Banking

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Reference: **2019-0045**

Complainants dissatisfied with the level of compensation offered due to personal hardship suffered

Fergus and Niall took out a joint mortgage with the bank in 2007. They both lived with their respective partners in the mortgaged property. They also rented rooms to other paying tenants. In November 2008 they broke from a fixed rate before it was due to expire. When they did so, the bank did not inform them that this meant it would not then offer them a tracker rate in 2010 when the fixed rate had been due to expire. As a result, they ended up on a higher interest rate from 2010 to 2015.

In 2015, the bank admitted its failings, accepting that it had not informed them that by breaking out of the fixed interest rate early they had lost their contractual right to a tracker rate of ECB + 0.75% from 2010. It offered to move them on to the tracker rate, readjust the balance of the mortgage by €43,473.27 to where it would have been had the correct rate been applied, provide a net refund of overpayments of €52,852.19 and pay €9,478.63 compensation in recognition of its failure.

From 2009 to 2013, Fergus and Niall had been engaged in renovations to the property, which only progressed when they could manage to scrape together some funds. This became increasingly difficult as their mortgage repayments increased with rising interest rates. They continued to live in the property with their partners during the four years when the building work was going on, which meant that living conditions were appalling. They went one winter without central heating and with a hole in a wall of the new build area.

Had they been on the correct interest rate, they claimed, they would have had more funds available for building works and the building period could have been reduced by two years. Had this been the case, they would have been able to rent out rooms in the property, as they had done previously. This would have contributed €800 a month of rental income towards their mortgage loan repayments.

The financial strain prevented either of them from getting married at a time they wished. Despite this, they never missed a repayment on their mortgage.

The higher rates also meant that they had to restructure their mortgage loan on several occasions to keep up the repayments. The restructures meant they had to pay additional interest and contributed to the stress they were already feeling. When Fergus contacted the bank to discuss the monthly repayments to prevent the mortgage falling into arrears, he was often met with poor customer service.

The pair accepted the balance reduction of €43,473.27 and the interest refund of €52,852.19. However, they did not accept the compensation of €9,478.63. They stated that this amount did not reflect the undue stress and hardship that they had suffered. They appealed to the bank's independent appeals panel. It rejected the appeal and the complaint progressed to the Ombudsman.

The bank maintained that the level of compensation was reasonable. It argued the request for additional compensation did not take into account the interest savings Niall and Fergus made from 2008-2010 when they broke the fixed interest rate early. However, as a gesture of goodwill, the bank offered an additional €7,000.

The Ombudsman stated that the "*interest savings*" argument was irrelevant; as this was before the tracker rate should have been implemented in 2010.

The Ombudsman found that Fergus and Niall had found themselves in a situation where they were in constant engagement with the bank seeking to agree a solution so that they could finish the building works and restore full repayments.

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However, the reality was that between 2010 and 2015, Fergus and Niall were making significant prepayments on the mortgage loan as a result of the overcharge of interest. For example by November 2011, had the correct interest rate been applied they would have had a credit of €17,000. By November 2014, they would have been in credit to the tune of €42,000 if the correct interest rate had been applied.

In reviewing the evidence, the Ombudsman highlighted correspondence from Niall and Fergus to the bank from 2011. This correspondence made it clear that, due to the numerous increases of the interest rate, that the two had a difficult choice between completing the building works or meeting their monthly mortgage payments. At this point, the higher interest rate meant Fergus and Niall were being overcharged by up to €1,800 per month. During the time between 2011 and 2013 they did not miss any agreed repayments with the bank.

The Ombudsman also noted the significant fact that both Fergus and Niall had found themselves in situations of unemployment, one for a prolonged period and the other as a result of an accident during the period of overcharging. The bank sought to argue that aside from the interest overcharge, the periods of unemployment would have had an impact on the income available to Fergus and Niall to complete the build. The Ombudsman found that the periods of unemployment exacerbated the situation with respect to the bank's overcharge on the complainants' mortgage loan account.

The Ombudsman found that it was clear that the bank's overcharging denied Fergus and Niall the opportunity of making informed financial and lifestyle decisions and greatly added to their stress and hardship. The Ombudsman upheld the complaint and directed the bank to pay a sum of €52,500 in compensation for the loss, expense and inconvenience they had suffered. This sum included the compensation already offered by the bank.