



<u>Decision Ref:</u>	2022-0117
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide accurate account/balance information Failure to process instructions in a timely manner Errors in calculations
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a mortgage account.

The Complainants' Case

The Complainants contends that the Provider *“agreed to reinstate an overpayment of €4,017.35 and apply to repayments due on the mortgage accounts”* and that in its letter dated **5th July 2019**, it stated *“that the overpayment is to be applied to repayments”*.

The Complainants advise that they cannot however see this overpayment reflected on their mortgage account statements.

The Complainants state that the Provider gave *“a convoluted explanation”* and:

*“manipulated figures on the banks statement by increasing the loan balance on account 3211**** by €2,667.00 on **24th July 2019**, and reducing account number 4051**** by €2,667.00 on the same day so that this overpayment has a nil effect”*.

The Complainants assert that *“this type of manipulation of figures only benefits [the Provider] and must be questionable on a number of levels”*.

The Provider's Case

In its Final Response Letter dated **12th December 2019**, the Provider states that on **30th August 2018**, it received the Complainants' signed Agreement to Amend Mortgage Loan Offer, for "interest only" forbearance, with effect from **10th August 2018**.

The Provider submits that the repayment amount at the time when the previous interest only period ended on **28th August 2018**, was for €4,874.11.

The Provider submits that due to the introduction of Single Euro Payments Area ("SEPA") in **January 2014** that "*direct debits are now raised 8 working days ahead in the system*" and the Complainants' "*direct debit due on **30th August 2018** was raised in the system, for the interest only amount of €856.76, when the interest only facility ended on **28th August 2018***"

The Provider submits that a "backdate" was posted in error:

*"to the mortgage for the difference between the full repayment amount of €4,874.11 and the new interest only repayment amount of €856.76. The "backdate", which is a debit reversal was posted for €4,017.35, on **3rd September 2018**".*

The Provider states that "*the purpose of the backdate is to enable the bank to issue a refund on a mortgage account without putting the mortgage in arrears*" and that this is done "*when forbearance is being backdated*". The Provider further states that "*the backdate does not affect the mortgage balance and so, will never show on a mortgage statement*".

The Provider advises that the backdate transaction on the mortgage was reversed on **29th April 2019** "*removing the overpayment that was not required on the mortgage as the full repayment amount of €4,874.11 was never requested or paid*".

The Provider asserts "*that as interest only forbearance was set up again, no repayments were requested for €4,874.11 therefore, in this case the backdate of the interest only facility was not required therefore, no refund was issued*"

The Provider apologises to the Complainants for the error and it asserts that the "*error and overpayment that was created did not impact them in anyway financially and that there is no refund of monies owed*".

The Complaint for Adjudication

The complaint is that the Provider:

1. in **July 2019**, "*agreed to reinstate an overpayment of €4,017.35 and apply to repayments due on the mortgage accounts*". The Complainants submit that they were not refunded this amount and cannot see the overpayment reflected on their mortgage account statements.

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2. provided a '*convoluted explanation*' to the Complainants with regards to the error and overpayment, subject to this dispute.
3. manipulated the figures on the account statements, which only benefitted the Provider.

The Complainants want the Provider to pay the overpayment of €4,017.35, directly to 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 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 **8 March 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

Chronology of Events

2005

- **8th August 2005:** Date of Mortgage Loan Offer Letter (the "Offer Letter")
- **10th August 2005:** Complainants sign and accept the terms of the Offer Letter
- **5th October 2005:** Complainants drew down a mortgage of €402,800.00 to mortgage account 32119*** ("the Mortgage Loan Account") for a term of 20 years.

2013

- **21st August 2013:** Agreement to Amend Mortgage Loan Letter of Offer completed and signed by the Complainants, providing for a period of 5 years "interest only" payments.

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2018

- **28th August 2018:** End of the Interest only forbearance period. Provider offers a further 12 months of interest only repayments, to be backdated to **10th August 2018**. This 12-month extension is discussed during a telephone conversation between the First Complainant and the Provider's agent on this date. The Complainants signed and completed the Agreement to Amend Mortgage Loan Letter of Offer and the Provider confirmed receipt of same.
- **31st August 2018:** Forbearance was applied as set out in the Agreement to Amend Mortgage Loan Letter of Offer of **28th August 2018** on the Complainants' mortgage loan account
- **3rd September 2018:** Erroneous Mortgage debit reversal in the sum of **€4,017.35** is applied to the Complainants' mortgage loan account. This resulted in the mortgage loan account being placed in an 'overpay' position for this amount.

2019

- **25th March 2019:** Meeting between the Provider and Complainants in respect of the residual balance regarding the sale at shortfall. A discussion took place concerning how to deal with the overpayment on the account, namely whether it could be used to meet repayments on the accounts.
- **26th March 2019:** Email sent from Provider to the Complainants, wherein they requested that the overpayment on the mortgage loan account could be moved around, thus cancelling the direct debit on the mortgage loan account and another account held by the Complainants.
- **9th April 2019:** Email from Complainants to the Provider, requesting an update on how the overpayment on the mortgage loan account arose, and requesting the cancellation of the direct debits
- **10th April 2019:** Email from the Provider to the Complainants, in which it explained how the overpayment arose, and that it was in fact an error as no actual overpayment was made and that this error would have to be rectified
- **29th April 2019:**
 - o The overpayment of €4,017.35 was reversed on the mortgage loan account
 - o Letter of Complaint sent to Provider by the Complainants, which included a complaint in respect of the calculation of the overpayment, suggesting that details of the overpayment had not been explained correctly.
- **9th May 2019:** The Provider issued an acknowledgment letter to the Complainants in respect of their complaint
- **30th May 2019:** The Provider issued a 20-day letter to the Complainants in respect of their complaint
- **28th June 2019:** The Provider issued a 40-day letter to the Complainants in respect of their complaint
- **5th July 2019:** The Provider issued its Final Response Letter to the Complainants. In respect of the overpayment issue, the Provider stated that "*...to provide resolution in respect of this matter, the [Provider] will now reinstate and apply overpayment in the amount of €4017.35...*"
- **10th July 2019:** The overpayment was reinstated on the mortgage loan account in the sum of €4,017.35.

- **23rd July 2019:** The Complainants sent an email to the Provider requesting that the overpayment be applied as per the email of **26th March 2019** and that direct debits be cancelled accordingly
- **23rd July 2019:** The Provider sends an email to the Complainants, confirming that the overpayment had been transferred in accordance with the email of **26th March 2019** and that the direct debits had been cancelled
- **10th November 2019:** The Complainants sent an email to the Provider asking why the overpayment was not reflected in the mortgage loan account statements. The Provider responded to confirm that there was no actual overpayment, as it was an internal transaction which is reflected in the balance on the statement. It confirmed that there was no refund due and it was an overpayment that paid the mortgages for the previous months, as agreed.
- **21st November 2019:** Mortgage loan account was redeemed in full by way of a lodgement of €104,750.68
- **6th December 2019:** Email sent by the Provider to the Complainants in respect of queries arising in the email of **10th November 2019**. The Provider advised that there was no actual lodgement of €4,017.35 or excess repayments made, noting that the issue was an internal adjustment.
- **10th December 2019:**
 - o Email from the Complainants to the Provider, advising that they are confused with the reply, and confirming that their question is where the overpayment is reflected on the statements. The Complainants further requested that the overpayment be paid directly in compensation, for the Provider's error.
 - o Email from the Provider to the Complainants, which states that "*there was no actual overpayment, it was an adjustment made when the arrangement was applied which is included in the balance of the statements. You are not due any refunds from [the Provider]*"
 - o Email from the Complainants making a complaint in respect of the overpayment issue.
- **12th December 2019:** Final Response Letter issued by the Provider to the Complainants setting out the nature of the overpayment error and the arising issues.

Evidence

(a) The Offer Letter

It is noted that the Provider relies on General Condition 4(d) of the Offer Letter to confirm its ability, with the Complainants' consent, to apply the overpayment in the manner instructed by the Complainants.

General Condition 4(d) of the Offer Letter signed and accepted by the Complainants on **10th August 2005** states as follows:

"The Lender may at its absolute discretion, and with the consent of the Borrower, vary any payment of principal, interest or any other amount payable in respect of the Loan."

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(b) Provider's Internal CACS Records

The Provider's summary in respect of the meeting between the Complainants and Provider on **25th March 2019** demonstrates that the issue of the overpayment was discussed, among other matters:

*"Meeting held with borrower...Borrower advised of a CGT liability of cA15k expected from sale of [Property address]. [Provider's Agent] advised that CGT and reasonable sales costs would be allowed subject to credit approval. Borrower raised further concern with surplus being applied against annuity of tracker loan *****130 and [Provider's Agents] agreed to discuss further and take matter to credit. Borrower advised rent increasing to 1422pm from April onwards. A/P – Email borrower re existing overpayment and if they want to use same to meet repayments and advise [Provider's Agent] will discuss other matter and take to credit".*

(c) Final Response Letter

In its Final Response Letter of **12th December 2019**, the Provider sets out the explanation for the apparent overpayment on the mortgage loan account. I note the following paragraphs:

"I can confirm that this was a bookkeeping error, the purpose of which was to prevent mortgage arrears where an approved forbearance facility was being backdated and a refund of the €4,017.35 was expected to be issued to you. The backdate of the facility was not required and the refund was not issued, therefore the balance of the mortgage was not affected. Transactions that do not affect the mortgage balance are not shown on the mortgage statement.

I can confirm that the error and the overpayment that was created did not impact you in any way financially and that there is no refund of monies owed to you".

Analysis

The Complainants submit that In **July 2019**, the Provider *"agreed to reinstate an overpayment of €4,017.35 and apply to repayments due on the mortgage accounts"*. The Complainants submit that they were not refunded this amount and they cannot see the overpayment reflected on their mortgage account statements.

I note that the Complainants accepted the terms of the Mortgage Loan Offer Letter of **8th August 2005** on **10th August 2005** and drew down €402,800.00 for a period of 20 years with a 1 year fixed rate period at 2.95%, after which time the account would move to a standard variable rate. Mortgage repayments during the first year of the agreement were to be for interest only.

It is apparent from a consideration of the chronology of events set out above that the Complainants were availing of forbearance measures in the administration of their mortgage loan account, the subject matter of this dispute. The Complainants had entered into a five-year period of such forbearance in **2013**, which was due to end on **28th August 2018**.

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From listening to an audio recording of a conversation that took place between the First Complainant and the Provider's agent, it is evident that the Provider decided to extend this period of forbearance by an additional 12 months. An agreement letter proposing this amendment to the terms of the mortgage was issued on **28th August 2018**, and was to be backdated, or to have effect, from **10th August 2018**. The Complainants signed and accepted these new terms on **30th August 2018** and following the receipt of the application by the Provider's admin team, the forbearance was applied the mortgage loan account on **31st August 2018**.

It is clear to me from considering the submissions of both parties, that what followed the above sequence of events was a misunderstanding on the part of the Complainants. A meeting took place between the Complainants and the Provider on **25th March 2019** wherein a number of issues were discussed, as can be seen from the Provider's CACS records of all communications with the Complainants.

It is evident from a consideration of the chronology of the events in addition to a reading of the Provider's internal CAC records of the meeting on **25th March 2019** that the Provider was unaware of the nature of the error in relation to the overpayment. The Provider submits that *"the error in relation to the overpayment was not determined at that stage"* and that it was against this particular backdrop that the Provider issued an email to the Complainants on **26th March 2019** proposing that the overpayment would be used to meet forthcoming repayments on a number of loan accounts held by the Complainants.

The nature of the Provider's error was identified 10 working days after this correspondence, and the Provider submits that this was communicated to the Complainants in an email on **10th April 2019**. It is apparent that the overpayment was removed on **29th April 2019**, the same day that the Complainants submitted their complaint which referred to the overpayment issue.

In its Final Response Letter of **12th December 2019**, the Provider sets out the explanation for the apparent overpayment on the mortgage loan account. It was made clear by the Provider that the error originated with the SEPA requirement for direct debit charges to be raised 8 working days in advance of the payment date on the Provider's system. As can be seen in the chronology set out above, the Complainant's forbearance arrangement was agreed on **30th August 2018**, to be backdated to **10th August 2018**. The direct debit for the interest-only payment that was due on **30th August 2018** was raised in advance of the due date. In error, a 'backdate' was subsequently posted to the mortgage loan account for the difference between the full capital and interest repayment amount (€4,874.11) and the new, interest-only repayment amount (€856.67). The 'backdate' posted to the account took the form of a debit reversal for €4,017.35 (the difference between the two payment amounts) which was posted on **3rd September 2018**. It is clear that the error occurred in circumstances where there was a mistaken belief that a direct debit for the full capital plus interest amount was raised, when in actual fact it was the "interest-only" repayment only that was raised. It was under this misapprehension that the Provider endeavoured to refund the mortgage loan account in a manner, to avoid the mortgage loan account falling into arrears.

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The overpayment was reinstated by the Provider to the account on **10th July 2019**. This reinstatement did not have any bearing on the balance of the mortgage loan account. It appears that the error resulted in an 'overpay' being placed on the mortgage loan account, but that it did not affect the account balance at any point. I am satisfied from the evidence that the overpayment was the result of an internal adjustment, made with the intention of issuing a refund on a mortgage account, without putting that account into arrears.

In respect of the Complainant's contention that they were not refunded this amount and cannot see the overpayment reflected on their mortgage account statements, it is apparent from a consideration of the documentary evidence submitted that after the adjustment, the balance on the Complainants' mortgage account remained unchanged. However, the adjustment did result in a positive arrears figure of €4,017.35, which is referred to as an 'overpay' by the Provider. The Provider submits that such overpay figures are always included in the account balance, and therefore the mortgage loan statements will not display an overpay.

The Provider submits that it reinstated the overpayment in an attempt to reach a solution with the Complainants in respect of the internal error made by the Provider in applying a backdating overpayment in **September 2018**. It submits that this solution allowed a transfer of monies, as agreed between the parties in **March 2019**, when all parties held the impression that the overpayment had been lodged correctly and recorded accurately. It is clear from a consideration of the correspondence that the reinstatement was carried out to facilitate the intentions of the Complainants as set out in the email of **26th March 2019** and in the internal CACS records of the Provider.

I am satisfied that the Provider has adhered to its obligations under the Consumer Protection Code 2012 (as amended), in particular **Provisions 10.1, 10.2 and 10.6**. Additionally, copies of the Provider's Consumer Errors Management Policy and Group Consumer Error Management Guidance were furnished to this Office as part of the Provider's submissions.

The Provider has demonstrated that it has written procedures in place for the handling of such internal errors that affect customers. Upon the identification of this error, it is clear that the 'overpay' was removed on **29th April 2019**, thus rectifying the error. It is apparent from the chronology of events as set out above that the error was resolved within a reasonable time frame and recorded on the Provider's RADAR error system.

In respect of the Complainants' assertion that the Provider gave a '*convoluted explanation*' to the Complainants with regard to the error and overpayment, the subject of this dispute, I must disagree. It is apparent to me from a consideration of the documentation provided that the Provider has fully discharged its obligations under the Consumer Protection Code 2012 (as amended) in respect of the provisions that deal with explanation of procedures and errors to a consumer.

The Provider submits that upon learning of the nature of the error in April 2019, it notified the Complainants on **10th April 2019** with a detailed explanation of what had occurred. I am also satisfied that both Final Response Letters issued to the Complainants on **5th July 2019** and **12th December 2019** set out what had occurred in a clear, comprehensive tone, and these letters were written in plain English and elaborated with more detailed explanations where appropriate.

In my opinion, these letters concisely set out the effect the error would have on the Complainants' account, which was in fact, none. It was also made clear in this correspondence that no further action was required by the Complainants, in circumstances where this was an internal error with no bearing on their mortgage loan account. It is also noted from the Provider's submissions that the Provider waited a reasonable period before removing the overpay, so as to afford the Complainants sufficient time to respond, if desired.

Finally, in respect of the Complainant's contention that the Provider manipulated the figures on the account statements, which only benefitted the Provider, I am not satisfied that this has been established by the Complainants.

It is apparent to me from the evidence that the Provider made an internal bookkeeping error that caused an incorrect overpayment to be credited to the account. The error was identified within a reasonable timeframe and rectified by the Provider. The Complainants suffered no detriment as a result of this error, and the overpayment had no effect on the balance of the Complainants' mortgage loan account. The Complainants have not set out the manner in which they believe the Provider has benefitted financially from the overpayment error, and the evidence indicates that there was no such financial benefit.

In circumstances where no payment was actually raised for the full capital and interest repayment amount, I am satisfied that the Provider is not obligated to issue a refund to the Complainants. It also appears that the overpayment should not be visible on the Complainants' mortgage account statements, due to the internal nature of the error. I completely disagree with the Complainants' proposition that the Provider issued a '*convoluted explanation*' to the Complainants in respect of the error and overpayment. On the contrary, I consider the explanations set out in the Provider's correspondence with the Complainants to be comprehensive, cogent and clear. I do not accept that the Provider '*manipulated the figures on the account statements, which only benefitted the Provider*' or that the evidence discloses a satisfactory basis to support that contention.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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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
Financial Services and Pensions Ombudsman (Acting)

4 April 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.