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| <b><u>Decision Ref:</u></b>             | 2022-0232   |
| <b><u>Sector:</u></b>                   | Banking   |
| <b><u>Product / Service:</u></b>        | Mortgage  |
| <b><u>Conduct(s) complained of:</u></b> | Increase in interest rate<br>Application of interest rate |
| <b><u>Outcome:</u></b>                  | Rejected  |

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

This complaint relates to the Complainants' mortgage loan account XXXX3277 held with the Provider, and which was drawn down by them on **26<sup>th</sup> January 2006**.

The nature of the complaint is set out in a document headed 'Mortgage Audit & Mortgage Review ("the Mortgage Audit Report"), which was prepared by a third party advisor for the Complainants and furnished by them to his Office with their Complaint Form. In response to the complaint, the Provider has issued two Final Response Letters dated **11<sup>th</sup> July 2016** and **21<sup>st</sup> September 2016**.

At the outset, certain limitations should be noted to the extent of the investigation by this Office, of the Complainants' complaint.

First, certain aspects of the Complainants' complaint relate to matters that are within the scope of the Provider's commercial discretion, such as the setting of interest rates. Such matters of commercial discretion are outside the scope of any investigation by this office, unless the conduct complained of is argued to be unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60(2)(b)** of the *Financial Services and Pensions Ombudsman Act 2017*.

Secondly, in both Final Response Letters furnished to the Complainants by the Provider, the Provider refers to two top-up mortgages, XXXXXX867 and XXXXX929. Neither of these top-up mortgages are referred to in either the Complainants' Complaint Form or the Mortgage Audit Report. Therefore, while addressed in the Final Response Letters, matters relating to these top-up loans do not form part of the investigation of the complaint made by the Complainants.

There are a number of elements of complaint relating to the Complainants' mortgage loan XXXX3277, which can be summarised as follows.

### **Interest rate relative to ECB rate**

The Complainants rely on the Mortgage Audit Report, which deals with this issue at pages 5 and 6. It is asserted by the authors of the Report that the interest rate margin over the ECB rate which applied to the Complainants' mortgage at the time of drawdown, was 1%. It is asserted that the Provider "*clearly followed the ECB up to 30/4/2008, which is a total of 869 days they followed the ECB*". It is asserted that the Provider, at various times thereafter, applied increases to the interest rate on the Complainants' mortgage loan, that did not maintain this alignment with the then prevailing ECB rate, and where the margin was greater than that which existed at the date of the drawdown of the Complainants' mortgage.

In essence, it is argued that because the Complainants' mortgage interest rate had effectively tracked the ECB rate for some time, the Complainants had a legitimate expectation that it would continue to do so throughout the lifetime of the mortgage, the effect of which would be that the Complainants would enjoy the benefits of a tracker rate mortgage.

At pages 4 and 5 of the Mortgage Audit Report, the authors identify the various changes to the applicable interest rate over the lifetime of the Complainants' mortgage, and indicate whether these changes were, or were not, consistent with the margin over the ECB rate which applied at the time of drawdown of the mortgage.

Further, the authors of the Mortgage Audit Report, on which the Complainants rely in support of their complaint, assert at page 6 that, "*these actions of ad-hoc changing and inconsistent methodology is clearly not in line with the Consumer Protection Code*". (It should be noted that the CPC 2006 was not in force at the time when the Complainants mortgage was approved or drawn down.

Finally, in this regard, the authors of the Mortgage Audit Report assert that, "*if there were material changes to the methodologies applied by the [Provider] or to the terms, the consumer should have been made aware*". At page 7 of the report, the authors assert that, "*The institution has also failed to produce any interest rate change letters to the mortgagor*". It is also argued also that the European Standardised Information Sheet should have been provided, though it is noted that this document is one of the documents furnished by the Complainants to this Office, with their Complaint Form.

### **The interest rate at drawdown**

This element of the complaint relates to the difference of .25% between the interest rate quoted in the Loan Offer Letter and that which was applicable from the date of drawdown.

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On the basis of the Mortgage Audit Report and other supporting documents furnished by the Complainants, it would appear that the rate quoted in the Loan Offer Letter, was 3.25% (which was 1% above the then prevailing ECB rate) whereas at the date of drawdown, the interest rate applied to the Complainants' mortgage loan was 3.50% (which was 1.25% above the prevailing ECB rate).

In the Mortgage Audit Report, it is argued at page 6 that *"The [Provider] apparently increased its APR rates the day before drawdown by 0.25% and we find no basis for this action"*. It should be noted that, while this event occurred in **2005**, some nine years approximately before the making of the complaint to this Office, the continuing nature of this change to the applicable interest rate being charged since that time, brings it within the scope of the remit of this Office.

#### **Absence of independent legal advice**

In relation to this element of the Complainant's complaint, it is argued that the Provider induced the Complainants to avail of a 'closing centre' to execute their mortgage as opposed to obtaining independent legal advice. The extent of the Complainants' complaint in this regard is set out on pages 6 and 7 of the Mortgage Audit Report, under the heading 'Additional Issues Found'.

#### **Tax Relief at Source**

The Mortgage Audit Report furnished by the Complainants in support of their complaint contains an assertion, with supporting calculations in the table headed '*Tax Relief at Source*', that the Provider has applied an incorrect level of Tax Relief at Source (TRS) to the Complainants' mortgage.

#### **Communications Issues**

At page 7 of the Mortgage Audit Report, on which the Complainants rely in support of their complaint, the authors set out briefly the complaint in relation to how the Provider dealt with the Complainants' complaint regarding the substantive issues regarding the interest rates applied to their mortgage loan over the lifetime of the mortgage. The essence of this element of complaint is that the Provider has *'failed and/or refused, whether intentionally or negligently to address the mortgagor's concerns...'*

#### **The Complainants' Case**

The Complainants assert that various changes to the applicable interest rate over the lifetime of the Complainants' mortgage have been identified and they indicate that these changes were not consistent with the margin over the ECB rate at the time of drawdown. It is further submitted by the Complainants that these actions of *"ad-hoc changing and inconsistent methodology is clearly not within the Consumer Protection Code"*.

The Complainants assert in their report that the interest rate applicable to their mortgage loan had an *"implied margin of 1%"* over the ECB rate because the Complainants' advisors calculated that this was the actual rate applied to the Complainants' loan for a particular period.

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It is argued by the Complainants that they should have been issued with notification that the interest rate would change, in addition to the European Standardised Information Sheet which should have been provided. It is noted by the Provider that this document is one of the documents furnished by the Complainants with their Complaint Form

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

The Provider refers to its Final Response Letter dated **20<sup>th</sup> February 2017** for specific commentary in respect of the Complainants' assertion relating to the method of interest charging issued by the Provider and it having resulted in a suggested ongoing loss to the Complainants. It submits that it uses an interest calculation methodology known as 'monthly rest'. Because of the long-term nature of most housing loans, it submits that they are charged on a periodic rest basis. This means that the interest is charged at the beginning of the period for that whole period, although instalments may be made at any time, prior to the end of the month. It is noted that monthly rest loans are the most common types of periodic rest loans.

The Provider sets out an explanation of the way it calculates interest. It submits that it calculates interest on the basis that there are 30 days in a month and 360 days in a year. It notes that interest accrues on a daily basis, based on the total amount outstanding at the end of the previous month (Total Debt). It states that this becomes the balance upon which the interest will accrue for the following month (Interest Calculation Balance).

The Provider explains that on the first day of each month, it projects the amount of interest that will accrue on the account for the coming month, and this is included in the monthly charge. The Total Debt, it notes, increases on a daily basis as the interest accrues. In line with the Complainants' Terms and Conditions, direct debits are collected on the seventh day of the month to cover that monthly charge. At the end of the current month, the Interest Calculation Balance is recalculated to take into account any payments made and the accrued interest on the account in the month. The APR or annual percentage rate of charge quoted on the Provider's Loan of Offer letter, is calculated on a monthly interest charging basis.

In respect of the European Standardised Information Sheet which should have been provided to the Complainants, but they suggest was not, it is noted by the Provider that this document is one of the documents furnished by the Complainants with their Complaint Form.

The Provider submits that there is no basis, contractual or otherwise, put forward to support the Complainants' argument that they were entitled to have the interest rate applicable to the loan, directly track the ECB rate for any period.

### **The Complaint for Adjudication**

The first element of the complaint is that the Provider wrongfully and without justification increased the interest rate on the Complainants' loan from that indicated on the Loan Offer Letter between the date of the Loan Offer Letter and the drawdown of the mortgage loan.

The Complainants say in that regard, that the Provider has, during the lifetime of their mortgage, wrongfully applied increases to the interest rate on the Complainants' mortgage loan that are not in line with the margin over the ECB rate that applied when the mortgage was approved and drawn down. Consequently, the Complainants dispute the balance owing on their mortgage.

Secondly, the Complainants complain that they were induced by the Provider into using the services of a 'closing centre' to effect drawdown of the mortgage loan, and that this in effect, deprived them of having independent legal advice in relation to the transaction.

Thirdly, the Complainants complain that the Provider has applied the incorrect Tax Relief at source (TRS) to their mortgage loan account.

The final element of complaint relates to the way the Provider has addressed the Complainants' complaint regarding their mortgage.

In their Complaint Form, when asked how they would like the Provider to put things right the Complainants have not stated their desired outcome. However, in the Mortgage Audit Report on which the Complainants rely in support of their complaint, it is stated that:

*"The mortgagor is simply requesting the [Provider] to amend their figures and to amend the mortgage balance to what it should reflect had these irregularities not have occurred".*

### **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.

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A Preliminary Decision was issued to the parties on **24 June 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.

The following chronology of events has been drawn from the evidence and the parties' submissions.

#### 2005

- **27th October 2005:** The Complainants completed the mortgage loan application form and selected a variable rate
- **13th December 2005:** Letter of Offer issued which stated the rate to be 3.25%
- **16th December 2005:** The Provider increased its Variable Base Rate to 3.50%

#### 2006

- **26th January 2006:** Loan Drawdown stage when the cheque was issued
- **27th January 2006:** The cheque was encashed
- **23rd March 2006:** Provider issued letter to the Complainants notifying them of an interest rate increase of .25%
- **23rd June 2006:** Provider issued letter to the Complainants notifying them of an interest rate increase of .25%
- **24th August 2006:** Provider issued letter to the Complainants notifying them of an interest rate increase of .25%
- **23rd October 2006:** Provider issued letter to the Complainants notifying them of an interest rate increase of .25%
- **19th December 2006:** Provider issued letter to the Complainants notifying them of an interest rate increase of .25%

#### 2007

- **24th March 2007:** Provider issued letter to the Complainants notifying them of an interest rate increase of .25%
- **21st June 2007:** Provider issued letter to the Complainants notifying them of an interest rate increase of .25%

#### 2008

- **28th April 2008:** Provider issued letter to the Complainants notifying them of an interest rate increase of .08%
- **26th June 2008:** Provider issued letter to the Complainants notifying them of an interest rate increase of .20%
- **25th July 2008:** Provider issued letter to the Complainants notifying them of an interest rate increase of .35%
- **24th October 2008:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .50%



- **20<sup>th</sup> November 2008:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .50%
- **12<sup>th</sup> December 2008:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .75%

#### 2009

- **26<sup>th</sup> January 2009:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .50%
- **26<sup>th</sup> March 2009:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .50%
- **23<sup>rd</sup> April 2009:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .25%
- **25<sup>th</sup> May 2009:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .25%

#### 2010

- **26<sup>th</sup> April 2010:** Provider issued letter to the Complainants notifying them of an interest rate increase of .60%
- **26<sup>th</sup> July 2010:** Provider issued letter to the Complainants notifying them of an interest rate increase of .60%

#### 2011

- **24<sup>th</sup> February 2011:** Provider issued letter to the Complainants notifying them of an interest rate change
- **23<sup>rd</sup> June 2011:** Provider issued letter to the Complainants notifying them of an interest rate change
- **25<sup>th</sup> August 2011:** Provider issued letter to the Complainants notifying them of an interest rate change
- **23<sup>rd</sup> November 2011:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .25%
- **15<sup>th</sup> December 2011:** Provider issued letter to the Complainants notifying them of an interest rate change

#### 2013

- **29<sup>th</sup> April 2013:** Provider issued letter to the Complainants notifying them of an interest rate change

#### 2014

- **20<sup>th</sup> November 2014:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .25%

#### 2015

- **26<sup>th</sup> May 2015:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .38%
- **25<sup>th</sup> September 2015:** Provider issued letter to the Complainants notifying them of an interest rate decrease of .25%

#### 2016

- **27<sup>th</sup> June 2016:** Complaint is received by the Provider
- **27<sup>th</sup> June 2016:** An acknowledgement letter is sent by the Provider in respect of the complaint
- **11<sup>th</sup> July 2016:** A Final Response Letter is sent
- **21<sup>st</sup> July 2016:** A Complaint is again received by the Provider

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- **22<sup>nd</sup> July 2016:** An Acknowledgment Letter is sent by the Provider
- **3<sup>rd</sup> August 2016:** A Final Response Letter is sent by the Provider
- **17<sup>th</sup> August 2016:** A Compliant is again received by the Provider
- **19<sup>th</sup> August 2016:** A Complaint is again received by the Provider
- **22<sup>nd</sup> August 2016:** An Acknowledgement letter is issued by the Provider in respect of the complaints of **17<sup>th</sup>** and **19<sup>th</sup> August 2016**
- **21<sup>st</sup> September 2016:** A Final Response Letter is issued. (No evidence of an update issued on **13<sup>th</sup> September** as required by the CPC timelines)
- **28<sup>th</sup> September 2016:** A Complaint is received. (No evidence that either acknowledgement or response issued within the CPC timelines)
- **12<sup>th</sup> December 2016:** A complaint is made to this Office
- **20<sup>th</sup> February 2016:** A Final Response Letter is issued by the Provider, including an apology for the delay in responding to the complaint email received on **28<sup>th</sup> September 2016**.

### Evidence

(i) Letter of Offer dated 13<sup>th</sup> December 2004

This letter included the following:

*"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY [the Provider] FROM TIME TO TIME"*

(ii) Mortgage Loan Application Form signed by the Complainants in October 2005

Section E of the Home Loan Application Form provided a note linked to the option "Variable" (selected by the Complainants) to advise that:

*"Variable interest rates increase and decrease with changes in market rates."*

On the following page, the form stated under a heading "**Important**":

*"Unfortunately, [the Provider] cannot inform customers individually of changes of interest rates prior to issuing their loan cheque"*

On the final page under '*YOUR DECLARATIONS AND CONSENT*', the Complainants confirmed in the first bullet point that:

*"I/We agree ... that the loan is subject to the rates and tables of [the Provider]."*

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(iii) [Provider] Mortgage Conditions

These conditions included the following:

- “2.1 The basis on which the interest rate on the Loan is calculated is stated in the Offer Letter.
- 2.2 The interest rate on the Loan may be increased or reduced by [the Provider] from time to time, however no change in the interest rate will be applied to the Loan during any period when the interest rate is a fixed rate”

(iv) General Conditions for [Provider] Home Loans

This 2 page document included the following:-

**“Acceptance of Terms and Conditions:** By taking the loan from [Provider] the borrower accepts all the Terms and Conditions set out in the Application Form, Offer Letter, these General Conditions and the mortgage.”

(v) Provider Letter to Complainants dated 26 January 2006 (issue of loan cheque letter)

This letter set out, amongst other things, as follows:-

“The amount of cheque will be made up as follows: **€165,000**

...

|                   |                            |
|-------------------|----------------------------|
| Term of Loan:     | 17 years approx.           |
| Rate of Interest: | 3.50% base rate (APR 3.6%) |
| Daily Interest:   | €15.82                     |

...

We enclose [Provider] standard Home Loan Mortgage and booklet of conditions for your attention in compliance with the Consumer Credit Act 1995. This mortgage and booklet should be retained for your records.”

At the end of the letter below the signature there were a number of details in capitals including the following:-

**“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY [PROVIDER] FROM TIME TO TIME. (Does not apply while the loan is at a fixed rate)”**

## Analysis

### Applicable Interest Rate

It is apparent from a consideration of the breadth of documentation submitted by the parties to this complaint, that the Complainants did not have a specified entitlement in their loan agreement, to have the interest rate applicable to their loan directly track the ECB rate for any length of time. The documentation gives no indication that the applicable rate will “follow” or “track”, the ECB rate or any other factor. It appears that at the time of the parties’ agreement, the rate applicable to the Complainants’ loan was the Variable Base Rate, which it is within the Provider’s discretion to vary.

It is noted that the Provider submits that it has exercised this discretion in setting the Variable Rate in a fair manner, in accordance with the terms and conditions. The Provider has acknowledged that such discretion should not be exercised capriciously, and notes that any such variances were exercised for valid commercial reasons throughout the period of the Complainants’ complaint. It is noted that some of the factors the Provider may consider when setting the variable rate include the cost of funding, capital requirements, loan default risk, mortgage operational costs and market competition.

I note that the application of the Variable Rate was clearly communicated to the Complainants in correspondence.

It is apparent from the evidence, that a considerable amount of documentation was supplied to the Complainants which indicated that this would be the rate, and in my opinion, a reasonable reader of this documentation would have concluded that the meaning of a ‘Variable Base Rate’ was to indicate a rate that could change over a period of time, for a number of different reasons. I am not satisfied that the Complainants could reasonably have drawn another conclusion in this regard, and I have not been provided with adequate reasoning as to how such a different conclusion could have been reached.

There does not appear to be any evidence submitted of a representation from the Provider that the Complainants relied on, in concluding that the rate of interest applicable to their facility was something other than a variable rate. It is also noted that when the Provider increased its Variable Rate to 3.50% on **16<sup>th</sup> December 2005**, this was a change that impacted all customers on the Provider’s Variable Rate, and not simply the Complainants.

The Provider asserts that at the time the Complainants applied to switch their mortgage to the Provider, all information including the full mortgage terms and conditions, was made available to them prior to the drawdown of the funds. It appears to me that the Complainants were furnished with sufficient information to inform them that by opting for a variable interest rate, it was likely that the variable interest rate would fluctuate over the course of the loan, including throughout the period between their application for a loan and the drawdown of funds.

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In respect of the Complainants' receipt of notification of the change in interest rate, they submit that they did not receive appropriate warning of the fact that the rate would increase. The Provider rejects this assertion and copies of each interest change letter have been submitted to this Office, as part of the complaint process, with the exception of eight letters, the physical copies of which the Provider contends it did not retain. In the case of these eight letters, key payment information and the system recorded date of issue, for each letter, has been supplied. The Provider asserts that per its regulatory obligations, it issued the Complainants with notification letters for all interest rate changes applicable to their loan facility since its inception. This is also apparent from a consideration of the chronology of events set out above.

It is also apparent from the Provider's copy of the '*Issue of Loan Cheque*' letter of **26<sup>th</sup> January 2006**, that confirmation was included that the Variable Rate of 3.50% applied at that time of drawdown of the funds. The Provider also notes its more recent obligations under the Consumer Protection Code 2012 under which it must inform variable rate customer annually of any alternative interest rates available that may result in savings. It notes that this information is furnished to the customer 30 days in advance of a variable rate increase.

I am satisfied from a consideration of the chronology of events set out above and the documentation submitted to this Office that the Provider discharged its obligations under the Consumer Protection Code 2006 and the Consumer Protection Code 2012 (as amended) in respect of its duty to notify the Complainants of the change in interest rate. The Provider notes that since 2011, its notification letters have been issued within the required minimum 30-day period, in advance of each increase in the interest rate.

I am satisfied from my review of the contractual documentation in place between the parties that the Complainants had no entitlement to have the interest rate applying to their loan, track the ECB rate or indeed track any other identified rate. There may have been periods of time when variations to the Complainants' variable rate and variations to ECB occurred in a similar manner, but I am satisfied that this was simply coincidental and there is nothing within the contractual documentation that created a link between the two. I do not accept in those circumstances, that the Provider acted wrongfully or without justification when it increased or decreased the variable interest rate which applied to the Complainants' borrowing either in the period leading up to the drawdown of funds, or thereafter.

Accordingly, on the basis of the evidence available I take the view that it is not appropriate to uphold the first element of the complaint.

#### Independent Legal Advice

The Complainants have suggested that the Provider induced them to avail of the services of a "Closing Centre" to close on the transaction, instead of obtaining independent legal advice. This is denied by the Provider which points to the options given in this regard when they applied to switch their existing mortgage loan to the Provider.

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The Provider points out that one option was to retain an independent solicitor and incur the associated costs to be paid by themselves, or alternatively, to avail of the quick switch scheme which involved availing of a Closing Centre solicitor and the Provider paying the legal costs.

I note in that regard, the contents of the Switch Form which is dated **15 December 2005** and signed in a number of places by both Complainants. The form in question made clear the Complainants' agreement that:-

“

- *In accepting this facility, I/we (the Borrower's)(sic) acknowledge that I/we are fully aware that I/we have the option of retaining my/our own independent solicitor in this matter.*
- *I/We acknowledge that I/we are fully aware that I/we have the option of seeking the advice of that independent solicitor as to whether or not I/we should use the services of the Closing Centre Solicitor. In accepting this facility, I/we (the borrowers) acknowledge that notwithstanding this option, I/we have decided to retain the Closing Centre Solicitor.*
- *I/We also acknowledge that the Closing Centre Solicitor is acting on my/our behalf and not on the behalf of either [Provider] or [third party entity name redacted]”.*

In those circumstances, I do not accept that the fact that the Provider offered this option to the Complainants (as an alternative to them retaining an independent solicitor for the purpose of taking advice) amounted to an inducement of any manner. Rather, the Complainants were given an option and, rather than instructing and paying for independent legal advice, they elected to use the service of the Closing Centre and they acknowledged that the solicitor at the Closing Centre would be acting on their behalf, and not on behalf of the Provider.

Accordingly, on the basis of the evidence available I take the view that it is not appropriate to uphold this element of the complaint.

#### Tax Relief at Source

The Provider notes that it applies Tax Relief at Source (TRS) in accordance with the instructions it receives from Revenue. The Provider has furnished specific details of the deductions of TRS applied to the Complainants' account, taking note of the various ceilings applied by Revenue in respect thereof.

It is noted by this Office that Revenue stopped TRS for May and June 2009 in accordance with the Government's supplementary budget that year. Revenue corresponded with the Complainants to confirm that their entitlement to TRS was re-applied in July of that year, and it was adjusted to ensure the full annual entitlement for 2009 was permitted.

The Provider submits that the correct interest rate was applied at all times during the operation of the Complainants' mortgage loan, and it does not accept the contention that an 'overcharge' was applied in respect thereof. The Provider asserts that no financial loss was suffered by the Complainants and that no payment is due because of any alleged loss.

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On the basis of the evidence before me, I do not accept that there was an error in the manner in which the Provider applied TRS to the Complainants' account. If the Complainants have additional concerns however, it is open to them to liaise directly with Revenue in order to ensure that the appropriate credits have been applied.

Accordingly, on the basis of the evidence available I take the view that it is not appropriate to uphold this element of the complaint.

#### Maladministration of the Complainants' Account

The Complainants submit that the Provider did not discharge its obligations in respect of the CPC 2012 in its handling of their complaint. It is noted that the Provider has acknowledged certain failures in this respect, which are noted below.

The Provider's duties in respect of complaint handling are set out at Chapter 10 of the CPC 2012 which deals with errors and complaint resolutions. The Provider has identified two instances in which it did not comply with the timeline requirements for customer responses in accordance with the CPC. In respect of the complaints dated **17<sup>th</sup>** and **19<sup>th</sup> August 2016**, it notes that the Complainants were not furnished with an update on the progress of their complaint until the 29<sup>th</sup> business day, when this should have taken place on the 20<sup>th</sup> business day, at latest.

Furthermore, it notes that when completing its Final Response letter dated **20<sup>th</sup> February 2017**, the Provider became aware of an email received from the Complainants dated **28<sup>th</sup> September 2016** to which no response had been issued, as a result of an administrative oversight. This oversight was acknowledged and apologised for in the Provider's Final Response Letter dated **20<sup>th</sup> February 2017**.

Apart from the two instances outlined above which the Provider has acknowledged, it is apparent from a consideration of the correspondence submitted by both parties to this Office that the Provider discharged its obligations, in that acknowledgement letters were issued within five business dates of a complaint being received. A point of contact within the Provider's organisation was identified for the Complainants' ease of communication. Final Response Letters issued within the required time in accordance with the CPC. The Provider notes that each complaint was logged in accordance with procedures including the details of each complaint, the date the complaint was received and any other information required.

I am satisfied that the Provider has endeavoured to resolve each aspect of the complaints raised by the Complainants, and explanations have been furnished to the Complainants in respect of any shortcomings, specifically the two instances outlined above.

It is noted that in **May 2019**, the Provider offered the Complainants a goodwill gesture in the amount of **€500**. In order to redress the Provider's limited errors referred to above, I take the view that this was a reasonable amount of compensation and on the basis that this figure remains open to the Complainants for acceptance, I do not consider it necessary or appropriate to make any direction in that regard.

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For the reasons outlined above, I do not consider it appropriate to uphold this complaint.

### **Conclusion**

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

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



**MARYROSE MCGOVERN  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)**

18 July 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.