



<u>Decision Ref:</u>	2021-0507
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Variable Mortgage
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Dissatisfaction with customer service Maladministration (mortgage)
<u>Outcome:</u>	Partially upheld

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

The complaint is in relation to a commercial loan facility.

The Complainants' Case

The Complainants submit that they took out a commercial loan in **2005** in order to purchase an investment property. The Complainants state that they had a commercial mortgage loan with 1.6% margin over a period of 20 years to be paid by monthly standing order, and that the rate on this loan was fixed for a period of three years. The Complainants contend that there was an issue around communication and the rate of interest applicable between **2005 and 2007** and submit that the issue was rectified in the letter of offer dated **2007**.

In **2007** the Complainants were issued with a new letter of offer for a 20 year term with a margin of 1.6%. The Complainants submit that they agreed to fix the interest rate for a period of three years. The Complainants contend that they were not given the option to assign a variable rate at that time. They further contend that all payments were made on time.

The Complainants submit that in **January 2011**, the original three-year fixed rate term expired and the Provider made contact with them regarding a new fixed term interest rate. The Complainants submit that they were not informed at that time of any option to opt for a variable rate and did not question this as the loan was called a 'fixed-rate loan'. The Complainants contend that they opted for a five-year fixed rate as repayments were only marginally higher than the three-year fixed rate option and the Provider had indicated the rate would most likely increase.

In **2016**, the five-year fixed term period ended, and the Complainants contend that the Provider failed to contact them to offer any new rates. The Complainants submit that in **September 2017**, they were completing a tax return for the year **2016** and their accountant noticed a drop in the interest rate. The Complainants state that they contacted the Provider to ask why a variable rate had not been offered in the past and that its response was that either a fixed or variable rate could be agreed on the account. They contend that the Provider was unable to clarify why this had not been explained or offered previously.

The Complainants want the Provider to review the interest rates that should have been applied and reimburse any overpayment, which the Complainants estimate at between €20,000 and €30,000.

The Provider's Case

The Provider argues that in the Offer Letter issued to the Complainants on **18 December 2007**, the interest rate applicable to the loan is set out. It highlights that the Offer Letter states that the rate is fixed for a three-year period with a margin of 1.6% and that the term of the loan is for 20 years. The Provider argues that the rate applied at the date of drawdown on **11 January 2008** was 6.25%.

The Provider refers to clause 5 of the terms and conditions of the 2007 Offer Letter which sets out the conditions concerning fixed rates and what would occur on the expiry of a fixed rate. The relevant clause indicates that at the end of a fixed-rate period, the borrower can request the bank to provide a further fixed-rate period or revert to the normal variable rate. The Provider argues that it is satisfied that the clause indicates the nature of a fixed-rate period (that is, that it is for a finite period), and which is determined by the term of the fixed rate chosen (that is, three-year or five-year fixed rates).

The Provider argues that the clause clearly sets out that if the Complainants did not wish to avail of a fixed rate at the date of drawdown, they could opt to move to the prevailing variable rate. It argues that the clause also clearly sets out that if the Complainants did not choose to avail of a further fixed-rate period after the expiry of the initial period in **January 2011**, the loan would by default move to a variable rate. The Provider argues that both of these express provisions clearly demonstrate the availability and choice of the variable rate of interest that was open to the Complainants at drawdown in **2008** and further on the expiry of the original three-year fixed-rate in **January 2011**.

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The Provider points to the confirmation form signed and accepted by the Complainants on **26 January 2011** accepting a further five year fixed-rate period at a rate of 5.69% interest including margin. The Provider highlights that the letter confirmed the fixed rate orally agreed on **20 January 2011** and clarified that the terms and conditions of the existing offer letter continued to apply.

The Provider argues that it is satisfied that the relevant sections of the loan documentation are sufficient to refute the allegations of the Complainants that they were misinformed by the Provider regarding whether a fixed-rate applied to loan, the length of the fixed rate being entered, and whether the product title 'fixed-rate loan' was misleading. The Provider argues that it is clear that a fixed rate was applied to the loan from the **2007** Offer Letter and the **2011** confirmation form which clearly stated that the loan was on a fixed rate. Second, it argues that those fixed-rate periods were clearly stated to be three and five years in length respectively and it was not the case that the payments were fixed over the term of the product from inception. Third, and in so far as the Complainants were in any way confused by the product title, the Provider argues that it included a clear description of the operation of a fixed rate at clause 5 of the **2007** Offer Letter. It argues that this included a description of what would occur if and when the Complainants chose not to avail of a further fixed-rate, which was the case in **January 2016**.

The Provider argues that the representatives of the Provider that the Complainant dealt with in **December 2007** and **January 2011** regarding the interest rate applicable on the loan have left the employment of the Provider for quite some time. The Provider states that it is therefore unable to obtain precise information on what discussions were had with the Complainants on the interest rates that could be applied to the account. The Provider argues that it is standard practice that the Provider will discuss all interest rates available with the Complainants, namely fixed and variable rates. While the Provider cannot confirm what exactly was discussed, it argues that it is satisfied that the calls were conducted at a time when that standard practice was in place. It argues it is therefore likely that the representative of the Provider did in fact discuss all available rate options with the Complainants, including a variable rate, which is the default rate for loan accounts such as the present one.

The Provider argues that the contemporaneous documentation demonstrates that the Complainants were aware significantly in advance of signing the Offer Letter in **2007** of the fact that they would be moving to a fixed rate which was finite, namely that it would expire after three years from drawdown. Further, and while the Provider states that it is not in a position to comment on the allegations made in respect of conflicting advice is being given to the Complainants, the Provider argues that the documentation signed and accepted by the Complainants in **2007 and 2011** was clear and accurately described the nature of the interest rate which was applied to the loan. Ultimately it argues that it was a matter for the Complainants to satisfy themselves that the interest rate they decided upon was the one which best suited their financial needs of the time of signing the agreement.

In respect of the issue of overpayment, the Provider argues that it is satisfied that the Complainants voluntarily chose to make overpayments on the loan account. The Provider points to an email from the Complainants dated **20 January 2011** in which they confirm that they wish to leave their monthly payments as they were and move to the new, lower fixed rate of interest. The Provider argues it is satisfied that the Complainants put themselves in an overpay position of their own volition and within their own knowledge. It argues that the standing order of €3,821.31 each month could only be changed by the Complainants and cannot be amended by the Provider.

It argues that it was a matter for the Complainants as to whether or not they continued with the overpayments on the account.

The Provider argues that was entitled under Provision 32(b) of the Consumer Protection Code 2006 (**CPC 2006**) to contact an existing customer in relation to a product held by that customer. The Provider argues it is satisfied it was reasonable and appropriate to contact the Complainants in January 2011 to advise them that their fixed rate was due to expire and to provide options for a further interest rate which could be availed of after the expiry of the fixed rate period.

In respect of its failure to contact the Complainants to advise them that their payments would revert to a variable rate at the expiry of the five-year fixed rate term in **2016**, the Provider points to the wording of clause 5 of the **2007** Offer Letter. It argues that the clause states that the new rate applying will be notified to the customer which, it argues, was done at each rollover date by the issuance of a rollover letter to the Complainants.

The Provider states that the Complainants issued a complaint letter on **13 January 2018**. The Provider states that it has no record of issuing an acknowledgement letter to the Complainants in respect of the complaint. The Provider states that the Complainant contacted it on **29 March 2018** advising that they had not received a response to the letter of **13 January 2018**. Thereafter, the Provider argues that an acknowledgement letter was issued on **6 April 2018** in respect of the complaint which was officially logged on **29 March 2018**. The Provider accepts that this was in breach of Provision 10.9 of the Consumer Protection Code 2012 (**CPC 2012**) in relation to complaints handling. The Provider apologises for its error in this regard and offers a goodwill gesture of €250 to the Complainants in recognition of its failure to comply with its obligations under CPC 2012.

The Complaint for Adjudication

The complaint is that the Provider poorly administered the Complainants' mortgage loan, including failing to provide all relevant information to the Complainants about interest rates, and applying incorrect rates resulting in overcharging of interest.

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.

In arriving at the view that an Oral Hearing would not be beneficial, I am conscious that the Complainants' version of what occurred in **2007 and 2011** is not accepted by the Provider. Having considered the matter, however, I am satisfied that the evidence available to me, in particular the contemporaneous documentary evidence, is sufficient for the purposes of a fair, appropriate and proportionate adjudication of the complaint. I am further of the view that the holding of an Oral Hearing is unlikely to yield further reliable information considering the 10 and 14 year periods that have elapsed since the conversations and interactions in question and the fact that the Provider's representatives are no longer employed by it.

A Preliminary Decision was issued to the parties on 22 November 2021, 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 issue of my Preliminary Decision the Complainants made a submission under cover of their email to this office dated 28 November 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this office under cover of its email dated 8 December 2021 that it had no further submission to make.

Having considered the Complainants' additional submission and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

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A commercial mortgage loan was issued by the Provider to the Complainants by way of Offer Letter dated **21 November 2005** in the sum of €407,000. This was signed and accepted by the Complainants on **29 November 2005**. The interest rate applicable to the loan was the Provider's 'cost of funds' rate plus a margin of 1.6%. The cost of funds rate was then 2.31%. The term of the loan was 20 years from drawdown. The definition of 'cost of funds' in the appendix to the Loan Offer identified that the interest rate was set on the date of drawdown and reset on the first day of each interest rate period. It was therefore a form of variable rate.

I note that in the email attaching the Offer Letter of **21 November 2005**, the Provider stated as follows:

"To give you an idea of the current fixed rates available see below – needless to say you have to add the 1.6% margin on to get your total rate."

A list was then set out of various fixed rates for periods of between 1 and 10 years. This cover email suggests that although the original loan that was accepted by the Complainants was a variable rate, the Complainants were interested in fixing their interest rate as the various options were under discussion.

By letter dated **10 December 2007**, a representative of the Provider referred to ongoing discussions in respect of interest rates on several loan facilities in the names of the Complainants.

In respect of the commercial mortgage at issue, the letter stated as follows:

"As mentioned, the standing order covering the commercial mortgage did not increase in line with interest rates, leading to the last letter advising of the required increase in repayments.

As advised, we are not in a position to reduce the bank's margin of 1.6% above the Monthly Cost of Funds which you are currently on, but we can offer you a 3 (sic) fixed rate for this commercial loan for 6.25%.

I have however, been able to reduce the rates on your home loans from 5.3% to 4.7%, and can now detail below the effect of this;

...

I have enclosed a new standing order which I would be grateful if you could complete and return to me in the enclosed envelope. The repayments for the homeloan mortgages will change automatically trigger direct debit system, but I would ask you to sign the acceptance of the changes in the rates and also return this to me.

You will also receive a revised loan offer in the next few days, which is necessary to accept the 3 year fixed rate on the commercial mortgage. Again, I'd ask you to sign this and return it to me.

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Should you require further information please feel free to contact me at xx-xxxxxxx."

With the Offer Letter dated **18 December 2007**, a new agreement entered into between the parties in respect of the loan balance in the sum of €387,795.84.

The relevant terms were set out as follows:

"Interest Rate

The rate(s) set out in the Offer Letter are indicative only in respect of the new facilities detailed and are subject to change between the date of this Offer Letter and the actual drawdown of the facility. The actual rate will be determined on drawdown and subsequent roll-over dates (if applicable) and as set out in Clause 5 of the standard Terms and Conditions set out in the appendix hereto.

3 Year Fixed Rate (4.65%) plus the bank's margin of 1.6% = 6.25%

Terms of Facilities and Repayment

20 years from drawdown & €2987.82 per month on a 3 year fixed rate."

Clause 5 of the Terms and Conditions provide as follows:

"5. Interest

(i) [Provider] Rates:

The rate(s) set out in this Offer Letter, whether fixed or variable will be determined by the Bank by reference to the Borrower's category, term, purposes and security proposed for the facility. Fixed rates are rates fixed for a period in excess of one year, determined on the date of original drawdown.

- **Variable**

On a rate change occurring in [the Provider] Variable Rates, (whether Prime or otherwise), the new rate will automatically apply to the facility as and from the date of such change and the Bank will give details thereof to the Borrower in the statement which issues following such rate changes.

- **Fixed**

Any fixed rate quoted in the prevailing fixed rate as of the date of offer. Due to possible fluctuations in interest rates, the Bank cannot guarantee that the said fixed rate will apply on drawdown.

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This being the case, the Borrower can decide to accept the fixed rate applying on the date of drawdown or take a variable rate. At the end of a fixed rate period, the Borrower may request the Bank to provide a further fixed rate period based on the then existing fixed rate or may revert to the normal variable rate.

However, the provision of any further fixed rate period from time to time ... will be at the sole discretion of the Bank. If no further fixed rate period is granted at the end of any particular fixed rate term, the facility will revert to a variable rate. Either way, the new rate applying will be notified to the customer.
(emphasis added)

Several important features of the Complainants' mortgage loan emerge from the above. First, the documentation made it clear that a fixed interest rate applied to the loan but only for a set period of three years out of the 20 year term. Second, the default position at the end of the fixed rate period was that the loan would revert to a variable interest rate. Third, at the expiry of the period, the Provider was entitled but not obliged to offer a further fixed rate period at the then existing rates but was in any event obliged to notify the Complainants of the new rate applying to the mortgage. I am satisfied that the relevant provisions were clear and comprehensible. I would add, also, that automatic reversion to a variable rate at the expiry of a fixed rate is a common feature in mortgage lending, both retail and commercial.

While I appreciate that the Complainants have submitted that they were unaware that they had an option to remain on a variable rate at the end of their three-year fixed rate period, I accept that the Provider made the position clear in the terms and conditions of their mortgage loan. Not only were the Complainants entitled to move to a variable rate at the end of the fixed rate period, the loan would automatically revert to a variable rate unless and until they were offered and they accepted a further fixed rate.

By email dated **19 January 2011**, a representative of the Provider (a relationship manager) wrote to the first Complainant as follows:

"As discussed by phone, the interest rate on your loan ... was fixed for 3 years to 11th January 2011.

It was fixed at 'Cost of Funds 4.65% + Margin 1.60% @ 6.25% on 11th January 2008. Since 11/1/2011, it is rolling (temporarily) on a weekly interest period – to 25th January."

By email dated **20 January 2011**, the first Complainant replied to the Provider's representative thanking her for her phone call and the relevant details. He stated as follows:

"I would like to leave my monthly payments as they are present, and move to a five-year fixed rate as below (5.69%).

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Please could you arrange this for me?"

By email dated **20 January 2011**, the Provider's representative responded to the first Complainant as follows:

"I confirm I have booked the rate @ 5.69% - which will commence on 25th January 2011.

Also I confirm that the standing order payment can remain the same. However I note that the January payment has not been made - as when the standing order was set up in January 2008 - it was set for 3 years only and consequently the last payment was December 2010.

I will send you a new standing order authority this evening. ... When I get it returned I can re-commence the payment – commencing January 2011 – without an expiry date."

A Customer Confirmation document in respect of the mortgage loan dated **21 January 2011** was sent to the Complainant from the relationship manager. This document stated that the rollover period was for five years and that the agreed interest rate including margin was 5.69% from **25 January 2011**. The document noted that *"the purpose of this letter is to confirm the fixed rate we agreed on 20/01/11. The terms and conditions of the existing offer letter continue to apply."*

The Complainants signed the customer confirmation portion of the document on **26 January 2011** confirming that they had agreed to the nominated fixed rate and that they had made the decision independently, without reliance on any communication from the Provider.

The email of **19 January 2011** as submitted into evidence appears to be incomplete. I note that the top of the email states 'Page 1 of 3' but only page 1 has been submitted. Further the email ends abruptly and is unsigned. It would have been preferable if the balance of this email was submitted in evidence or at least an explanation provided as to why only this segment is currently available.

During the course of the adjudication of this complaint, a query arose of the contents of an email dated **19 January 2011**. This office had received page 1 of the email but the top of the email states page 1 of 3. On **29 September 2021** we requested the Provider to furnish a complete copy of this email. The Provider responded on **15 October 2021**, as follows:

"The Provider notes that the item in question is a printed email thread, which is identified at the top right hand corner as "Page 1 of 3". The Provider has reviewed its hardcopy files, from which the email was recovered, and notes that pages 2 and 3 of the email are not within the files. The Provider also notes that the email was redacted within the hardcopy file, and as such there is no identifying information in relation to the sender within the Provider.

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The Provider has further sought information from the relevant business department within the Provider in an attempt to identify the email thread within its databases. Owing to the redacted identifying information, and the fact that the email was sent nearly 12 years ago, the Provider has been unable to locate the email in this way.

The Provider apologises for any inconvenience caused by this. The Provider would welcome the opportunity to allow the Complainants to provide the relevant email chain if available to them on their own email database.”

The Provider’s response was shared with the Complainant.

The email of **19 January 2011** states that there was a phone call between the parties in or around **19 January 2011** in which the expiry of the three-year fixed rate and the options available to the Complainants were discussed. The correspondence states that the rate was fixed from **January 2008** at a fixed and specified cost of funds rate of 4.65% plus the margin of 1.6%. Prior to **January 2008**, and as set out above, the interest rate was a variable rate based on a fluctuating cost of funds rate (plus the margin). In this context, it is not clear to me on what basis the Complainants suggest that they were unaware that they had an option to choose a variable interest rate in **2007** when they were on such a variable rate between **2005 and 2007** and chose to fix their rate from **January 2008** for a period of three years.

Further, the email of **21 November 2005** which lists the available fixed rates suggests that the Complainants were interested from drawdown in fixing their interest rate, which commenced as a variable cost of funds rate.

While there is no express reference in the email of **19 January 2011** to the option of remaining on a variable interest rate, the language of the email ties in with the terms and conditions of the Loan Offer. As set out above, the default position under the Loan Offer was that at the expiry of each fixed interest rate term (that is, **11 January 2011**), the loan would revert to a variable rate unless and until a new fixed rate was agreed. In the email of **19 January 2011**, the Provider’s representative stated that since **11 January**, the account was on a temporary, rolling weekly interest rate.

I acknowledge that this sentence did not expressly set out that the then-current interest rate was variable but it certainly suggests that was the case. It was manifestly not a fixed rate and, as such, must have been a type of variable rate. The Complainants could have sought more information from the Provider’s representative if they were in doubt as to the relevance of this sentence. I accept that it was the Provider’s standard practice at the time to discuss all available options in respect of interest rates with customers, which seems to be borne out in the email correspondence submitted and the fact that a telephone call took place between the parties in respect of interest rate options around **19 January 2011**. Further, the terms of the loan as regards interest rates made it clear at all times that the loan would revert to a variable interest rate at the expiry of a fixed interest period.

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As against this, I note from the Provider's account history report that that the costs of funds rate that applied to the Complainants' account for the two week period between **11 January and 25 January 2011** was significantly lower than the fixed rate agreed from **25 January 2011** onwards. The variable cost of funds rates for those weeks appear to have been 0.57% and 0.69% respectively, leading to a total interest rate inclusive of margin of 2.17% and 2.29% for the relevant periods. The fixed rate agreed was 5.69%, more than 3% higher than either of those variable rates based on costs of funds. This disparity is concerning given the absence of information available to me on what precise information was provided to the Complainants when agreeing a new five-year fixed rate period. The then-current 'cost of funds' variable rate should have been notified to them in the course of discussions on interest rates. It would have been preferable if their options were communicated to them in writing. I am not aware of what the Provider's 'costs of funds' rate was for the five year period of the second fixed rate between **2011 and 2016**. I note that the costs of funds rate was 0.6% on **25 January 2016**, so an interest rate inclusive of margin of 2.2% was applied on the expiry of the second fixed rate period, and varied thereafter but at a similar level.

Ultimately the complaint is that the Complainants were not made aware that they had the option to remain on a variable rate of interest after the expiry of the three-year fixed term. In light of the available documentation, I do not accept the Complainants' contention that they were not made aware by the Provider that they had the option to remain on a variable rate of interest from **January 2011**. This ought to have been clear to them from the loan terms and conditions and at least alluded to in correspondence in **January 2011**. Rather, the Complainants chose to fix their interest rate for a period of five years. There are advantages and disadvantages associated with both fixed and variable rates. I note that the relevant period was one of severe market volatility and high interest rates, both fixed and variable. Choosing to fix their interest rate for a five year period was the Complainants' choice to make based on their financial circumstances and any independent advice they opted to take. It was not for the Provider to advise them in this regard, though they should have been provided with sufficient information by the Provider to enable them to make an informed decision. In my view, they had sufficient information available to them, including the relevant terms and conditions, to at least ask further questions of the Provider during discussions in **January 2011** if they were unclear on their options.

In respect of an alleged overpayment on the account, the email exchange from **19 and 20 January 2011** set out above also establishes that it was the decision of the Complainants not to decrease their monthly mortgage payments in line with the reduction in their interest rate from 6.25% to 5.69% from **25 January 2011**. As the emails make clear, the first Complainant communicated his decision not to amend the standing order and was informed that while this was acceptable to the Provider, he had to complete a new standing order since the previous one had expired on the expiry of the three-year fixed rate. In my view, it was the Complainants' decision to make over-payments from this time against their commercial mortgage, a decision that would reduce their interest obligations on the account over time. I am not upholding this aspect of the complaint.

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In respect of the expiry of the five-year fixed rate in **January 2016**, it would not appear that there was any communication from the Provider to the Complainants to alert them to the expiry of the fixed rate or to offer them a choice to move to a further fixed rate. As set out above, clause 5 of the Loan Offer provides as follows:

“If no further fixed rate period is granted at the end of any particular fixed rate term, the facility will revert to a variable rate. Either way, the new rate applying will be notified to the customer.”

While the Provider has suggested in its submissions to this Office that it notified the new variable rate to the Complainants by way of ‘roll-over letter’, it has not submitted any evidence to support this contention. On the basis of the available evidence, I accept that no such notification was made by the Provider. Accordingly, I am of the view that the Provider did not comply with its contract in failing to notify the Complainants of the new variable interest rate applicable to their commercial mortgage on the expiry of the five-year fixed rate in **January 2016**.

Further, I am of the view that the Provider ought to have written to the Complainants to inform them that their five-year fixed rate was due to expire and to set out any available options as regards interest rates. Under Provision 2.6 of the Consumer Protection Code 2012 (**CPC 2012**), the Provider is obliged to make *“full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer”*. I am of the view that the expiry of a fixed interest rate is relevant material information that ought to have been communicated to the Complainants in **January 2016**.

Further, under Provision 4.2 CPC 2012, the Provider *“must supply information to a consumer on a timely basis”* having regard to *“a) the urgency of the situation; and b) the time necessary for the consumer to absorb and react to the information provided.”* In failing to inform the Complainants of the expiry of the fixed rate period and any options available to them in terms of fixing their interest rates, I am of the view that the Provider has not complied with its obligations under CPC 2012. Finally, I am of the view that its conduct in failing to communicate with the Complainants in respect of the expiry of the fixed interest rate was unreasonable.

A written complaint was made by the Complainants to the Provider dated **13 January 2018**. No acknowledgement of the complaint was received until the Complainants contacted the Provider by phone on **29 March 2018** to follow up on their complaint. A five-day acknowledgement letter was issued by the Provider to the Complainants dated **6 April 2018**. After two further update letters, a final response letter was issued by the Provider to the Complainants dated **6 June 2018**. The Provider has accepted that its failure to log the complaint of **13 January 2018** and to issue an acknowledgement to the Complainants within five business days was in breach of Provision 10.9 CPC 2012.

The Provider issued its final response letter on **6 June 2018**. The letter stated that the Provider had carried out an extensive search of its archives to assess any remaining information in respect of the complaint but the only documentation in existence was that received by the Complainants in early **2018** through a data protection request.

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The letter noted that the Provider could not locate any other documentation in regard to interest rates offered to them. It further argued that the Provider was only obliged to retain records for six years under the CPC 2012. The letter stated as follows:

“Therefore because we do not have the records of events and indeed the staff members you then dealt with have left [the Provider] I am unable to state what discussions, advice or negotiation took place at this remove. I appreciate this may not be desired response.

I regret to advise having given careful consideration to the information provided to you I am unable to uphold your complaint. However, I trust that my letter will go some way towards providing you with an explanation of the records held on file.”

While I am satisfied that the Provider is correct in respect of its obligations to retain records for a six-year period under CPC 2012, I am not satisfied that this letter of **6 June 2018** represented an appropriate response to the complaint raised by the Complainants. The Provider made no attempt to deal with the issues that the Complainants had raised or to highlight any relevant documentation that would tend to support or counter the complaints raised. I appreciate that a more detailed response was issued by the Provider by letter dated **15 April 2019** after a complaint was made to this Office and which mirrors the Provider’s submissions to this office in response to the complaint, but its original response to the complaint was nowhere near sufficient. In this regard, I note that under Provision 10.1 CPC 2012, the Provider is obliged to *“seek to resolve any complaints with consumers.”*

With its letter of **6 June 2018**, I am not satisfied that the Provider attempted to resolve the complaint in the present case and hence it was in further breach of its complaint handling obligations under CPC 2012.

Because of the Provider’s failure to furnish the Complainants with interest rate options in **January 2016**, I am of the view that in light of the various lack of compliance identified above, it is appropriate to direct compensation.

In my Preliminary Decision I stated that resulting from the Provider’s failure to communicate with the Complainants on the expiry of their fixed interest rate in **January 2016**, coupled with the Provider’s poor complaint handling, I intended to partially uphold the complaint. I also indicated my intention to direct the Provider to pay a sum of €2,000 in compensation to the Complainants.

The Complainants, in a post Preliminary Decision submission, argued that the compensation I intended to direct was not sufficient.

Having considered the Complainants’ additional submission and all the submissions and evidence I remain of the view that €2,000 is a reasonable sum of compensation in all the circumstances of this complaint. Therefore, I uphold the complaint and direct that the Provider pay a sum of €2,000 to the Complainants.

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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) (a) the conduct complained of was contrary to law and (b) the conduct complained of was unreasonable in its application to the Complainants.**

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 Complainants in the sum of €2,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

13 December 2021

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,

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**(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.

