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| <u>Decision Ref:</u> | 2019-0045 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Tracker Mortgage |
| <u>Conduct(s) complained of:</u> | Failure to offer appropriate compensation or redress CBI Examination |
| <u>Outcome:</u> | Upheld |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider and the overcharge of approximately €96,000 in interest by the Provider on the loan account.

The Complainants' mortgage loan account was considered by the Provider under the Provider's mortgage redress programme.

An offer was made to the Complainants by the Provider on 28 July 2015 as part of the mortgage redress programme in relation to admitted failures of the Provider regarding the Complainants' Mortgage Loan Account, as follows;

"On 01/11/2008 [the Complainants] broke from the fixed interest rate period which applied to [the Complainants'] mortgage account at that time. This break took place before the scheduled maturity date of the fixed interest rate period.

In breaking from [the Complainants'] fixed interest rate period early, [the Complainants] lost a contractual right to avail of a tracker mortgage at the scheduled maturity date of the fixed interest rate period. However at the time that [the Complainants] broke from [their] fixed interest rate period, [the Provider] did not inform [the Complainants] that [they] would be unable to avail of a tracker rate mortgage at the scheduled maturity date of the fixed interest rate period."

In the offer made to the Complainants in 2015, the Provider proposed to provide redress to the Complainants by returning them to the tracker rate of interest and compensate the Complainants as follows;

1) Tracker Rate Mortgage Option

“the opportunity to move to the tracker rate mortgage you would have been entitled to move to at the maturity of your fixed interest rate period if you had chosen to do so. That rate will reflect the loan conditions of your mortgage with [Provider]. The rate of interest charged on this product is based on the ECB Refinancing Rate (the “ECB Rate”) plus a margin of 0.75% (in practice this equals a tracker rate today of 0.800%)”.

(1) Redress and Compensation

Part One – Balance adjustment and possible net refund to you

“We have established that your current loan balance would have been €553,000.96, which is €43,473.27 less than your loan balance at present.

We have calculated a net refund of overpayments due to you of €52,852.19”

Part Two – Compensation

“This payment will include two elements;

Firstly, it will include a payment of €9,478.63 in recognition of our failure in this matter.

Secondly, it will include €400.00 (including VAT) which you may use to pay for independent advice if you chose to seek advice in respect of this letter. You will have full discretion as to the use of this money”

A mortgage rate instruction form and payment authorisation and account adjustment form were signed by the Complainants accepting the Provider’s proposal in relation to the tracker interest rate on 07 August 2015.

The Complainants did not accept the compensation offered. Therefore, the conduct being complained of and that is being adjudicated on by this office is that the Provider has not offered adequate compensation to the Complainants by consequence of the Provider’s failure in relation to their mortgage loan account.

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The Complainants have been through the Provider's customer appeals programme therefore, this office is now in a position to progress the investigation and adjudication of the complaint and issue a Legally Binding Decision.

The Complainants' Case

The Complainants submit that the offer made by the Provider under the mortgage redress programme does not adequately take account of the *"undue stress and hardship"* that they have suffered as a result of the admitted failures of the Provider.

The Complainants submit that they have incurred financial losses of at least €20,760 and further non-financial losses, the detail of which is summarised in the following paragraphs.

The Complainants submit that from 2009 to 2013, they engaged in significant building work on the mortgaged property. The work was carried out on a month to month basis when funds were available to meet the costs. They submit that if they had been on a tracker rate during this time period, the building period would have reduced by *"approximately two years (halved)"* as they would have been able to afford to undertake more work on a monthly basis. The Complainants submit that had the building work on the property been completed sooner, they would have been in a position to rent out rooms to contribute towards their mortgage loan repayments. The Complainants submit that they lost approximately €800 per month, over a two year period on rental income, amounting to €19,200.

The Complainants submit that during the time of the building work they also had to seek a number of restructuring arrangements and pursue an appeal with respect to the restructuring applications.

In this regard, the Complainants submit that they first enquired about a nine month moratorium for their mortgage loan account in November 2011 *"in order to complete the build, enhance the value of the property and enable us to rent rooms to subsidise the mortgage repayments"*. The Complainants submit that from that date there were a series of interactions with the Provider seeking restructure arrangements and the application process *"was arduous of itself and caused additional strain and stress as well as considerable time commitments"*. The Complainants submit that the Provider *"never made it easy to discuss or initiate proposals"*. The Complainants availed of three restructure agreements between January 2012 and May 2013; two three month moratoriums and a three month interest only period. The Complainants submit that as a result of the moratoriums they had to pay additional interest on a higher capital amount and that this would not have happened if they had been paying the correct interest rate.

The Complainants have detailed that although they continued to live in the mortgaged property during the extension work, their *"living conditions were appalling"* as their home was effectively a building site for four years. They say they had to endure one winter without central heating and a hole in the external wall into the new build area of the extension.

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The Complainants submit that the failure on their mortgage loan account caused by the Provider resulted in relationship, personal and financial stress.

The Complainants submit that the protracted development period put huge strain on themselves, their partners (who were living in the house) and also the relationship between the two Complainants. In addition to this, the Complainants submit that the employment status of the second-named Complainant during the period of overcharging caused "*a huge amount of stress and hardship*". The Complainants submit that in order to meet their mortgage repayments, they needed to borrow from family and friends.

The Complainants further state that given the expense that was being incurred, coupled with meeting high monthly repayments, it was not financially viable for either of them to get married at a time they wished.

The Complainants submit that their correspondence with the Provider from 2011 to 2013 was indicative of the stress, hardship and frustration suffered, which would have been avoidable if the correct interest rates were applied. The Complainants state that the compensation offered does not take into account the full facts and intricacies of their case as it ignores the sacrifices and hardships that they endured as a result of the Provider's failure on their mortgage loan account.

The Complainants are also seeking to be refunded for the life assurance premiums in the name of the Guarantor on the mortgage loan account. On 18 September 2014, the Provider received a request from the Complainants to remove the Guarantor and the second-named Complainant from the mortgage account. The Provider granted this request subject to conditions, one of which was that a capital reduction of €200,000 on the mortgage was required. The Complainants advised that they would not be in a position to comply with this condition. The Complainants state that if the correct loan balance and equity position were applied at the time, the transfer of title could have occurred sooner and the life assurance payments would not have been necessary.

The Complainants further submit that with respect to the submissions made by the Provider regarding the net refund of overpayments of €52,852.19, that this sum was one "*which should have been refunded regardless. It was refunded without interest or penalties, a luxury which I suspect we, the Complainants, would not have been afforded were we to fall into arrears of €52,852.19. We therefore refute the overpayment refund/redress amount should be categorised as "appropriate" or form part of addressing this complaint, as it was due and owing.*"

In addition to the compensatory payment of €9,878.63 which the Complainants have received, the Provider offered the Complainants the further sum of €7,000 as a gesture of goodwill, in full and final settlement of their complaint, giving a total compensation offer of €16,878.63. The Complainants have rejected the offer and state that this compensation figure does not reflect the realities of their complaint.

In summary, the Complainants are claiming the following financial and non-financial losses:

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1. Loss of rental income on the mortgaged property over approximately two years - €19,200.
2. Additional interest charged as a result of the restructure arrangement to their Mortgage Loan Account – €1,560 claimed.
3. Additional stress and hardship – The financial and personal stress suffered as a result of the Provider's failure on their Mortgage Loan Account. The hardship and stress due to their living conditions during the prolonged building work on the property.
4. Life assurance paid by the Guarantor over two years - €1,560.

The Provider's Case

The Provider submits that as a result of an investigation by the Central Bank, the Provider identified a failure in connection with the management of certain mortgage loan accounts, including the Complainants' mortgage loan account.

The Provider submits that the failure that occurred with regard to the Complainants' mortgage loan account was the Provider's failure to inform the Complainants that, by breaking early from the fixed interest rate period in November 2008, they would lose their entitlement to a tracker interest rate in the future.

The Provider submits that it implemented the mortgage redress programme and the purpose of the compensation offer pursuant to the mortgage redress programme was to return the Complainants' mortgage account to the position that it would have been in had the failure not occurred and to compensate the Complainants for the failure. The Provider submits in its letter of 28 July 2015, that the Provider's failure was explained to the Complainants and that details of the redress and compensation proposal were given to the Complainants.

The Provider has detailed that the mortgage rate instruction form and payment authorisation and account adjustment form were completed by the Complainants in August 2015.

The Provider submits that an appeal was submitted by the Complainants to the customer appeals programme which is an independent appeals panel established by the Provider. The Provider submits that it replied to the Complainants' submission to the customer appeals programme. A decision was reached by the customer appeals panel that the Complainants were unsuccessful in their appeal. The Complainants made a complaint to the then Financial Services Ombudsman in November 2016 expressing dissatisfaction with the amount of compensation offered by the Provider.

The Provider submits that the level of redress and compensation offered to the Complainants in their letter of 25 July 2015, was determined following a review of the Complainants' mortgage account pursuant to the mortgage redress programme and that

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based on the information to hand the Provider determined that the refund of overpayments in the amount of €52,852.19 and the additional compensation of €9,878.63 was “*an appropriate level of redress and compensation*” to be given to the Complainants.

The Provider submitted that the compensation amount included an amount of €400 to enable the Complainants to avail of independent advice if they wished. It also offered €7,000 as a gesture of goodwill.

The Provider submits that the redress offer returned the Complainants’ mortgage loan account to the position it would have been had the Provider’s failure not occurred.

The Provider submits that an additional amount of €9,478.63 was an appropriate level of compensation to be given to the Complainants and that the Provider submits that the offer of redress and compensation made to the Complainants was “reasonable”.

It later increased the offer of compensation to €16,876.63.

The Provider also submits that the Complainants’ request for additional compensation does not take into account the interest savings the Complainants made when they broke the fixed interest rate period early. The Provider submits that for the period of 01 November 2008 until 03 September 2010, the Complainants benefited from a lower rate of interest than they would have paid had the mortgage loan account remained on the fixed interest rate. The Provider claims this resulted in an interest saving of approximately €22,008.22 to the Complainants.

With regard to the losses claimed by the Complainants the Provider has made detailed submissions as summarised in the following paragraphs.

The Provider submits that during the building works on the mortgaged property, a number of arrangements were approved to assist the Complainants with their mortgage repayments and in order to assist them to complete the extension. The Complainants were granted two three month moratoriums (February to April 2012 and May to July 2012), a four month capital payment holiday (December 2012 to March 2013) and a further three month Moratorium from March to May 2013. The Provider submits that they did endeavour to “*facilitate the Complainants in their requests for full moratoriums/mortgage restructures.*”

The Provider notes that from the Standard Financial Statements submitted in November 2011 and July 2012 that during this time period one of the Complainants was in and out of work and the other Complainant had suffered an accident which resulted in him being unable to work. The Provider submits that this would also have had an impact on the income available to both account holders at this time and their requirement for a moratorium.

The Provider further submits that it does not agree with refunding €19,200 for the loss of rent as prior to the renovations being carried out the Complainants relied on tenants for rental income. It argues that the Complainants decided to carry out renovations on their property and it was as a result of their decision to carry out renovations on the property that they were unable to rent out the rooms while the property was under construction.

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With respect to the Complainants' submission that as a result of the restructure agreements from November 2011 to May 2013 they have incurred additional interest on the greater capital sum, the Provider submits that the Complainants "*signed the restructure offers confirming that they were aware that the concession of making reduced monthly repayments will result in additional interest costs over the term of the loan.*"

The Provider submits that even if the Complainants had moved to the correct tracker rate on 3 September 2010, a capital reduction of €192,000 would still have been required for the transfer of the mortgaged property in November 2014.

The Provider concludes that even if the Complainants had been on the tracker rate, it is unlikely that they would have been able to afford to pay this amount given that they were unable to pay the €200,000 in September 2014 and the €120,000 in July 2015.

The Provider submits that it considers the level of redress and the amount of compensation provided to the Complainants to be reasonable. In addition to the compensatory payment of €9,876.63, the Provider offered the sum of €7,000 as a gesture of goodwill, making the total compensation offered €16,876.63. This was rejected by the Complainants.

The Complaint for Adjudication

The complaint for adjudication is whether the Provider has offered adequate compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account.

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 17 January 2019, 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, I set out below my final determination.

I note that the Provider has detailed that the primary objective of the mortgage redress programme was to return all affected customers to the position they would have been in, had the Provider's failure not occurred. Furthermore, the Provider has submitted that it conducted a review of the Complainants' mortgage loan account to establish the overall impact of the Provider's failure on the Complainants.

The Provider has submitted that based on the information to hand when the review was undertaken that the Provider determined that an overcharge of circa €96,000 of interest had occurred and as such, the Provider carried out a balance adjustment of €43,473.27, offered a net refund of overpayments in the amount of €52,852.19 and additional compensation amount of €9,878.63. The Provider submitted that this was an appropriate level of redress and amount of compensation to be given to the Complainants. I note that the Provider later made an additional offer of compensation of €7,000.

The Provider submits that the level of redress and compensation was "*reasonable*" and that this is further supported by the decision made by the customer appeals panel on 12 July 2016.

The Complainants have sought additional compensation and provide numerous supporting arguments. The Complainants are of the view that account has not been taken by the Provider of the undue stress and hardship suffered by the Complainants, in the compensation awarded to the Complainants as part of the mortgage redress programme.

In this regard, I note that the impacted period extended for almost 5 years from 03 September 2010 to 28 July 2015 (the "impacted period"). In order to assess whether the compensation adequately takes account of the losses and hardship suffered by the Complainants during that period, I have considered the history on the Complainants' mortgage loan account during that period. In particular I will focus on certain key points in time highlighted, by the Complainants as relevant to this complaint, to which the Provider has responded.

In advance of detailing the history, I note that the Provider has submitted that the request for additional compensation does not take into account of interest savings (of approximately €22,008.22) that the Complainants made between 1 November 2008 until 3 September 2010 (i.e. when the break was applied in the fixed interest rate period until the end of that period if it had continued).

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It may be the case that the Complainants had the benefit of remaining on a lower rate until the end of what would have been the fixed interest rate period. That said, the Provider has accepted its failures in its dealings with customers both generally and in this instance specifically in relation to the Complainants on their mortgage loan account. It is accepted that there were certain information failings on the part of the Provider in November 2008, which I am of the view was the impetus that led to the ultimate overcharge on the Complainants' mortgage loan account which lasted for almost five years from September 2010 to July 2015. The Complainants complaint is that they have not been adequately compensated for hardship and losses that they sustained during the impacted period and as such I am of the view that the earlier period when any "interest saving" was made has no relevance to this complaint.

I am disappointed that the Provider has sought to advance an argument that because the Complainants had an "interest saving" for two years prior to the impacted period that this should be considered as a compensatory measure for a subsequent overcharge of interest of the sum of €96,380.27 over close to a five year period.

I note from the documentation submitted that the admitted failure on the Complainants' loan account began in September 2010.

This office has been provided with a Redress Statement which illustrates the manner in which the Complainants' mortgage loan account would have amortised had the Complainants' mortgage loan account been on the correct tracker interest rate. I note that because of the overcharging significant prepayments were actually being made by the Complainants on their mortgage loan account. The following chart illustrates these prepayments at particular points in time that are relevant to the Complainants' complaint;

| Date | Prepayments made by the Complainants |
|------------------|---|
| 04 November 2011 | €17,012.14 |
| 03 February 2012 | €19,819.62 |
| 04 May 2012 | €21,069.61 |
| 31 July 2012 | €22,902.96 |
| 01 January 2013 | €24,761.10 |
| 31 March 2013 | €22,271.19 |
| 30 November 2014 | €42,706.82 |

The above periods are of significant importance as they correlate with the time periods when the Complainants have asserted that particular hardship and losses accrued to them by consequence of the Provider's overcharging. The time periods from 2011 – 2013 also correlate with the time periods when the Complainants were seeking restructure arrangements with the Provider in order to facilitate them completing the building works on their home.

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I note that in November 2011, the Complainants submitted an application, together with Standard Financial Statement to the Provider for a nine month repayment holiday on their mortgage loan account to fund the completion of the building works which they estimated would cost circa €37,000 at the time. The letter from the Complainants to the Provider dated 02 December 2011 is of particular relevance and I quote from it as follows;

*“The build has been funded from our own resources to date. However, two things have occurred in the past 12 months. Firstly, the tenants upon who we relied for rental income have vacated due to the ongoing construction and poor condition of the house. Secondly, **interest rates have been increased on numerous occasions by [the Provider]**. This has led to an unsustainable position and all savings have been expended on mortgage servicing.*

*At this juncture, we need to choose between completing the extension and improving the property and repayment capacity or **trying to part meet payments as they fall due**”. [My emphasis].*

In my view the above evidences the impact of the over charge on these Complainants and their mortgage loan account at this time. Firstly with respect to the rising interest rates, I note from the Monthly Summary of Interest Charged that was provided by the Complainants as part of the mortgage redress programme, that in the twelve month period referred to by the Complainants, the Complainants were being overcharged interest by between €1,000 and €2,000 a month by the Provider, which is very significant. The following chart illustrates the difference between the in interest charged on the Complainants’ mortgage loan account on a monthly basis and the interest that should have been charged had the correct tracker interest rate been applied.

| Date | Interest Charged | Correct Interest | Difference |
|---------------|------------------|------------------|------------|
| January 2011 | €2,125.37 | €889.14 | €1,236.23 |
| June 2011 | €2,660.56 | €965.10 | €1,695.46 |
| November 2011 | €2,729.37 | €1,104.49 | €1,760.72 |

Furthermore of relevance the Complainants were indicating to the Provider that they had a choice to make with respect to seeking to part pay their mortgage at that time and complete the extension, when in fact it has subsequently transpired that they were actually in a situation where they had made a significant pre-payment of €17,012.14 to the mortgage loan by November 2011.

I note that the Provider granted the Complainants a three month moratorium by letter dated 21 December 2011. The Complainants appealed that decision by letter dated 09 January 2012 and a further three month moratorium was granted from May 2012 to July 2012 (inclusive), which was accepted by the Complainants. The actual situation was that by 4 May 2012, the Complainants had in fact made prepayments on their mortgage loan account of €21,069.61.

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The Complainants submitted a further Standard Financial Statement to the Bank in July 2012 seeking a further restructure. That Standard Financial Statement records that the Complainants' net monthly income less monthly expenditure was €3,214.67 at the time. It goes on to record that when taking account the monthly repayment due of €3,140.51 and other debt of €1,417, the Complainants had a deficit of €1,342.84. However, I note that in retrospect the Mortgage Redress Statement shows that full mortgage repayments at that time should have been €2,110.77, some €1,000 less. Whilst it remains the case that the Complainants would have had a deficit of some €300 on any Standard Financial Statement (if they had to complete one at the time) I am of the view that €1,000 a month is a significant differential. It is my view that Complainants were deprived of making informed decisions on the basis of the monies actually available to them at the time and how to best manage that money in order to make repayments on their mortgage loan and finance the ongoing building works. Further, the evidence now shows that they were in prepayment of €22,902.96 on their mortgage loan at that time.

It cannot but be the case that the availability of this sum to the Complainants would have entirely changed the situation that they were facing and the decisions that they could have made, had they been aware of the actual situation with respect to their finances and mortgage loan at the time. The Provider's overcharging denied them the opportunity of making informed financial and lifestyle decisions and greatly added to their stress and hardship.

The Complainants were granted a restructure of a capital payment holiday for a period of three months in September 2012. The Complainants accepted the restructure in November 2012 and submitted an appeal, requesting a three month moratorium in November 2012. There were exchanges of correspondence between the Provider and the Complainants as it appears that the relevant signed form was not received by the Provider. On 07 January 2013, the Complainants wrote to the Provider and outlined that this was the fourth time the form had been submitted to the Provider even though on each occasion it was submitted in the addressed envelope. The Complainants further outlined *"This request has been outstanding since September 2012 and you will appreciate that the implementation is critical and urgent. In the interim, each mortgage repayment has been made, to the detriment of the on-going house extension which was previously flagged to you."* The Complainants enclosed their earlier appeal letter seeking a three month moratorium.

This series of engagements culminated in a telephone call between the first-named Complainant and a representative of the Provider on 21 January 2013. Recordings of the call have been provided in evidence. During the course of this call which lasted some 23 minutes the first-named Complainant articulated repeatedly to the Provider's representative the difficulties that they were finding themselves in with respect to servicing the mortgage loan and trying to complete the build on the property. The first-named Complainant outlined the numerous engagements that had taken place with the Provider since 2011 in an effort to come to a solution *"rather than fall into arrears"*.

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The first-named Complainant expressed concern with respect to his credit rating, the fact that they had just gone through the winter with *"holes in the walls"* and that the Provider had left them in a situation of being *"between a rock and a hard place"* with respect to the repayment situation on the mortgage loan. The first-named Complainant was notably frustrated on this telephone call with the interactions that had taken place with the Provider both generally and with the manner in which he was being dealt with by the Provider's representative. The first-named Complainant was desperately seeking to come to some form of solution with the Provider on this telephone call. I believe that the Provider could have been more helpful to the first-named Complainant at this stage. The manner in which the Provider's representative dealt with the first-named Complainant on this telephone call was not helpful. The Provider's representative did not appear to know all of the details in relation to the Complainants' mortgage loan, in particular and of importance, that it was a residential loan and not investment loan in circumstances where, the representative purported that she had made recommendations regarding the Complainants' application for a moratorium. At various points in time, the representative was curt in dealing with the first-named Complainant. This was noted by the first-named Complainant during the call, which ultimately ended amicably between the parties, with respect to the next steps arising.

Following the telephone call, the Complainant submitted a five page appeal letter dated 25 January 2013 outlining in detail to the Provider the history of the matter including the difficulties experienced and again seeking a three month moratorium so that the build could be completed, which was then estimated at €7,000. A three month moratorium was ultimately granted by the Provider after a successful appeal to the Mortgage Arrears Resolution Process Appeals Board in March 2013. It is again of note that by 31 March 2013, while the Complainants had gone through a very frustrating process in order to keep their mortgage in good order they had in fact made prepayments on their mortgage loan account of €22,271.19. There were no further restructures sought by the Complainants.

With respect to the above history, the Provider submits that during the building works on the mortgaged property, they endeavoured to facilitate the Complainants in their request for full moratoriums/mortgage restructures. The Provider submits that the Complainants decided to carry out renovations on their property and it was as a result of their decision to carry out renovations on the property that they were unable to rent out the rooms while the property was under construction. Additionally the Provider has submitted in response to this complaint that during this time one of the Complainants was in and out of work and the other Complainant had suffered an accident which resulted in him being unable to work. The Provider submits that this *"would also have had an impact on the income available to both account holders at this time"*.

It may be the case that the building works that the Complainants decided to complete on their home resulted in the Complainants being unable to rent out the rooms that they were previously renting for income, in circumstances where, and by their own submission, the house had *"holes in the walls"*, *"heating and plumbing issues"* and *"health and safety issues"*. It is also the case that the Complainants were being significantly overcharged by the Provider during this period from 2011 to 2013 for interest which resulted in the Complainants in fact making significant prepayments on their mortgage loan entirely without their knowledge.

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The Complainants found themselves in a situation where they were in constant engagement with the Provider seeking to agree a solution so that they could finish the build and restore full repayments. During the time between 2011 and 2013 the Complainants did not miss any agreed repayment with the Provider. Of further note is the fact that both of the Complainants found themselves in situations of unemployment, one for a prolonged period and the other as a result of an accident is significant. The Complainants during these periods maintained agreed repayment. Whilst the Provider correctly submits that the periods of unemployment would have had an *"impact on the income available"* to the Complainants, I am of the view that this exasperates the situation with respect to the Provider's overcharge on the Complainants' mortgage loan account. I fail to understand how the Provider seeks to somehow rely on this as justification for reduced compensation when in fact it made the impact of the overcharging all the worse.

With respect to the Complainants' submission that as a result of the restructure agreements from November 2011 to May 2013 that they have incurred additional interest on the greater capital sum, the Provider submits that the Complainants *"signed the restructure offers confirming that they were aware that the concession of making reduced monthly repayments will result in additional interest costs over the term of the loan."*

In this regard, I find that whilst it may be the case that the restructure offers were signed in the knowledge that additional interest would be incurred, they certainly were not signed in the knowledge of the significant overcharging that was taking place. The Complainants with respect to these restructures was denied the availability of significant sums of money that they were overpaying on their mortgage loan accruing on a monthly basis and were also denied the knowledge of the true capital position of their mortgage loan. By way of examples,

- the restructure agreement signed in January 2012 shows a current capital balance of €599,290.01, whereas the Redress Statement now shows that the mortgage balance as at that time was €573,602.89. A difference of €25,687.12.
- the restructure agreement signed in January 2013 shows a current capital balance of €609,574.92, whereas the Redress Statement now shows that the mortgage balance as at that time was €564,722. A difference of €44,852.92.

Once again, I find it strange that the Provider is seeking to rely on this as justification for reduced compensation.

Having considered the points submitted by the Complainants with respect to the hardship, stress and impact that this overcharging had on them during this period while they were trying to make best endeavours to complete the build and engage with the Provider to make this possible and taking account of all the evidence before me, I am of the view that the level of compensation offered is not at all sufficient or reasonable to compensate the Complainants for the hardship, loss and inconvenience suffered and is not reasonable in the circumstances. The fact that the level of interest over charged was of such a significant magnitude, the overcharging spanned a time period of five years and the position that the Complainants found themselves is remarkable in this particular matter.

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The Complainants further submit that losses were incurred with respect to life assurance payments for the Guarantor from September 2014. They submit that at that time they sought to remove the Guarantor and the second-named Complainant from the Mortgage Loan Account. This request was granted subject to a capital reduction of €200,000, which the Complainants state they could not afford.

The Complainants submit that had the correct loan balance and equity position been known, the removal of the second-named Complainant and the Guarantor could have been forthcoming sooner and the life assurance payments would not have been necessary. The Complainant paid a monthly life assurance policy for approximately two years, after their request in September 2014, at a premium of €65 per month, totalling €1,560.

The Provider has detailed in their submissions that a capital reduction of €192,000 would have been required for the transfer of the mortgaged property in November 2014. The Provider submits that even if the Complainants had been on the tracker rate, it is unlikely that they would have been able to afford to pay this amount given that they were unable to pay the €200,000 in September 2014 and the €120,000 in July 2015.

The property and mortgage were subsequently transferred in December 2015 following a capital reduction of €73,000.

In this respect, I have not been provided with any evidence by the Complainants that they had the funds available at the time to complete this transaction. However that being said I accept that again at this time the Complainants were denied the opportunity of making informed decisions about their finances as they did not know the true capital position at this time on the mortgage loan account and that this is a direct result of the Provider's overcharging.

Taking into consideration all of the evidence before me in terms of the significant level of overcharging that occurred, the time period of almost five years over which it occurred and the impact the overcharging had on the Complainants' lives, I am of the view that the level of compensation offered (initially €9,878.63 and later increased by €7,000 to €16,878.63) is not sufficient or reasonable to compensate the Complainants for the loss, stress and inconvenience suffered by the Complainants during the impacted period.

It is clear to me that the conduct of the Provider in overcharging the Complainants for their mortgage over an extended period had a serious and negative impact on the Complainants. It is clear that having to live in a very difficult environment had a serious impact on their quality of life. It is evident that the overcharging and the consequences that flowed from this overcharge for the Complainants, has been a major source of stress and inconvenience for them. It has denied them control over important decisions relating to their finances and their lives in general, it forced them into significant and stressful interactions with the Provider for over two years. I have considered the volume of documentation that was submitted by the Complainants as part of completing the Standard Financial Statements and restructure agreements, the recording of telephone conversations, the letters to the Provider and the appeal letters, the content of which is quoted in this decision.

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I accept that this took a considerable amount of time and effort and was undoubtedly very difficult for the Complainants.

Therefore I uphold this complaint and direct that pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Provider pay a sum of €52,500 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered. For the avoidance of doubt the total sum of compensation of €52,500 is inclusive of the €9,873.63 compensation already offered to the Complainants for the Provider's failure.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €52,500, to an account of the Complainants choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

11 February 2019

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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.

