



<u>Decision Ref:</u>	2019-0274
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<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

The Complainants entered into a mortgage loan agreement xxxxxxx1161, with a previous provider on **16 February 2001**, in the amount of £100,000 (€126,973.80) for a term of 15 years (funds were advanced on **24 August 2001**). They entered into a further mortgage loan agreement xxxxxxx1163 with the previous provider on **21 February 2002**, for a term of 15 years in the amount of €12,697 (with funds advanced on **13 June 2002**).

The third party provider subsequently sold the Complainants loans to a Fund which is not a regulated financial service provider and the Provider commenced servicing the mortgage on **25 August 2014**.

The Complainants' complaint is that that there was overcharging of interest by the Provider and that the Provider acted wrongfully in issuing correspondence to the Second Complainant at an address that she had not lived at in a number of years.

The Complainants' Case

The Complainants submit that the Provider has changed the terms and conditions attaching to their mortgage loan agreements, without their consent. They submit that the payment distribution on each of their loan agreements has been changed, without their having been informed. The Complainants submit that on account **-1161**, the previous provider, with which they had entered into the mortgage agreement, charged a monthly instalment of **€438.74** whilst the Provider to which it was sold, charged a monthly instalment of **€391.66**

The Complainants submit that on account **-1163**, the provider with which they had entered into the mortgage agreements charged a monthly instalment of **€50.66** whilst the Provider has charged a monthly instalment of **€97.44** since it began servicing the mortgage. The Complainants submit that this has resulted in the term on mortgage **-1161** being extended and extra interest being applied as a result.

The Complainants state that when the mortgages were sold by the previous provider, it refunded **131** days of interest to the Complainants' accounts. They submit that the Provider proceeded, however, to charged **234** days interest and not the **131** that should have been charged.

The Complainants are unhappy that the amount of interest charged by the Provider in **2015** was exactly the same as they had been charged in **2014**, even though they had made 12 months repayments at that stage and the interest rate had not changed.

The Complainants are unhappy that correspondence issued to the Second Complainant by the Provider was sent to their previous address, in England, even though they have lived in Ireland since July 2003.

The Provider's Case

The Provider submits that it received the following account information in relation to the Complainants' two mortgage accounts (as of **25 August 2014**) from the third party provider, which transferred the Complainants' mortgage:

Mortgage accounts	Monthly instalment amount	Interest rate
xxxxxxx116-1	€391.66	3.65%
xxxxxxx116-3	€97.74	3.65%

Borrower Name	Mailing address provided by the previous provider
Mr X	[Irish Address]
Ms X	[UK Address]

The Provider submits that the previous provider sent a letter to the Complainants in **June 2014**, in which the Provider is named as the servicer of the mortgage loan, with whom their personal data may be shared. The Provider refers to clause 21 of the Mortgage Offer Letters, which the Complainants had entered into, which allows for the sale of the Mortgages to any third party and as a result to share any information required as part of the sale, which clause states:

"The [previous provider] may at any time and from time to time transfer, assign, mortgage and/or charge the benefit of all or any part of the mortgage, the loan or any part thereof and all of the rights and interests of the [previous provider] in and to any life assurance to the [previous provider] and all other contracts and policies of insurance relating to the property on such terms as the [previous provider] may think fit, with or without notice to the applicants(s) or any other person."

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The Provider submits that correspondence was issued by the Provider to the Second Complainant on 4 separate occasions between **22 August 2014** and **19 January 2015** to the address detailed above, which it had been provided with by the previous provider. The Provider submits that it has completed a full review of the mortgages and has determined that it was not provided with any other addresses, other than the address detailed above for the Second Complainant by the previous provider.

The Provider submits that, on **28 August 2014** the Second Complainant contacted its offices to advise that she was in receipt of its letter of **22 August 2014**, however, the Provider submits that the correspondence she was referring to was in the name of the First Complainant and the Second Complainant raised a complaint in this regard.

The Provider submits that it subsequently completed a review of the documentation it held on file to confirm that it was using the correct address for the Second Complainant. The Provider submits that the outcome of this review determined that the provider which had sold the Complainants' mortgage loan had provided it with varying address details for both parties to the mortgage, and that the correspondence details held for the Second Complainant comprised a UK address.

The Provider submits that as the previous provider had not provided a valid phone number for the Second Complainant, it had no means of contacting her. On **22 October 2014** it responded to the complaint raised by the Second Complainant on **28 August 2014**. The Provider submits that, the correspondence issued to the Second Complainant from **August 2014** was sent to the address confirmed to it by the previous provider, as the most up to date address for her.

The Provider submits that it issued the response by registered post, in order to ensure the safe delivery. The Provider submits that the correspondence was however returned undelivered on **11 November 2014** and the outcome of the delivery was recorded as "*Not known at this address.*"

The Provider submits that once it became aware of an issue with the address details held, it took proactive measures to try and ascertain valid address details for the Second Complainant and that following calls with the Second Complainant, on **19 January 2015** and again on **18 February 2015**, it updated its address details for her and all further correspondence was issued to the updated address.

The Provider submits that there have been no changes to the terms and conditions of the Complainants' mortgages and that this was confirmed in its correspondence to them dated **22 August 2014**. The Provider submits that the monthly repayment on mortgage -**1161** was **€391.66** and on mortgage -**1163** was **€97.74**, both prior to and subsequent to the transfer of the mortgages to the Provider.

It submits that the Complainants' mortgage accounts are "annual rest accounts" and that annual rest is a method of calculating the monthly repayment amount, whereby the interest calculated for the current year is based on the balance outstanding at the end of the previous year. The Provider submits that for these accounts, the previous provider

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calculated and applied interest for any given year on **01 January** of that year, based on the balance on **31 December of the previous year**. In **2014**, for account **-1161** this equated to interest of **€429.10** which was applied on **01 January 2014** (based on a balance of **€11,756.22** as at **31 December 2013**). The Provider submits that for account **-1163** this equated to **€138.46** interest, applied on **01 January 2014** based on a balance of **€3,793.36**.

The Provider submits that upon transfer of the accounts to the Provider on **23 August 2014**, the previous provider processed an adjustment to credit the Complainants' account with the interest which had been applied for the remaining 131 days of **2014**. It submits that this credit, amounting to **€154.01** and **€49.69** respectively is visible on the relevant Statement, issued by the previous provider.

The Provider submits that it uses a slightly different approach to annual rest accounts. It calculates interest for any given year, based on the balance outstanding at the end of the previous year. However, instead of applying the interest to the account on **01 January**, it is not applied until **31 December** of that year.

The Provider submits that as it recorded the principal balance exclusive of the annual interest applied by the previous provider on **01 January 2014** and then applied the annual interest on **31 December 2014**. It submits that therefore, there has been no detriment to the Complainants' account and interest incorporated in the outstanding balance transferred to a new loan assignee is inclusive of annual interest in the amount of **€567.56** being applied in **2014**.

The Provider submits that this is purely a timing matter and does not impact the customer as the monthly repayment amounts remain the same, as does the amount of interest applied and payable for any given year.

The Provider submits that although the Complainants' have expressed concern that the interest charged for **2015** was the same as that for **2014** in fact, the interest which it applied to the accounts on **31 December 2014** was the amount due in respect of **2014** and not **2015**.

With regard to the Complainant's reference to a change to the interest rate, the Provider submits that there has not been any change.

The Provider submits that based on the information provided by the previous provider, it confirms that the interest rate applicable to the Complainants' mortgages as of **25 August 2014** was **3.65%**. The Provider submits that it is not in a position to comment on any changes to the interest rate by the previous lender as it was not servicing the mortgages at this time.

The Provider submits that there has been no change to the interest rate on the mortgages since it commenced servicing the mortgages on **25 August 2014** until the mortgages transferred to the loan assignee on **24 June 2016**.

The Provider submits that the Mortgages were transferred to a new loan assignee on **24 June 2016** and it has outlined below the status of the Mortgages at this date:

Mortgage account number	Monthly repayment amount	Principal Balance	Maturity date	Arrears
-1161	€391.66	€3,058.70	10 August 2016	€0.00
-1163	€97.74	€1,686.76	10 June 2017	€0.00

The Complaint for Adjudication

- The complaint is that the Provider was guilty of maladministration of the Complainants' mortgage accounts insofar as when the mortgages transferred from the previous provider and the Provider began servicing the loan, the previous provider refunded 131 days of interest but the Provider subsequently charged 234 days and not the 131 that should have been charged.
- The Provider miscalculated the interest charged during 2015 (which was exactly the same as in 2014 even though 12 months further repayments had been made and the interest rate had not changed.)
- The Provider issued correspondence to the Second Complainant to her previous address in England where she had not lived for more than a decade.

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 12 July 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that

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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.

Interest Charged by the Provider

In relation to the first element of the Complainants' complaint - that when their mortgages were transferred, the previous provider refunded 131 days of interest but that the Provider, who began administering the loan, charged 234 days and not the 131 which the Complainants contend should have been charged.

I have had regard to the Provider's account of how interest was calculated. It has been submitted that the Complainants' mortgage accounts are "annual rest accounts" and that the interest is calculated for the current year based on the balance outstanding at the end of the previous year.

The Provider submits that the previous provider had calculated and applied interest for any given year on **01 January** of that year, based on the balance on **31 December of the previous year**. It has submitted that in **2014**, interest of **€429.10** was applied by the previous provider to the Complainants' account **-1161** on **01 January 2014**, based on a balance of **€11,756.22** as at **31 December 2013**. The Provider submits that **€138.46** was applied to account **-1163** on **01 January 2014** by the previous provider, based on a balance of **€3,793.36**.

The Provider submits that upon the transfer of the accounts to the unregulated Fund on **23 August 2014**, the previous provider processed an adjustment to credit the account with the interest applied for the remaining **131** days of **2014**. It submits that this credit amounting to **€154.01** and **€49.69** is visible on the relevant Statement, from the previous provider.

The Provider submits that its calculation of interest is similarly based on the balance at the end of the previous year, however, instead of applying the interest to the account on 01 January, it is not applied until 31 December of that year.

In examining this complaint, I have had regard to the Statements of Account, which have been furnished as part of the investigation of this complaint.

The Statement of Account shows that **€429.10** interest was applied to account **-1161** on **01 January 2014** by the previous provider.

It shows that **€138.46** interest was applied to account **-1163** on **01 January 2014**, by the Complainants' previous provider. The Statement shows that subsequently, on **22 August 2014**, the amounts of **€154.01** and **€49.69** were credited to the Complainants' account.

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It appears that the figure of **€154.01**, which was credited, represents **131** days of interest (i.e., €429.10 divided by 365 and multiplied by 131).

Similarly the figure of **€49.69** appears to represent **131** days of interest (**€138.46** divided by 365 and multiplied by 131).

I note from the Statement of Account in relation to account **-1161**, for the period **23 August 2014** to **10 June 2106** (when the loan was sold to the new loan assignee) there is an entry dated **23 August 2014** with a description of *"Take On – Interest Accrued"*, and a credit to the Complainants' account in the amount of **€275.09**.

This figure of **€275.09** appears to be **€429.10** minus **€154.01**, i.e, the amount of interest which accrued between **January** and **23 August 2014**. As such, this appears to represent a refund of the balance of interest which had been charged to the Complainants' account, by the previous provider on **01 January 2014**.

On the **31 December 2014** the amount of **€429.10** was then charged in interest to this account, in respect of the year 2014. This is the same amount of interest which had been applied by the previous provider at the beginning of **2014** but subsequently refunded.

I accept that this appears to comprise a calculation of interest for 2014, based on the balance outstanding at the end of the previous year (2013). Instead of applying the interest to the account on **01 January**, as the previous provider did, the Provider refunded the interest applied on **01 January 2014** and applied it instead on **31 December** of that year.

Similarly, in relation to account **-1163**, I note from the relevant Statement of Account, an entry dated **23 August 2014** described as *"Take On – Interest Accrued"* which credits the Complainants' account in the amount of **€88.77**. This figure appears to be derived from **€138.46** minus **€49.69**, and as such represents a refund of the balance of interest which had previously been charged by the previous provider on **01 January 2014**.

On the **31 December 2014** the amount of **€138.46** was charged in interest to this account, by the Provider in respect of the year **2014**. This is the same amount of interest which had been applied by the previous provider at the beginning of 2014 but subsequently refunded.

I am satisfied therefore that the interest was not applied twice and I accept that no detriment was suffered by the Complainants as a result of the Provider's method of the calculation of interest.

The Complainants have also submitted that they are unhappy that the interest charged by the Provider in 2015 was exactly the same as in 2014, even though they had made 12 months repayments and the interest rate had not changed.

I have had regard to the relevant Statements of Account and I note that on account **-1161**, the amount of interest charged on **31 December 2014** was **€429.10**. The amount charged on **31 December 2015** was **€273.22**.

On account **-1163** the amount of interest charged on **31 December 2014** was **€138.46** and the amount charged on 31 December **2015** was **€100.70**.

I am therefore satisfied that the interest charged by the Provider was not exactly the same in 2014 and 2015.

Old Address Used by the Provider for Correspondence

The Complainants are unhappy that correspondence which issued to the Second Complainant was sent to their previous address in England where they have not lived for many years.

The Provider has submitted that the details which it was using to correspond with the Second Complainant during the period complained of were the details which had been furnished to it by the previous provider when it transferred the loan.

I note that as part of the evidence furnished, there is a letter dated **09 June 2014** from the Complainants' previous mortgage provider to each of the Complainants, advising that their mortgage had been sold to the Fund previously referred to (upon whose behalf the Provider serviced the loan). I note that the letter which issued to the Second Complainant was sent to the Second Complainant's address in England. As this was the address being used by the previous provider immediately prior to the transfer of the loan, in my opinion this points to this being the address that it subsequently supplied to the Provider.

Two telephone calls took place on **28 August 2014** between the Provider and the Second Complainant. Having received a letter from the Provider dated **22 August 2014**, which requested certain documentation in compliance with anti-money laundering requirements (namely, proof of identity and proof of address) the Second Complainant phoned the Provider to advise that they would not be sending the information which had been requested, on the basis that all of the information it held in relation to them was up to date. The Provider said that it would make a note on the account to that effect.

An internal Note of the Provider of this date, in relation to its having sought updated details, states:

Mrs called – sec done. Mrs advised that she is not happy with the letter that was received. Mrs adv that she will not be sending in proof of identification as it should have been passed to us by [previous provider] Adv Mrs that each lender is required to hold up to date information on all accounts. Mrs adv that our information must be up to date as the letter was received. Adv Mrs that she is within her rights not to send the information. Mrs unhappy that this is not stipulated in the letter. Mrs also advised that the letter is only addressed to Mr and not to her. I apologised and adv that it is company policy to send letters to all account holders. Asked if Mrs would like me to lodge a

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complaint. Mrs asked that I do and to ensure that it is noted that Mrs is complaining regarding the tone of the letter. Adv that I will log complaint."

On **22 October 2014** the Provider issued its Final Response Letter to the issues raised by the Complainant on **28 August 2014**.

The Internal Notes of the Provider indicate concerns about the correct mailing address. An entry dated **22 October 2014** states:

Reviewed acc and can't find reference as to ms changing address so will issue response to mailing address on file.

A further entry dated **22 October 2014** states:

FRL issued to cus with copy of mortgage deed enclosed . envelope marked private and confidential.

On **11 November 2014** the letter was returned, marked "unknown at this address".

An internal Note of the Provider, dated **11 November 2014** states:

Letter issued on 22.10.2014 was been [sic] returned marked not known at this address. This letter was originally sent by registered post. As we hold no other address for Ms [Complainant] have sent email to compliance for advice on how to proceed.

On **19 January 2015** the Second Complainant phoned the Provider about a letter which she had received that morning (the letter having been addressed to the First Complainant) and she wanted to know what it was about. The Provider advised that it was in relation to a letter it had received from the Complainants' insurance company about the mortgaged property.

The Agent asked the Complainant what the best number to contact her at was – she said the one that was on file. The Agent confirmed that this was the home address one and read it out. The Complainant confirmed that it was.

During a second call of **19 January 2015**, the Provider rang to speak with the Second Complainant to advise that the address which it held on file for her was different from the property address. Having had regard to the documentation in question, it seems that the Provider was referring to the fact the property address was in Ireland whilst the address it held on file for her was a UK address. However the Complainant appeared to understand the Provider to be referring to some other issue with the address and responded that, "*it always has done and I don't know why*".

The Provider asked, "*Do you want us to send the response to the property address at [X Road, Y Street]?"*

The Complainant responded that they were the same street.

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The Provider asked, “Do you want me to change your mailing address to that then?” The Complainant responded “whatever, they all find us.” The Agent confirmed that she would change the address and issue the response.

On **09 February 2014** the Provider issued a further Final Response Letter to the Complainant,

On **18 February 2015** the Second Complainant advised the Provider that she was in receipt of a letter dated **09 February 2015** from it and that the Provider appeared to have been writing to her at their previous UK address. The Provider advised that that was the address which had been furnished to it by the previous provider and that it could only go on the information to what was provided to it and which it had on file when it issued the letter.

As part of the investigation of this complaint, the Provider has furnished two sets of data which it has submitted was supplied to it by the previous provider, namely “Loan Level Data” and “Customer Level Data”.

I note that the “loan level data” contains an “account address,” being the property address while the Customer Level data records the First Complainant’s address as being the same as the property address. The Second Complainant’s address is recorded as a UK address.

The Provider was asked to explain why the Complainants were not corresponded with using the data held in the “loan extract” data, i.e. using the property address.

The Provider responded that:

“loan level data contains information relating specifically to the loan as at the date of drawdown i.e. advanced amount, advance date etc., and the migration information at date of migration such as the balance at transfer, interest rate, remaining term etc. The customer level data contained information relating specifically to the customer, i.e. contact address and phone number. This data may change throughout the lifetime of the loan.

Relevant laws and legislation dictates that Customer/Personal information should be accurate and up to date and thus [the previous provider] had an obligation to ensure that the customer information was as such.

At the date of transfer [the Provider] had not been in contact with the customers, it is therefore plausible for [the Provider] to assume that the Customer level data provided was correct and up to date. In this regard, Loan level data could not be considered reliable for contact details as information at the loan level would have been compiled at both the advance date and at migration.”

Having had regard to the evidence, I accept that it was reasonable of the Provider to rely upon the details furnished to it by the previous provider. I note that when it began servicing the loan, it had requested updated proof of address from the Complainants but they had declined to provide these details.

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The Provider has submitted that as the previous provider had not provided a valid phone number for the Second Complainant, it had no means of contacting her.

I accept that when it comes to making telephone contact with a customer the Consumer Protection Code 2012, places certain restrictions on a provider and states:

Telephone Contact

3.40 A regulated entity may make telephone contact with a consumer who is an existing customer, only if:

d) the consumer has given his or her consent to being contacted in this way by the regulated entity.

Although the Provider sought the Second Complainant's consent to receive calls in relation to her mortgage account, on **28 August 2014** and asked the Complainant to confirm which was the best contact number for her, the Complainant advised it was the one that it had on file. The Agent responded "perfect" without checking what, if any number, was on file for the Complainant. The Provider has submitted that as the previous provider had not however provided a valid phone number for the Second Complainant, it had no means of contacting her. I note that this was rectified during a phone call of **19 January 2015** when the Agent, at the end of the call, asked Complainant :

Are you okay for calls if we need to contact you?"

Complainant: Yes, fine.

Agent: You are. And what is the best number to contact you on?

C: The number that you have on file. Alright, thanks very much for your help.

A: No, just bear with me one second there [Complainant] sorry now, there isn't actually - is that the home number is it? The [reads out number].

A: That's right

C: That's perfect, thank you very much...

I note that after this date, phone calls were made to the Complainant at that number and the address updated. I appreciate that the Second Complainant was annoyed that the Provider had been using the wrong address for a number of months however, I accept that the Provider was relying upon the contact details as furnished to it by the previous provider. As noted above, it seems that the previous provider had also been writing to the Second Complainant at the incorrect, UK address, up to **09 June 2014** when it wrote to her to inform her about the sale of the loan.

I note that the Provider requested proof of address from the Complainants in August 2014, pursuant to the obligations upon financial service providers to hold up to date information on its customers in accordance with the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013. However, when such information was requested of the Complainants they refused to furnish same and lodged a complainant with the Provider

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arising from the letter of request which they received in this regard, on the basis that the information was up to date.

I accept that when it received updated contact details from the Complainants the Provider updated its records accordingly.

On the basis of the evidence made available to me, I do not therefore believe that the Provider acted wrongfully or that there are any grounds upon which it would be appropriate to uphold the Complainants' 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
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

6 August 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.**