer to the security questions, the Second Named Complainant confirms to the Bank the account number, her date of birth and she is then asked what the correspondence address on the account is to which she replies by providing her address. The Second Named Complainant goes on to state that she got a letter "yesterday" informing her that her fixed rate is coming to an end on 24 February. She further states that the letter is "giving me all the different rates and estimated prices but it doesn't give an estimate on the tracker variable rate". The Complainant is then informed that the Bank ceased offering tracker rates in 2008. The call ended.

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Arising out of this phone call, it is clear at the very least that the Bank's letter of 25 January 2012 did issue to [the Complainant's address] and was received by the Second Named Complainant and that it did set out that the fixed rate period was coming to an end and offered a number of different rates and estimated prices as the Second Named Complainant described it in her telephone call.

In light of the foregoing I have no reason to doubt that the letter on 24 February 2012 also issued and that the records show that a further letter was issued on 31 August 2012. The Bank sets out that this letter, in compliance with the Bank's obligations, provided the Complainants with notice that the variable interest rate was going to increase to 4.35% from 24 October 2012.

In addition to all of the foregoing, I have reviewed the annual mortgage statements that issued to the Complainants and I note they also set out the specified interest rate and in particular they specify a rate change to 4.35% on 24 October 2012.

The First Named Complainant submits that the primary address for correspondence should have been [a different address], which was the address stipulated in a document entitled Confirmation of Mortgage Account Details.

The Bank states that in its system, the correspondence address automatically switches to the property address. The First Named Complainant complains that he was never notified of this fact and he can find it nowhere in the paperwork for the mortgage. It does appear, that the address may have been applied automatically and that the First Named Complainant was not expressly told or informed this by the Bank. However, the Second Named Complainant confirmed the correspondence address for the account in her phone call to the Bank in February 2012. In addition, there is no doubt that she received the correspondence dated 25 January 2012 and I accept that the correspondence of February 2012 and August 2012 issued to the property address and was received by, at least, the Second Named Complainant.

The First Named Complainant ultimately is not disputing if the Second Named Complainant received the correspondence or not. In addition, the First Named Complainant submits that he is the main mortgage holder and that his daughter [the Second Complainant] would have had no understanding of the consequences of the 2012 letter or what the standard variable rate means.

The Bank submits that the mortgage was applied for as a private dwelling house by both Complainants. The Bank states that when a private dwelling house mortgages are drawn down and activated on the Bank's system, the property address automatically switches as the correspondence address. The Bank states that it is of the view that customers would be expected to be resident in their "private dwelling house" property.

The Bank rejects the First Named Complainant's description of himself as the main mortgage holder. The Bank points out that the mortgage is held jointly by the Complainants and they are both jointly and severally liable for the mortgage. In that regard, the Bank refers to the special conditions of the terms and conditions of the mortgage, and in particular part 4 (b).

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This provides, among other things, that the loan is being advanced jointly to the Complainants.

The Complainants are joint mortgage holders and the evidence is that at least one of them was given express notice of the end of the fixed rate period in February 2012 and the various rates and options available to the Complainants. It is clear that correspondence was being sent to the property the subject of the mortgage and while I accept that it would have been preferable if correspondence was also sent to the First Complainant's address, I don't find the Bank culpable in this regard in respect of the correspondence address. The letters sent to the Second Named Complainant were addressed to both account holders that is, both Complainants and if the contents of those letters were not brought the attention of the First Named Complainant, they should have been brought to his attention by the Second Named Complainant who was on notice of the contents of those letters.

For the reasons set out above, I do not 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

23rd May 2019

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.**