



<u>Decision Ref:</u>	2022-0044
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Fixed Rate
<u>Conduct(s) complained of:</u>	Maladministration Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Errors in calculations
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to suggested poor customer service and poor communication by the Provider in relation to Tax Relief at Source (TRS) arising from the Complainants' mortgage arrangement.

The Complainants' Case

The Complainants state that they purchased a property in **February 2016** and moved out of the same property in **2010**. The Complainants state that in **February 2018**, they voluntarily surrendered the property to the Provider '*under conditions that all costs (sic) associated with property would be cleared*' upon sale of the property.

The Complainants assert that on **15th August 2019** they received a communication from Revenue stating that there had been an overpayment of €8,089.44 on their TRS claim. The Complainants state that at no stage did the Provider inform them of a requirement for them to notify Revenue that the property's use had changed from being their primary dwelling residence to a rental property.

The Complainants submit that the Provider was fully aware that their property was a rental property and yet it still maintained a claim for TRS on their behalf each month. The Complainants submit that they reached an agreement with the Provider as part of a voluntary surrender of the property in **2018** wherein '*All bills associated with property were to be paid when property is sold*'. The Complainants also contend that **€8,089.44**

overpayment *'should be on the outstanding mortgage balance'*. The Complainants contend that it was the Provider, as opposed to them, that was claiming the TRS each month.

The Complainants want the Provider to *'take care'* of the **€8089.44**.

The Provider's Case

The Provider issued a Final Response Letter on **26th September 2019** and states that TRS is a private tax matter between the Complainants and the Revenue. The Provider states that it *'would not have offered to cover any overpayment you received from the Revenue'*. The Provider states that with regard to the €8,089.44, the Complainants need to contact the Revenue to discuss the matter.

The Provider asserts that it has no input or direction with regard to the qualifying criteria of a loan in respect of an entitlement to TRS and it refers to the Revenue guidance on the relief. It also states that upon the drawdown of the Complainants' mortgage and as part of a welcome packet, it issued a TRS1 form to the Complainants, which is a form addressed to Revenue to claim TRS relief. It submits that this was done as a courtesy to advise them that they may be entitled to TRS and it notes that the form is also available *"by post, or by download online, directly from the Revenue Commissioners office"*.

The Provider states that it is not classed as a claimant in respect of TRS, and that the Complainants are the claimants in this regard. It asserts that the onus in respect of notifying Revenue of a change of address, or use of the property was a matter for the Complainants.

The Complaint for Adjudication

The complaint is that the Provider failed to provide adequate customer service or to advise the Complainants that they were required to contact the Revenue in 2010, regarding the TRS claim relevant to their property; the Complainants say that this has resulted in an overpayment being reclaimed by the Revenue, from them.

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

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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 **10 January 2022**, 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Chronology of Events

- **14th February 2008:** Provider issued a TRS1 Form to the Complainants with a Welcome Letter, advising them of their possible eligibility for TRS
- **15th February 2008:** The Complainants' Equity Release Secured Personal Loan was drawn down
- **30th April 2008:** Provider commenced application of TRS to the Complainants' loan as per Revenue instructions
- **2010:** Complainants advised that they had moved out of the mortgaged property
- **14th October 2010:** The Complainants changed the address on their current account with the Provider according to its records
- **October 2013:** The Provider notified the Complainants in writing of the change in the Revenue's TRS calculation process (per details below). A Frequently Asked Questions document was also included.
- **10th December 2013:** Complainants submitted a Standard Financial Statement (SFS) to the Provider in which it was noted that the mortgaged property was to be let to tenants
- **1st January 2014:** Revenue commenced new practice of calculating TRS credits based on the amount paid each year. (Until **31st December 2013**, the credit was applied regardless of the amount paid each month.)
- **January 2014 – March 2014:** 3 month Mortarium Restructure Arrangement applied by Provider to Complainants' account
- **10th March 2014:** Complainants submitted a Standard Financial Statement (SFS) to the Provider in which it was noted that the mortgaged property was to be let to tenants
- **15th March 2014:** Complainants' account first fell into arrears
- **11th December 2014:** Complainants submitted a SFS to the Provider and the address on the Complainants' mortgage loan was changed as a result
- **January 2015:** Complainants' address on the mortgage loan was changed
- **5th January 2015:** Provider offered the Complainants a long term Split Mortgage Arrangement; the offer was declined
- **March 2015 - August 2015:** 3 month Mortarium Restructure Arrangement applied by Provider to Complainants' account

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- **13th September 2016:** Provider offered the Complainants a long term Part Capital and Interest Restructure Arrangement; the offer was declined
- **30th June 2017:** TRS credits ceased to be applied to the Complainants' loan account
- **September 2017:** Provider commenced Voluntary Surrender Solution (VSS) initiative
- **14th February 2018:** Provider issued correspondence to Complainants inviting them to apply for the VSS scheme
- **22nd February 2018:** Meeting held between the Provider's Portfolio Manager and the Complainants at their home, where the VSS Acceptance Forms were signed
- **23rd February 2018:** Complainants submitted all required VSS documentation to the Provider, together with the keys for the mortgaged property
- **22nd August 2019:** Provider telephoned the Complainant
- **26th September 2019:** Final Response Letter issued by the Provider
- **29th July 2020:** The mortgaged property was sold at auction for €65,000
- **12th February 2021:** Provider discharged the outstanding balance on the account in the amount of **€220,405.45**.

Evidence

(i) Guidance from the Revenue Commissioners

The criteria to avail of Tax Relief at Source are set out comprehensively by the Revenue on its website under the title '*Mortgage Interest Relief*'. A copy of this guidance was furnished to this Office by the Provider as part of its formal response to this investigation. It sets out that TRS is available to be claimed only on 'qualifying mortgage loans'. Qualifying mortgage loans are defined as follows:

"A qualifying mortgage loan is a loan secured by the mortgage of freehold or leasehold estate, or interest in a principal private residence. A qualifying mortgage loan may be:

- *A new mortgage*
- *A top-up loan used to develop or improve the home*
- *A separate home loan used to develop or improve the home*
- *A re-mortgage or a consolidation of existing loans.*
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The manner in which TRS is calculated is also set in the guidance:

"How do you calculate Mortgage Interest Relief?"

You can claim tax relief on the amount of interest actually paid by you within a tax year (calendar year) on a qualifying home loan.

The relief is subject to rates and thresholds depending on the year of purchase. This relief continues up to the end of 2020 for loans taken out between 2004 and 2012 inclusive."

The above-mentioned thresholds are also included in the guidance.

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Revenue also sets out a definitive list of the types of loans that are not eligible for TRS:

“The following loans do not qualify for Mortgage Interest Relief:

[...]

- *Loans taken out on properties that are not:*

- o *Your home*

[...]

- *Loans for investment, rental or a second property*

You must notify Revenue by completing a TRS4 Form and returning it to the address quoted on the form if you are getting Mortgage Interest Relief on:

- *A property that is no longer your home. An example would be if you moved out and now rent out the property*

[...]

If you do not notify Revenue in a timely or efficient way, any relief that you have received can be demanded and collected by way of court proceedings. You may then have to pay court costs as well as the overpaid relief.

If you are in the business of renting property, mortgage relief is available through the tax system. You should contact your Revenue Office for more information.

(ii) The Provider’s Welcome Letter dated 15th February 2008

The Provider submits that it drew the Complainants’ attention to their potential eligibility to TRS relief ‘*as a matter of courtesy*’ in their ‘Welcome Letter’ of **15th February 2008**. The relevant passage states as follows:

“If you want to apply for tax relief at source (TRS), please fill in the enclosed TRS1 application form and send it directly to the Revenue Commissioners. Each person named on the mortgage who wants to claim tax relief should fill in a TRS1 form. However, if you are a married couple who are jointly assessed you need only fill in one form. It is important that all applicable mortgage account numbers are included on the form. If you have any queries on the TRS scheme, please contact the Revenue Commissioners using the following helpline number...”

(iii) Revenue Commissioner’s TRS1 Form

The TRS1 form that the Complainants submitted to Revenue includes a declaration at its conclusion:

“I/We declare that all particulars given on this form are correctly stated and that the loan(s) is/are in respect of the purchase, repair, development or improvement of my/our sole or main residence. I/We undertake to notify Revenue, within one month, if there is a change in personal status, the percentage of the loan qualifying for relief, or in the status of the property, which would affect the amount of relief allowed.”

(iv) Letter from Provider to Complainants of October 2013

This letter was written to place the Complainants on notice of the change in Revenue’s practice in respect of TRS. It states as follows:

“Up to 31 December 2013, Financial Institutions are calculating TRS based on the amount of interest which has been charged on a Mortgage Account. This is in line with accepted industry practice. As instructed by Revenue from 1 January 2014, TRS will be calculated based on the amount of interest actually paid on a Mortgage Account. As a result, where you do not make the required monthly interest repayment each month then the abovementioned change will impact your Mortgage Account and it is unlikely that you will receive full TRS.”

This change in practice affected the Complainants in the following way:

From the date of their drawdown of the mortgage on **15th February 2008** until **31st December 2013**, Revenue calculated their TRS credit based on their mortgage bill amount, which was accordingly applied by the Provider.

From **1st January 2014** to **30th June 2017**, Revenue calculated their TRS credit based on the actual amount of monthly payments made. As is set out in the audio evidence below, the Complainant submitted that following their departure from the property, they *“weren’t paying the mortgage, we might have been paying fifty euro into that”*. Accordingly, it seems that Revenue should have applied little or no TRS credit to the account during this time.

This letter also included a ‘Frequently Asked Questions’ section, Question 2 of which states:

“If you have received too much TRS this may be re-couped by Revenue directly. This is in line with current Revenue practice. Any queries in relation to this should be directed to www.revenue.ie or 1890 463626”

(v) Interest Certificates

The Provider sent Interest Certificates to the Complainants with each statement. This statement set out the details of TRS claimed each year, and stated as follows:

“TRS is Tax Relief at Source, in this case mortgage interest relief on your home mortgage. A qualifying loan for mortgage TRS purposes is a secured loan, used to purchase, repair, develop or improve an individual’s sole or main residence, which must be situated in the State. An individual can also claim relief in respect of a

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mortgage paid in respect of a separated/divorced spouse and/or a dependent relative for whom a dependent relative tax credit is claimed. TRS cannot be claimed in respect of an Investment Property.

If you feel you may be entitled to mortgage interest relief on your home mortgage: visit www.revenue.ie and complete the application form online, download the TRS1 Application Form online or phone the TRS helpline..."

(vi) Finance Act 2001

In its application of TRS to the Complainants' loan, the Provider was bound to adhere to the provisions of Finance Act 2001.

Under Part 3 of the Finance Act, which is entitled '**Operation of Relief at Source**' the obligations and entitlements of qualifying lenders such as the Provider are set out. The legislation states that the Provider is obliged to furnish a report to the Revenue Commissioners on a monthly basis or other interval as agreed by both parties. This report must set out details of the qualifying loans in respect of TRS, as requested. The Provider is also required to apply the TRS credit to qualifying loans at the instruction of Revenue for the purpose of reducing the customer's monthly loan repayment. The legislation also confirms that the Provider is obliged to operate on the basis that any information supplied to it by Revenue can be relied upon.

(vii) Audio Evidence

A substantial amount of audio evidence was submitted to this Office as part of the investigation of this complaint.

In respect of the call that took place on **22nd August 2019**, I note the following exchange:

First Complainant:	<i>Yes, we lived in it for a while The Banks were well aware we had left The Revenue knew we left, because all the other tax bills we were doing was from a different house</i>
Provider's Agent	<i>Did you move? You took this out as a home loan?</i>
First Complainant	<i>Yes, originally it was</i>
Provider's Agent	<i>Did you move somewhere else then, did you rent?</i>
First Complainant	<i>We just rented the house and moved</i>

In respect of the call that took place on **23rd August 2019**, I note the following exchange:

First Complainant	<i>I was on to Revenue this morning. They have said that there was an overpayment of TRS that was...basically shouldn't have happened. Our question is, is this covered? It's an overpayment of</i>
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	<p>TRS from Revenue into the mortgage. €8089 on top of the mortgage.</p> <p>Basically, when we moved out, we should have been contacted. We weren't aware that we had to do that to be honest with you, we ran when we could, to be fair...the bank knew We were sent outstanding financial statements; do you know what I mean?</p> <p>Revenue had our new addresses and stuff like that, you know yourself</p> <p>Our question is, where do we go from here in regard to this? Because in our opinion it is basically money that should really be on the mortgage...we haven't pocketed it</p>
Provider's Agent	No but you were actually claiming TRS...I looked into this yesterday for you
First Complainant	Yeah
Provider's Agent	On your mortgage account you were actually claiming TRS, so you were actually getting the relief for it
First Complainant	Yeah
Provider's Agent	So you were claiming it
First Complainant	Yeah, I understand, we were claiming it but is this not a bill associated with the mortgage? We haven't pocketed as such
Provider's Agent	What happened here was you took out your mortgage in 2008. TRS is only valid for 7 years I think at the time. That was up until 2014 and then the government extended the TRS scheme as such, and you were still claiming it on the mortgage. So every month when you were paying the mortgage you were getting relief of your TRS
First Complainant	Saying that, we can go back and we can say we weren't paying our mortgage for a lot of it to be fair!
Provider's Agent	What happens is, the government brought in legislation that when you didn't pay your mortgage, the TRS wasn't given for the previous month. Where you can see sometimes in your statements that you weren't getting TRS relief, that's because if you didn't make a payment the previous month, you wouldn't have actually gotten the TRS relief
First Complainant	So basically this isn't covered even though it is to do with the mortgage
Provider's Agent	No, because it's a relief, it's a tax relief from where you took out your mortgage. At that stage, the government had TRS. You don't actually get TRS now - if you took out a new mortgage today, you don't get TRS. Back at the time you took your mortgage out there was TRS relief for first time buyers. That claim was sent in and you continued to make the claim on the mortgage then
First Complainant	It was a home loan you took out wasn't it?
First Complainant	Yes, it was a home loan

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Provider's Agent	<i>Yeah it was a home loan, yeah. What have they said to you?</i>
First Complainant	<i>They just want the eight thousand. We said we were under the impression, we were told when we originally surrendered the property that any bills associated with the mortgage was going to be taken care of</i>
Provider's Agent	<i>Yeah, but you surrendered back in 2018. Even though you took it out in 2008, I think, when did you move out then?</i>
First Complainant	<i>2010</i>
Provider's Agent	<i>So Revenue then were under the impression that you were still living at that property from what I can gather. That's probably why they have sent that. It is a home loan, so you claimed the relief for... So the onus would be on yourself to say I'm not actually living at that property, so that's probably why they've re-billed you. It's not a direct fee associated with a mortgage as such, if there were possession fees or something like that. When you surrender your home back to the bank, we have to have possession fees on the account. That will eventually be part of the VS, the voluntary surrender, that will be written off. But in this case, the TRS is a separate issue</i>
First Complainant	<i>We were told by [Other Agent of Provider] that even management fees and electricity bills and all was going to be covered</i>
Provider's Agent	<i>They might come under the remit of possession fees But this is separate</i>
First Complainant	<i>This is definitely separate?</i>
Provider's Agent	<i>This is a Revenue issue. I think the onus, from what I can gather, the onus would have been on you to declare that you weren't actually living then at that address. Because that's what your primary residence was. So if you were living somewhere else you would have to declare to Revenue that you weren't living there</i>
First Complainant	<i>Ok, even though we had, because we were filing returns in relation to the apartment and in the Bank, when we were filling out Standard Financial forms and putting that the rent for the apartment was this and this and this</i>
Provider's Agent	<i>Yes but the onus wouldn't be on the bank there, this is a Revenue thing</i>
First Complainant	<i>We were never notified, we were never told when we were going in that you need to notify such and such. To be honest, where we were, it was just a bit of a dive, so were delighted to get out of there and run for the hills, to be honest with you, it's in the pits of [Region], you wouldn't let a cat live there to be fair</i>
Provider's Agent	<i>But I don't think TRS would have been covered by that, that would be a separate thing</i>

	<i>I think [Other Agent of Provider] would have probably said it would be something like possession fees, or any costs associated with the property but not the TRS</i>
First Complainant	<i>[Second Complainant] is here and says he [Other Agent of Provider] did say any bills associated with it. In our head, alright it is TRS and it has been, blah blah blah, I understand that. But what we're saying is we don't have the property at the end of this. The property is gone</i>
Provider's Agent	<i>I know that, but in fairness, when you hand it back, we're willing to write off any residual debt associated with the property</i>
First Complainant	<i>We're having to pay a bill here of €8000 that they're saying we got it back but we haven't actually gotten it, because at the time we would have been lodging €50 into the account</i>
Provider's Agent	<i>But you see you were still claiming your TRS</i>
First Complainant	<i>I know that...</i>
Provider's Agent	<i>If you left in 2010, you can see that you got TRS of €140 that month, and that's probably where Revenue are coming from.</i>

In respect of the call that took place the following month, on the **19th September 2019**, I note the following exchange:

First Complainant	<i>I was just wondering if you looked into the file anymore</i>
Provider's Agent	<i>I have, but to be honest with you, from the [Provider]'s perspective, it's still the same. It's still a Revenue issue. Have you contacted Revenue?</i>
First Complainant	<i>I have and they said to get back to you. I've also contacted legal representative - my solicitor. His view is that the [Provider] was directed by Revenue on how much TRS every month to take. We were filling out SSF forms, the Bank knew the property was rented. Technically, they were happy enough to go to Revenue and take money from Revenue which was the €8000 knowing that we weren't in the property. He said basically the €8000 technically should be on top of that mortgage, so it should be something that the bank should cover. Not a bill as in we pocketed it, because we haven't, it's basically eight grand on top of the mortgage, but that should be on top of the mortgage that isn't.</i>
Provider's Agent	<i>But you get relief though - you got relief for the time period that you were claiming it...An example, let's see your TRS is €100 and the mortgage is €1000, so the net cost to yourself is €900</i>
First Complainant	<i>But we weren't paying the mortgage, we might have been paying 50 euro into that. We weren't paying 900</i>
Provider's Agent	<i>So who was paying the mortgage</i>
First Complainant	<i>Nobody. We hadn't paid the mortgage when we weren't there</i>

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Provider's Agent	<i>Was the property rented at any stage?</i>
First Complainant	<i>It was, but we still weren't paying any money into it, we were paying maybe €50</i>
Provider's Agent	<i>Yeah</i>
First Complainant	<i>This is what I mean, ok you're saying...I understand where you're coming from. You were meant to be paying €1000 but because you got TRS it was €900. We didn't get to pocket that €100 because we weren't paying it. There were some months we weren't getting any TRS because we weren't making any payment</i>
Provider's Agent	<i>Correct, remember I explained to you that the government changed the legislation then, that once you didn't pay they wouldn't give you the TRS</i>
First Complainant	<i>That's where we were at, eight. My solicitor said I'll fight your corner...because it's not eight grand that's received into your bank...Basically the bank was happy enough to take...We were filling in SFS forms Our manager in [Region] knew exactly what was going on, they were still happy enough to take the money. We might not personally have written to such and such but they knew that the property was rented & technically the eight grand should be there on the mortgage, it should be €8000 extra on it Say it was 251,000 on this letter, technically it should be nearly 260 because it's 8 grand of a bill</i>

Analysis

Tax Relief at Source is a mortgage interest relief that the Complainants availed of by applying directly to the Revenue Commissioners. The process for obtaining this relief is by submitting a TRS1 Form to Revenue, which provides both personal information and details of the property and the loan. These details are required to confirm that the borrowing falls within the definition of a 'qualifying home loan'. The Revenue consider this information in order to calculate the level of TRS credit due to the Applicant, in accordance with its set of rates and thresholds. The Revenue then corresponds with the relevant financial institution (the Provider, in this instance) and instructs the level or percentage of TRS credit due to the Applicant on its mortgage. The Provider then applies this deduction at source, which in turn reduces the amount of the mortgage payment billed on the account, each month.

I note that the Complainants originally obtained their loan and drew down their mortgage facility on **15th February 2008** for the purposes of debt consolidation and home improvements in respect of their principal private residence. This rendered the Complainants eligible to claim TRS on their mortgage loan. However, I note that they moved out of this residence in **2010** and subsequently commenced rental of the property. Therefore, taking account of the Revenue criteria, the mortgage ceased to be eligible for TRS relief as it was no longer being used as a principal private residence.

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The Complainants' mortgage account fell into arrears on **15th March 2014** and remained in arrears from that date. The Provider applied a number of forbearance measures to the account, and offered two long term relief options to the Complainants, both of which were declined by the Complainants.

I note that in **September 2017**, the Provider commenced a scheme known as the Voluntary Surrender Solution (VSS). This initiative was a departure from the Provider's standard approach, and was not generally offered to its mortgage customers. On a case by case basis, the Provider issued correspondence to a selected number of borrowers, including the Complainants, which invited them to apply for the scheme. Upon receipt of this correspondence, the customer was invited to avail of the initiative and, upon satisfaction of the required criteria, the Provider took possession of the surrendered property. The Provider would subsequently arrange for its sale and having applied the proceeds, it would arrange for any remaining debt to be written off in full.

As part of the VSS Agreement entered into by the Complainants with the Provider, the Provider agreed to discharge any costs associated with the sale of the property. Such costs included auctioneers' fees, valuation fees, management company fees, BER certificate costs and legal costs. The Provider also agreed to discharge any tax liabilities associated with the sale of the property, which included Value-Added Tax (VAT) and Capital Gains Tax (CGT). A key point to note in this respect is that the Tax Relief at Source (TRS) is not a tax arising from the sale of the Complainants' property. Rather, I accept that it is a personal tax liability and is not referred to in the VSS documentation submitted in evidence by the Provider to this Office.

It is apparent from the Revenue guidance that it, and not the Provider, calculates TRS, based on the personal status of the applicant. TRS is regarded as a personal tax credit or liability and is not dictated by the Provider, or issued at the Provider's discretion. The Provider's role as Mortgage Lender and administrator is to facilitate the application of the TRS credit to the mortgage in question; it does not hold the responsibility for confirming an individual's entitlement to TRS. I accept in that regard that the Provider does not play a role in the calculation of an individual's credit allowance.

It is apparent that the Provider communicated effectively to the Complainant that all correspondence and queries in respect of TRS were to be directed towards the Revenue Commissioners and not to it. The Complainants were clearly asked to send the TRS1 application form to the Revenue, not to the Provider, and they were clearly asked to direct any further queries in regard to the scheme to the Revenue. I am of the view that this communication was sufficiently clear to put the Complainants on notice that this was not a scheme being controlled at the discretion of the Provider.

The declaration signed by the Complainants as part of the TRS1 form clearly states that should any relevant aspect of the signatories' personal or property status change, so that the amount of relief allowed would be affected, they should notify the Revenue within one month. The signed form did not state that notifying the Provider would be sufficient to put the Revenue on notice. It is clear that the Revenue were to be notified directly of any such

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change. The Complainants in the present matter, moved out of the property in **2010**, and from that point on they no longer used it as a 'qualifying residence', i.e. as their principal private residence. However, I note that they did not notify Revenue of this development and change in their personal circumstances, until **August 2019** upon their receipt of the bill for the overpayment of TRS.

The Provider issued a letter updating the Complainants, regarding the change in manner in which the TRS credit would be administered from **2014** onwards. As part of this communication, the Complainants also received a 'Frequently Asked Questions' document, which referred the reader directly to Revenue should they have any queries. It also put the Complainants on notice of the fact that *"if you have received too much TRS this may be recouped by Revenue directly"*.

It is apparent from the evidence, that the Provider furnished Certificates of Interest to the Complainants annually which outlined the amount of TRS claimed on their loan. It can be seen from the statements provided that between **30 April 2008** and **30 June 2017**, the Provider applied the TRS credit two months in arrears, in adherence to guidance from the Revenue Commissioners. Each Certificate, as set out above, included an explanatory memorandum in respect of TRS and again provided the reader with contact details for the Revenue, not the Provider, to discuss the matter.

It is clear from the Revenue guidance on TRS and the Finance Act 2011 that the onus was on the Complainants, not the Provider, to notify Revenue of their change in circumstances in **2010**. They undertook to do so when signing the TRS1 Form in **2008**. The fact that they started to rent out the property that was the subject of the mortgage loan, rendered them ineligible to claim the tax credit. I agree with the Provider in that it cannot be held responsible for keeping updated records of the personal circumstances of each customer for TRS purposes. I accept that, as the Provider states:

"A customer may decide at their discretion to vacate their Family Home on a temporary basis, for work commitments, travel, etc.. Similarly, a customer may vacate their Family Home but other family members may continue to reside there. A request to change address would not be a firm indication that the Borrowers are intending to rent out their mortgaged property and live elsewhere on a permanent basis."

Even if the Complainants had notified the Provider that they had moved out of the property and were now renting it out, the onus still remained with the Complainants to notify Revenue of that change in status.

I am satisfied that the Complainants were notified that the application of TRS was not a matter within the control of the Provider. The Complainants were put on sufficient notice that any queries they might have had in relation to their eligibility after they left the property ought to have been directed to Revenue. However, they made no such enquiries, either with Revenue or the Provider itself.

I am satisfied that the Provider has successfully demonstrated that TRS is a personal tax claimed by the Complainants directly from the Revenue Commissioners, and is therefore a personal issue between the Complainants and Revenue. Although the Provider facilitated the monthly repayment reduction on the basis of the Complainants' application to the Revenue in 2008, it does not have any discretion or input into the calculation of the Complainants' TRS claim.

I am satisfied that the Provider was entitled to take the view that the bill received from the Revenue for TRS overpayments of **€8,8089.44** does not fall within the category of the fees and charges that the Provider agreed to write off as part of its Voluntary Surrender scheme. Furthermore, it is a bill issued directly to the Complainants by the Revenue and therefore constitutes an issue between those two parties and does not involve the Provider. I understand that the Complainants may have regarded TRS as falling within the category of taxes to be discharged by the Provider, upon its writing off of the remaining debt, however it is clear to me from the evidence outlined above that they are not correct in that respect.

I understand that the Complainants are in the difficult and frustrating situation of having to repay a significant amount of money to the Revenue Commissioners. However, it is my view that this is not an amount that the Provider is obliged to pay.

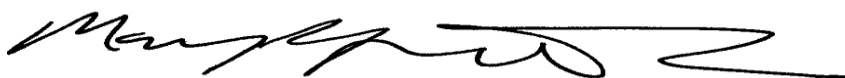
In respect of the complaint of poor customer service, I note from the audio evidence provided to this Office that the Provider's agents were courteous and patient with the Complainants at all times. The agent with whom the First Complainant spoke on a number of occasions, endeavoured to familiarise himself further with the applicable Revenue guidance in respect of TRS in advance of his further conversations with the Complainants in that regard. I have not been provided with evidence of poor customer service or poor communications and accordingly, I do not accept that this aspect of the complaint should be upheld.

Accordingly, for the reasons set out above, this complaint is not upheld.

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
Deputy Financial Services and Pensions Ombudsman

/Cont'd...

1 February 2022

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.

