

Banking

Reference: 2019-0084

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Complainant thought compensation offer from the bank did not take account of financial impact

Joan and Julia, a mother and daughter, held a mortgage loan with a bank on a fixed interest rate. In January 2009, they decided to break from the fixed rate 10 months before it was due to expire. As a result, they gave up their contractual entitlement to a tracker interest rate of ECB + 0.80%, which was due to apply at the end of the fixed interest rate period.

The mortgage loan ended up on a higher interest rate, making their monthly payments considerably higher. The mortgage fell into significant arrears, at one point in excess of €18,000.

In 2015, the bank accepted that it had made an error on their mortgage account by failing to inform them that they would lose their future right to a tracker interest rate from November 2009 when they broke from the rate early. To provide redress, the bank offered to move them to the tracker rate of ECB + 0.80%, adjust their mortgage balance by €40,430.08 to where it would have been had they been on a tracker rate, refund overpayments of €21,137.27 in interest for the impacted period of November 2009 to November 2015 and pay compensation of €6,265.53 in recognition of its failure.

The complainants accepted the application of the tracker rate on their mortgage loan but rejected the mortgage adjustment, overpayment refund and the level of compensation, stating that it did not adequately take account of the financial hardship, distress and upset that they suffered. Their calculations showed that they had been deprived of €63,567.35 during the impacted period and believed their mortgage balance should be adjusted accordingly. Julia also stated that her quality of life was so severely impacted by the stress caused by the overcharge that she had to seek professional help to deal with the stress levels.

On top of this, their credit rating with the Irish Credit Bureau (ICB) was severely impacted by the whole affair, to the point where they were unable to secure finance from any other institution. They requested that the bank arrange for all the records of non-payment with the ICB to be removed, for €63,567.35 to be repaid to them and for a realistic offer of compensation to be offered. They also wanted the capital balance of the mortgage loan to be reduced so that they would be put in the position they would have been in, had the bank's failure not occurred.

They initially took their appeal to an independent appeals panel established by the bank, which rejected their submission.

The bank stood by the decision from the appeals panel and affirmed its belief that the level of redress and compensation offered was correct. However, in recognition of the delay in providing the compensation, due to the complaint being taken to the Ombudsman, it increased the offer of compensation to €15,000. It also stated that it would conduct a review of the ICB record once the account has been redressed.

The Ombudsman found that, had the correct tracker rate been applied to the mortgage loan, it would have never been in arrears. He outlined that the evidence demonstrated that they had, in fact, made significant prepayments on the mortgage loan, for example:

- › In June 2013, when they were being informed by the bank that they were in arrears of €16,495.37, they had actually made prepayments on their mortgage loan of €10,766.38
- › In April 2014 when they were being informed by the bank that they were in arrears of €17,576.77, they had in fact made prepayments of €12,989.01

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The Ombudsman noted Julia's circumstances, in particular, as she was servicing the loan herself and had a period of unemployment during the six year period when the mortgage loan was being overcharged. He outlined that this would have caused significant stress and difficulties for Julia and impacted her finances, including her disposable income, her wellbeing and her standard of living. The Ombudsman found that the difference between the interest that was charged and the interest that should have been charged, was often substantial. In both October 2014 and March 2015, for example, the difference was €1,131 per month.

The Ombudsman rejected a number of their arguments. The Ombudsman found they were not entitled to compound interest of 8% per annum on the overall interest overcharged of €63,567.35, as the Ombudsman pointed out they were not deprived of the use of that sum for the full period of overcharging. The Ombudsman pointed out that there was no entitlement to legal fees for making a complaint to the Ombudsman. The Ombudsman also rejected the argument that they were entitled to a refund of the interest overcharged as well as a capital reduction of circa €40,000, as that would result in them receiving a sum over and above what was overpaid by them. The Ombudsman could also not request that the bank confirm that the rate of ECB + 0.80% would remain on their loan until it was paid off, as it was not for the Ombudsman to interfere with any prospective or future changes to the mortgage which might be mutually agreed by the parties.

Given the significance of the overcharge, and the considerable stress that it caused, the Ombudsman agreed that the level of compensation offered by the bank was *"not at all reasonable"*.

The Ombudsman substantially upheld the complaint and directed the bank to pay €45,000 in compensation. This included the sums already offered by the bank but was in addition to the balance adjustment and refund of interest. He also directed the bank to carry out rectifications to the ICB record.