



<b><u>Decision Ref:</u></b>	2021-0535
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Errors in calculations
<b><u>Outcome:</u></b>	Upheld

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

This complaint relates to the amount of compensation issued by the Provider as a result of overcharging on the Complainants' mortgage accounts.

**The Complainant's Case**

The Complainants stated that they raised their complaint following a "*recent mortgage interest rate review*" carried out by the Provider on two mortgage accounts they held with the Provider. The Complainants state that they were overcharged on both mortgages over a three-year period to the total value of €10,344 (ten thousand three hundred and forty-four euro).

The Complainants state that whilst they acknowledged the interest rate review has completed, with the overcharged amount refunded and additional compensation issued, they contend that they have suffered a much greater financial loss as a result of the overcharging at the time, and the compensation received is not sufficient.

The Complainants state that the Provider overcharged them on two mortgage accounts between **September 2007** and **September 2010**. The Complainants state that "*During this time period we came under significant financial strain like many others due to the recession.*" The Complainants state that their income was reduced due to changes in their

employment and as a result they “*massively*” reduced their spending to ensure that they never missed a mortgage repayment.

The Complainants state that they contacted the Provider to revert to interest only payments on the mortgage during this period. The Complainants state that their outgoings were such that they were greater than the incomings by €500 (five hundred euro) each month, which was an amount they could not sustain.

The Complainants state that in **August 2010**, they made the “*very reluctant decision*” to sell one of the properties, which was situated in a “*great location in Dublin*”. The Complainants state that they sold the property with a view to reducing the monthly shortfall in income. The Complainants state that the repayments were €1800 (one thousand eight hundred euro) each month and they were receiving €1300 (one thousand three hundred euro) in rental income. The Complainants state that given its desirable location, it had been their intention to keep the property for the full term of the mortgage loan, as a long term investment.

The Complainants contend that if they had been charged the correct mortgage rates during this three year period, they would have been able to maintain ownership of the property and would never have sold the property.

When the Complainants made this complaint, they stated that at the relevant time, the mortgage on the Dublin property was three years into a 25 year term with €280,000 (two hundred and eighty thousand euro) outstanding. The Complainants state that the house sold for €305,000 (three hundred and five thousand euro) in **January 2011** which, after fees, resulted in them clearing approximately €20,000.

The Complainants state that the current rental income for properties in this housing estate is €2,200 (two thousand two hundred euro) a month. The Complainants state that rental rates have increased significantly over the last nine years and they estimate that they have lost out on €20,000 (twenty thousand euro) in rental profit in that time. The Complainants also contend that if they still owned the property today, they estimate that they would be making an annual profit on rental income of €6,000 (six thousand euro) a year which could have equated to over €70,000 (seventy thousand euro) in rental income by **2032**.

The Complainants stated when making their complaint that the then current value of the property was approximately €400,000 (four hundred thousand euro) and if they still owned the property the outstanding balance would have been in the region of €180,000 (one hundred and eighty thousand euro). The Complainants state this means that they should have had an asset in positive equity to the value of approximately €220,000 (two hundred and twenty thousand euro).

They state that whilst they were content to receive the refund from the Provider, they are:

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*“...disgusted at what has happened and would appreciate a review of the compensation in light of us having to sell a valuable rental property which is intended as a security for our retirement and our children's future.”*

The Complainants want the Provider to issue adequate compensation *“in light of us having to sell a valuable rental property which was intended as a security for our retirement and our children's future.”*

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

The Provider issued a final response letter dated **26 March 2020**. The Provider states that once *“this particular issue was identified it became clear that the determining impact would require a complex and detailed investigation to establish the impact it had on our customers.”*

The Provider states that as a result it established the *“Mortgage Interest Rates Review (MIRR) Team”* as a means of resolving the issue. The Provider states that following a review of the Complainants' mortgage accounts, it found that the interest rates agreed with the Complainants were not applied correctly.

The Provider states that it issued two letters dated **November 2019** and **December 2019** that outlined how this issue arose. The Provider states these same letters *“provided a detailed explanation of how we were putting things right for you”*, and also stated that the Provider would be refunding the overcharge interest with further compensatory payment.

The Provider states that at the time the Complainants sold their property they were affected by the economic recession and experienced financial difficulty due to a reduction in their income. The Provider states as a result it is *“unable to accept responsibility for loss of potential rental income and potential loss on the sale of the property”*. The Provider states that it will not be able to offer additional compensation because it is satisfied that the amount paid *“(€9000.10 + €5070.39)”* is an appropriate amount.

### **The Complaint for Adjudication**

The complaint is that the Provider failed to adequately compensate the Complainants for the overcharging on their mortgage accounts between **2007** and **2010**.

## 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 **25 November 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

In its submission to this Office, the Provider explained that its records indicated that the fixed interest rates the Complainants accepted in their Loan Offers, were not applied to their mortgage accounts as they should have been.

The Provider has submitted that on the mortgage account number \*\*\*\*\*13, the Complainants' Loan Offer document stated that a fixed rate of 4.65% would apply to their mortgage fixed until **31 August 2010** (hereafter the "first mortgage"). When the Complainants' first mortgage drew down, the fixed rate had increased to 5.25% and this rate was applied to the mortgage. The Provider stated the Complainants "*may not have been fully informed of the interest rate increase*". As the mortgage account was on higher interest rate during the fixed rate period, the Complainants were charged a higher rate of interest.

I note that when the fixed term for the first mortgage account was due to expire after three years on **30 September 2010**, as outlined in the loan offer, a rate sheet dated **13 September 2010** was issued to the Complainants which outlined the rates applicable to their mortgage account.

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As the Complainants did not complete and return the signed rate sheet before **30 September 2010**, the Complainants' mortgage "rolled to the Standard Variable Rate (SVR) of 3.85%" which was the default rate outlined in the Provider's letter of **13 September 2010**. The repayment reduced from €710.09 (seven hundred and ten euro and nine cent) to €641.26 (six hundred and forty one euro and twenty six cent) from **30 October 2010**.

The Complainants subsequently submitted a rate change request dated **9 February 2011** choosing a fixed rate of 4.3% fixed until **31 October 2013**. This rate was applied to the first mortgage account with effect from **28 February 2010** and the repayment was changed to €681.94 (six hundred and eighty one euro and ninety four cent). The Provider submitted that this did not happen until one month later than it should have and a higher rate of interest was charged for that one month.

The Provider has set out that on the mortgage account number \*\*\*\*\*42, the Complainants' Loan Offer document stated that a fixed rate of 4.65% would apply to their mortgage fixed until **31 August 2010** (hereafter "second mortgage"). When the Complainants drew down, the fixed rate had increased to 5.25% and this rate was applied to the second mortgage. The Provider again submitted that the "*Complainants may not have been fully informed of the interest rate increase*".

As the mortgage account was on higher interest rate during the fixed rate period, the Complainants were charged a higher rate of interest. When the fixed term for the second mortgage account was due to expire after three years on **30 September 2010**, as outlined in the loan offer, a rate sheet dated **15 September 2010** was issued a rate sheet to the Complainants which outlined the rates applicable to their mortgage account.

As the Complainants did not complete and return the signed rate sheet before **30 September 2010**, the Complainants' mortgage "rolled to the Standard Variable Rate (SVR) of 3.85%" which was the default rate outlined in the Provider's letter of **15 September 2010**. The repayment reduced from €1,797.74 (one thousand seven hundred and ninety-seven euro and seventy four cent) to €1,577.33 (one thousand five hundred and seventy seven euro and thirty three cent) from **30 October 2010** until the account was redeemed in **December 2010**.

The Provider has submitted a detailed table setting out the impact of overcharging on the first mortgage and second mortgage.

For the purpose of this decision, it is unnecessary to include the table in full, however a summary of the table is as follows below:

**First mortgage**

From	Until	Interest Rate Provider should have charged	Interest rate Provider charged
30 August 2007	31 August 2010	4.65%	5.25%
31 August 2010	1 October 2010	3.85%	5.25%
<b>Payment Summary Totals First Mortgage</b>			
Interest Overcharged Amount		€3,526.62	
Compensatory Payment		€1,543.77	
Payment Total		<b>€5,070.39</b>	

**Second mortgage**

From	Until	Interest Rate Provider should have charged	Interest rate Provider charged
30 August 2007	31 August 2010	4.65%	5.25%
31 August 2010	1 October 2010	3.85%	5.25%
<b>Payment Summary Totals First Mortgage</b>			
Interest Overcharged Amount		€6,808.23	
Compensatory Payment		€2,191.87	
Payment Total		<b>€9,000.10</b>	

The Provider has submitted that the Complainants' mortgages were redeemed at the time of remediation, and the compensatory payment was calculated by taking the interest over charge amount, and multiplying it by the interest rates charged on the accounts after the impact period, compounded daily until the date of redemption. For the period after redemption, an interest rate of **3%** was applied to the refund payment that was due at the date of redemption, compounded daily until 23 days after the date on their letters.

In the Provider's letters dated **29 November 2019** (which concerned the first mortgage account) and **4 December 2019** (which concerned the second mortgage account), the Provider has outlined that the highest mortgage balance was used in the interest calculations (compounded daily) and that the compensatory payments were calculated

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using interest overcharging amount and multiplying it by the interest rates charged on the Complainants' accounts after the impacted period.

I note that in a letter dated **16 February 2020** the Complainants stated that the period from **2008** to **2010** was a very stressful time for them, resulting in a significant financial loss far greater than what they were compensated for. They stated that the decision to sell the property in relation to the second mortgage was made in order to ensure that they did not have any financial arrears on their mortgage, as they did not want financial arrears on their financial records.

In a response letter dated **26 March 2020**, the Provider stated that it accepted that an error on its part caused the Complainants distress and inconvenience. The letter also stated:

*"From all available information, at the time your property was sold, you were in financial difficulty due to reduced income as a result of the economic recession as you rightly stated in your complaint letter. Therefore, we are unable to accept responsibility for loss of potential rental income and potential loss on the sale of the property."*

On **29 September 2020** the Complainants submitted a further response letter. The Complainants stated that they contacted the Provider for current financial statements in relation to their *"outgoing vs income"* for the period, however, the Provider did not have any of these records as it was outside of the retention period.

The letter also stated that they were only made aware of the overcharging in late **2019** and were not in a position to receive any evidence from the Provider in relation to their financial situation at that time. The Complainants further argued that the house that was sold would still be in their possession if they had not been overcharged at the time and

*"all we did by selling the house was clear the debt with a small sum left over as it was a terrible time to be selling. We knew this at the time but felt that we had no choice."*

The Provider has submitted that in respect of the second mortgage it was redeemed following a receipt of cheque for €279,990.98 (two hundred and seventy-nine thousand, nine hundred and ninety euro and ninety-eight cent) which was received by the Provider on **23 December 2010**. The Provider also stated that the overcharge per month was €104.60 (one hundred and four euro and sixty cent).

The Provider stated that, while it acknowledged that any level of overcharging was unacceptable, *"it is important to note that the Complainants did not contact the bank at any point prior to 2010 to advise of financial difficulties, at which point the property was already in the process of being sold"*.

The Provider has also stated that in **October 2010** the Complainants were in touch with an agent of the Provider regarding the properties. The Provider has stated that a summary was completed by the Provider's agent which confirmed *"rental income from the*

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*properties is also down 1/3 prompting the sale of Dublin RIP*". The Provider stated that a three month moratorium was agreed with the Complainants in relation to the second mortgage account to allow the sale of the property to close.

On **21 January 2021** the Complainants submitted that they did contact the Provider regarding their financial difficulties at the time, and following discussions with the Provider, the Complainants agreed to *"go interest only on the house for a time period."* The Complainants further submitted to this Office that in 2020 they requested bank statements from the Provider for the period of their financial difficulties surrounding the second mortgage. The Complainants queried how the Provider had access to information regarding the Complainants' bank statements at that time, but this information was not made available to the Complainants.

The Complainants also contend that they received numerous calls from the Provider on a monthly basis during the period when they had financial difficulties concerning the second mortgage which added to the stress at the time and contributed to their very reluctant decision to sell the house.

By way of response on **18 February 2021**, the Provider stated by way of explanation that it *"would point out that the Bank is only required under our regulatory obligations to hold details of historic transaction such as statements for a period of 6 years from the date of the transactions. We would therefore not be required in 2020 to have statements going back prior to 2014."*

### **Analysis**

In respect of the first mortgage, the period of overcharging was from **30 August 2007**, to **31 October 2010**. During this 38 month period, the total overcharging was **€3,526.62** (three thousand five hundred and twenty six euro and sixty two cent). This reflects an average of €92.80 (ninety two euro and eighty cent) extra per month. This, however, is a crude average calculation because the Provider's table at Appendix B shows that there was an overcharge on **31 August 2010** for the amount of €176.60 (one hundred and seventy six euro and sixty cent). Indeed, from **August 2007** to **August 2010**, the interest overcharged ranged between €74 and €79.

In respect of the second mortgage, the period of overcharging was from **30 August 2007**, to **31 October 2010**. During this 38 month period, the total overcharging was €6,808.23 (six thousand eight hundred and eight euro, twenty three cent). This would reflect an average of €179.10 (one hundred and seventy nine euro and ten cent) extra per month.

However, the Provider's table at Appendix B shows that there was an overcharge amount of €327.19 (three hundred and twenty seven euro and nineteen cent) for **August 2010** alone. Indeed, from **August 2007** to **August 2010**, the interest overcharged ranged between €142 and €152.



It is therefore noted that the Complainants were paying on average of around €250 (two hundred and fifty euro) a month owing to the combined overcharged interest for the first and second mortgages, over about three years.

I also note provision 10 of the Consumer Protection Code 2012 (the 2012 Code). In particular I note provision 10.2 (a) which states

*“A regulated entity must resolve all errors speedily and no later than six months after the date the error was first discovered, including...effecting a refund (with appropriate interest) to all consumers who have been affected by the error, where possible.”* In addition, the Provider *“must not benefit from any balance arising out of a refund, which cannot be repaid, in respect of an error.”*

Accordingly, I am satisfied that the Provider complied with provision 12 of the 2012 Code.

The Complainants state that the decision they made to sell this property was as a result of the Provider overcharging on their mortgage, and had it not been for that, they would never have sold the property. I have sympathy for the Complainants and I note that they were going through some serious financial difficulty at the time. I also note that the Complainants have submitted that they contacted the Provider about reverting to an interest only repayment structure for the second mortgage, however there is no documentation regarding this within the evidence made available to this Office.

The Complainants have also submitted details surrounding the amount they would have earned in positive equity and/or rental income had they not sold the property. Though I understand the Complainants were upset at losing a potentially valuable investment when they sold the property, what the future may or may not have held for the Complainants, if the property had been retained by them, in my opinion, is entirely a matter of conjecture.

On the basis of the evidence which has been made available to me, I do not accept that the overcharging of the interest was the sole cause of the sale of the property in respect of the second mortgage. The Complainants have stated that they were in financial difficulties in the period between **2007** and **2010** and were servicing two loans at the time. The Complainants state that their outgoings were such that they were greater than the incomings by €500 (five hundred euro) each month, somewhat more than the average monthly overcharging to the mortgage accounts. Be that as it may, I am cognisant that during a period of such financial difficulty, every financial demand contributes to the overall pressure experienced.

In those circumstances, whilst I am satisfied that the Provider's compensatory payment to the Complainants has been relatively generous, I take the view that in addition to the calculations which have been prepared to take account of the individual figures relative to the specific mortgage accounts, it would also have been appropriate for the Provider to have made an additional compensatory payment to the Complainants, as a gesture of goodwill, given the very significant period during which this overcharging continued, which coincidentally happened during a period of particular financial difficulty for many consumers. In my opinion, the Provider's failure to offer additional compensation to the

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Complainants in that regard, was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Provision 11.6 of the 2012 Code states:

*“A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.”*

Accordingly, I am satisfied that the Provider was not required to retain the Complainants' bank statements sought by the Complainants in 2020 which would have been dated more than 10 years prior to the said request.

I am satisfied, on the basis of the foregoing, that the amounts of €1,543.77 (one thousand five hundred and forty-three euro and seventy seven cent) and €2,191.87 (two thousand one hundred and ninety one euro and eighty seven cent) respectively, represented somewhat adequate compensation to the Complainants for the overcharging on their mortgage accounts between **2007** and **2010**.

For the reasons set out above however, I take the view that the Provider ought to have made a further compensatory gesture to the Complainants in the particular circumstances and accordingly, to conclude matters, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainants, as specified below, to reflect the overall inconvenience suffered by the Complainants during this regrettable period of overcharging.

Accordingly, for the reasons set out above, this complaint is upheld.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of in the sum of **€2,000** (two thousand Euro), 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.

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- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**MARYROSE MCGOVERN**  
Deputy Financial Services and Pensions Ombudsman

17 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,
  - (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.