



<u>Decision Ref:</u>	2020-0004
<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>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainant with the Provider and an overcharge of interest in the amount of €4,547.86 on that mortgage loan account. The mortgage loan which was taken out to purchase a holiday home in Spain and carry out home improvements was secured on the Complainant's principal place of residence.

The Complainant's mortgage loan account was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "Examination"). The Provider identified that an error had occurred on the mortgage loan account and as such, that mortgage loan account was deemed to be impacted under that Examination.

The Provider contacted the Complainant on **15 December 2017** advising her of the error that had occurred on her mortgage loan account. The Provider detailed how it "*got things wrong*" as follows;

"In our review, we found that when you moved to a fixed rate from a tracker rate we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate. Because of this, you may have had an expectation that a tracker rate would be available to you at the end of the fixed period. The language used by

us in your documentation may have been confusing as to whether it was a variable interest rate which varied upwards or downwards tracking the ECB rate or a variable interest rate which varied upwards or downwards at our discretion.”

With respect to the effect of the failure on the mortgage loan account the Provider outlined as follows;

“How this failure affected you

As a result of our failure, we can confirm that you were charged an incorrect interest rate between 14 Nov 2008 and 30 Oct 2015.”

The Provider made an offer of redress and compensation to the Complainant by letter dated **15 December 2017**. The offer of €5,675.25 was made by the Provider to the Complainant and comprised of the following;

1. Redress of €4,775.25 covering;
 - Total interest overpaid
 - Interest to reflect the time value of money
2. Compensation of €650 for the Provider’s failure
3. Independent Professional Advice payment of €250.

On **31 January 2018** the Provider increased the Independent Professional Advice payment by €500 to €750.

The Provider did not restore a tracker interest rate to the Complainant’s mortgage loan account as the mortgage loan account had been redeemed in full on **30 October 2015**.

In **February 2018**, an appeal was submitted to the Independent Appeals Panel. The basis of the appeal was the level of compensation offered by the Provider. The Appeals Panel decided on **6 April 2018** that the Complainant was unsuccessful in her appeal, for the following reasons:

“The Panel carefully considered all the information provided by the Customer and the Bank. The Customer did not demonstrate to the Panel how the redress and compensation amounts offered were inadequate. The Panel decided that the Bank has correctly applied the tracker rate for the appropriate period.”

As the Complainant had been through the Provider’s internal appeals process, this office was in a position to progress the investigation and adjudication of the complaint.

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The conduct complained of that is being adjudicated on by this office is that the Provider has not offered adequate compensation to the Complainant by consequence of the Provider's failure in relation to her mortgage loan account.

The Complainant's Case

The Complainant submits that the compensation offer made by the Provider is not "adequate".

The Complainant submits that she made a number of substantial lump sum payments, totalling €110,000, to the mortgage loan account between **2009** and **2012**, in an attempt to mitigate against the high interest rate which was incorrectly applied to the mortgage loan account and to avoid falling into arrears. The Complainant submits that her decision to make these lump sum payments to the mortgage loan account was "*directly influenced*" by the interest rate which operated on her mortgage loan account during the impacted period. She submits that at the times she made the capital reductions, there was a disparity of up to 2.35% between the interest rate on the account and the rate which should have applied. The Complainant submits that the €110,000 was "*primarily made up [of] redundancy*" that she had received in 2001.

The Complainant further outlines that she increased her monthly repayments on the mortgage loan account from €110.56 to €600.00 in **April 2014**, in a further attempt to mitigate against the high interest rate which was incorrectly applied to the mortgage loan account by the Provider and to avoid falling into arrears. The Complainant submits that as a result the sum of "*€500 monthly*", being the difference between her original monthly repayment and her increased monthly repayment, was not available to her "*for further investment.*"

The Complainant submits that if the mortgage loan account had been operating on the correct interest rate she would not have opted to redeem the mortgage loan account early in **October 2015**, and the mortgage term would have ended in **2024** in accordance with the terms of the mortgage loan agreement. She submits that the Provider has stated that it did not reinstate the tracker rate to the mortgage loan account as it had already been redeemed in full. She submits that it would have been reasonable for the Provider to offer her the opportunity to reinstate the mortgage at the tracker rate, in circumstances where the mortgage loan account was redeemed earlier than contracted for. She submits that this would be in keeping with the approach for "*Switcher Cases*" as set out in the Provider's Redress and Compensation Scheme document.

The Complainant has submitted that the *“impact”* of not having the money that she paid off her mortgage loan in the form of the lump sum payments and the increased monthly payments *“has been phenomenal”* and the *“key impacts”* are as follows;

- (a) The Complainant’s daughter was unable to take up a university scholarship in the United States of America as the expense of flights over and back to the USA to the level that was required *“was not realistic without the comfort of a lump sum in the bank”*.
- (b) Both of the Complainant’s children *“limited their university selection to Dublin as accommodation costs would not have been achievable without a lump sum.”*
- (c) The *“lump sum payment would ideally have been used for a deposit for a house for my children when house prices were low. This opportunity is now gone as house prices have increased over the past few years.”*
- (d) *“Short term loans which attracted high interest rates would not have been required”* if she had access to the lump sum.
- (e) The Complainant could have earned interest if the €110,000 had been invested over the period of time.

The Complainant submits that the *“impact”* of the Provider’s failures *“have had a substantial negative impact on [the Complainant] and [her] family and [their] livelihoods and continues to do so”*.

The Provider’s Case

The Provider submits that the Complainant drew down a mortgage of €164,000 on **09 December 2004** for a term of 20 years under Mortgage Loan Offer Letter dated 16 November 2004, which was signed and accepted by the Complainant on 18 November 2004. The loan was drawn down in three stages: €12,000 on 09 December 2004, €142,000 on 16 December 2004 and €10,000 on 12 May 2005.

The purpose of the loan was to assist in the purchase of a holiday home in Spain and home improvements. The Complainant’s private dwelling house was security for the loan. The private dwelling house was mortgage free and valued at €450,000 when the Complainant applied for the mortgage loan.

The Provider details that the letter of offer provided for a tracker rate of ECB + 0.95% on the mortgage loan. The Complainant signed a Mortgage Form Authorisation (*“MFA”*) on **30 November 2005** to apply a fixed interest rate to the loan of 3.49% until **14 November 2008**. The mortgage loan rolled onto a standard variable rate of 4.79% on **14 November 2008**. The Complainant then signed a MFA to apply a fixed interest rate of 3.15% to the

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account on **22 January 2010** to **19 January 2012**. The Complainant then redeemed the mortgage loan 9 years earlier than the scheduled maturity date (**31 December 2024**) on **30 October 2015**.

The Provider outlines that the Complainant's mortgage loan was considered to be impacted as part of the Examination in **December 2017** because the Provider found that when the Complainant moved from a tracker rate to a fixed rate in **November 2005**, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed rate in **November 2008** and the language used by the Provider may have been confusing and misleading.

The Provider submits that the redress and compensation payment made to the Complainant is "*reasonable*", "*fair*" and "*adequate*".

The Provider sets out the interest rates that had applied at the time of each lodgement and what the tracker interest rate would have been at those times, as follows;

<i>"Date of Lodgement"</i>	<i>Amount of Lodgement</i>	<i>Interest Rate at Date of Lodgement</i>	<i>Tracker Interest Rate at Date of Lodgement</i>	<i>Difference in Interest Rate</i>
<i>1 September 2009</i>	<i>€25,0000</i>	<i>2.54% Variable</i>	<i>1.95%</i>	<i>0.59%</i>
<i>8 September 2009</i>	<i>€25,000</i>	<i>2.54% Variable</i>	<i>1.95%</i>	<i>0.59%</i>
<i>24 January 2012</i>	<i>€10,000</i>	<i>4.05% Variable</i>	<i>1.95%</i>	<i>2.1%</i>
<i>21 August 2012</i>	<i>€50,000</i>	<i>4.05% Variable</i>	<i>1.7%</i>	<i>2.35%"</i>

The Provider details that it would be "*unfair and unreasonable*" for it to be asked to compensate the Complainant for the lump sum payments that she made on the mortgage loan account. It submits that there are "*any number of reasons*" why the Complainant would use funds available to her to clear the mortgage.

The Provider submits that the Complainant has "*adduced no evidence to link the lump sum payments to the question of the tracker rate and has relied on a simple assertion of linkage over 9 years after the event*". The Provider submits that not only is there an absence of contemporaneous evidence to support the Complainant's view, the Provider's view is that the available evidence is against such linkage. The Provider submits that the terms of the Complainant's mortgage allow for the Complainant to make prepayments or partial redemptions whilst on a variable rate and the Provider is required to use these payments and apply them in accordance with the Complainant's instructions. The Provider submits that the Complainant got full value for the capital she prepaid in lump sums against the mortgage loan account, the lump sums reduced the overall amount of interest accruing on the mortgage loan account and the Complainant has not shown any loss.

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The Provider does not accept the Complainant's assertion that the lump sum payments made in **September 2009** were due to rising interest rates. The Provider submits that the interest rate on the mortgage loan account was 2.54% when the Complainant made two lump sum payments totalling €50,000 in **September 2009**. The Provider submits that the variable interest rate on the mortgage loan account had actually reduced on 5 occasions in early 2009, as follows;

- *“16 January 2009 – Variable Rate 4.04%*
- *2 March 2009 – Variable Rate 3.54%*
- *20 April 2009 – Variable Rate 3.04%*
- *11 May 2009 – Variable Rate 2.79%*
- *15 June 2009 – Variable Rate 2.54%”*

The Provider submits that on **22 January 2010** the Complainant elected *“by her own choice”* to move from a variable interest rate of 2.54% to a higher fixed interest rate of 3.15%, applicable until **19 January 2012**.

The Provider outlines that on **24 January 2012** the Complainant made a further lump sum payment of €10,000 towards the mortgage loan account, at which time the interest rate on the mortgage loan account was on a variable interest rate of 4.05%. The Provider submits that it *“does not accept that the Complainant has evidenced that this lump sum payment was made due to rising interest rates. The Complainant elected to move into a more expensive fixed interest rate and upon its expiry, paid a lump sum payment which can only be assumed to have been done to avoid incurring any costs of a fixed breakage fee.”*

The Provider says that when the Complainant made the fourth lump sum payment of €50,000 in **August 2012** the interest rate on the mortgage loan account was 4.05%. Since the previous lump sum payment in **January 2012**, there was no change in the interest rate charged to the mortgage loan account. The Provider submits that therefore in its view, the Complainant has failed to evidence that *“rising interest rates”* were the reason for the lump sum payment of €50,000 in **August 2012**.

The Provider outlines that at the time the Complainant increased her monthly repayments on the mortgage loan account in **April 2014**, the interest rate of 4.55% on the mortgage loan account had not changed for a period of 18 months. The Provider submits that the Complainant elected of her own volition to make additional payments as she is entitled to do under the terms of the Offer Letter. The Provider submits that nowhere in any correspondence with the Provider did the Complainant indicate that she was in *“financial difficulty”* of any sort. The Provider is of the view that the Complainant's request to

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increase the monthly mortgage loan repayments by 5.5 times the repayment amount, coupled with the fact that she had access to funds of €110,000 to make lump sum payments towards the capital reduction of her mortgage, is *“at odds”* with her submission that she struggled to pay her mortgage. The Provider submits that the mortgage loan account remained on line and ahead of schedule and there are no recorded requests for forbearance on the mortgage loan account.

The Provider states that the *“pattern of partial redemptions does not seem to the Provider to have any connection to the question of a tracker rate or rising interest rates”* or that the *“Complainant had a “fear of falling into arrears”*”. The Provider further outlines that the *“fact that the Complainant had access to €110,000 to make these payments...reaffirms that the Complainant was not “in danger” of falling into arrears”* on the mortgage loan account.

The Provider submits that the Complainant redeemed the mortgage loan account in full on **30 October 2015**, 9 years earlier than the maturity date (**31 December 2024**). The Provider submits that the Offer Letter did not oblige the Complainant to redeem her mortgage earlier than the maturity date. The Provider further submits that the mortgage loan account does not fit into the category of *“Switcher”* under the Examination as there has been no ongoing line of credit issued to the Complainant since the loan was redeemed.

With respect to the *“key impacts”* submitted by the Complainant, the Provider submits that at the time the Complainant made the lump sum payments to the mortgage loan account between **2009** and **2012**, her children were not of an age to attend university in Dublin or elsewhere in the world as they were under the age of 15. The Provider says that when the Complainant elected to increase her mortgage repayments in **April 2014**, from €110.56 to €600, the children were aged 15 and 17. The Provider *“cannot accept that any hardship was caused to [the Complainant’s] family for [the] lump sum payments, for an educational choice [the Complainant’s] children were too young to make”*.

The Provider further submits that at the time the mortgage loan was redeemed in full in **October 2015**, the Complainant’s children were approximately 16 and 18 and in the Provider’s view *“this can only be regarded as elevating [sic] any financial burden on the Complainant as she no longer had a mortgage on her family home.”*

In respect of the Complainant’s submission that she could not afford to pay a deposit on a house for her children when property prices were low, the Provider submits that it cannot be *“fairly and reasonably”* said that the choice of the Complainant to make lump sum repayments off her mortgage, at a time when property prices were reducing between **2009** and **2012** in any way results from the Provider’s failure. The Provider submits that *“these consequences are too remote from the question of tracker and dependent on any*

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number of factors someone may consider when making lump sum payments towards their mortgage loan account.” The Provider further submits that the Financial Services and Pensions Ombudsman does not have the power to order a reward for such a thing as a missed opportunity, as this is not in the nature of a “*loss, expense or inconvenience*” pursuant to Section 60(4)(d).

The Provider submits that no evidence has been produced by the Complainant evidencing any short term loans taken out by her. It submits that the Complainant furnished in evidence a letter confirming approval of car finance dated **4 February 2016**, but the mortgage loan had been redeemed in full at that time. The Provider submits that the possible connection between the tracker issue and the Complainant’s decision to apply for car finance, subsequent to the full redemption of her mortgage loan account, is too remote for it be justly linked to this complaint. The Provider further submits that the redemption of the mortgage in **October 2015** can only have alleviated any financial burden on the Complainant when applying for car finance loan, as she no longer had a mortgage on her family home.

In response to the Complainant’s submission that she has suffered a loss of investment opportunity on the lump sum payments, the Provider submits that the Complainant made these payments of her own volition. The Provider submits that the Complainant got full value for the capital she prepaid in lump sums against the mortgage loan account and has not shown any loss.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has not offered adequate compensation to the Complainant by consequence of the Provider’s failure in relation to her 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 Complainant was 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

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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 12 December 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, within the period permitted, the final determination of this office is set out below.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished do 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 are sufficient to enable a Preliminary Decision to be made in this complaint without the necessity for holding an Oral Hearing.

At the outset I note that the Provider has submitted that the Financial Services and Pensions Ombudsman does not have the power to order a reward for such a thing as a missed opportunity, as this is not in the nature of a *“loss, expense or inconvenience”* pursuant to Section 60(4)(d). I do not accept this submission by the Provider.

The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider’s Redress and Compensation Framework which is based on the Central Bank’s Principles for Redress. The redress payment of €4,775.25 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €227.39 to reflect the time value of money. The Provider also paid the Complainant compensation of €650 and €750 for the purposes of seeking legal advice. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider has already provided for.

The Complainant has sought additional compensation because she made four lump sum payments totalling €110,000 between **2009 and 2012** and increased her payments from €110.56 to €600 from **March 2014 to October 2015**, when the mortgage was redeemed. The Complainant submits that the *“reason”* she made the lump sum payments and increased her payments in **2014** was because her interest rate was rising and she had a *“fear of falling into arrears”*. The Complainant submits that if her account had remained on a tracker interest rate she would not have made the lump sum payments.

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I will now consider if this compensation is sufficient given the individual circumstances of the Complainant.

The Complainant's mortgage loan was drawn down on a tracker interest rate mortgage loan of ECB + 0.95% on **09 December 2004** for a term of 20 years. The tracker interest rate applied to the mortgage loan until **November 2005**, when the Complainant requested to apply a fixed interest rate to the mortgage loan. The Complainant was issued with an options letter on **22 November 2005**, which contained the following interest rate options:

<i>“</i>	Rate	Projected Repayments
<i>Fixed to 10 November 2006</i>	3.290%	€935.93
<i>Fixed to 09 November 2007</i>	3.390%	€944.01
<i>Fixed to 14 November 2008</i>	3.490%	€952.12
<i>Fixed to 13 November 2009</i>	3.690%	€968.46
<i>Fixed to 12 November 2010</i>	3.850%	€981.66”

The Complainant elected to apply the fixed interest rate of 3.49% to the account effective until **14 November 2008**. It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainant's mortgage loan account, in that, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed rate. The Provider found that the language used may have been confusing as to whether the tracker interest rate or a variable interest rate would apply at the end of the fixed interest rate period.

At the time **14 November 2008**, the mortgage loan account rolled onto a standard variable rate of 4.79%. The Provider's "Central Log Entry" from **29 October 2008** records, as follows;

“made a roll over call to [the Complainant] she is happy to roll to svr at the moment will ring back in if she sees fixed rates reduce.”

If a tracker interest rate had been applied at this time the tracker interest rate would have been 4.20%. The difference in interest charged on the variable rate and interest that would have been charged on the tracker interest rate of ECB + 0.95% between **November 2008** and **August 2009**, is represented in the below table;

Date	Rate charged (Variable)	Rate that would have been charged (Tracker)	Difference in Rate	Difference in interest charged
28 Nov 2008	4.79%	4.20%	0.59%	€31.85

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31 Dec 2008	4.79%	3.45%	1.34%	€135.27
30 Jan 2009	4.04%	2.95%	1.09%	€130.92
27 Feb 2009	4.04%	2.95%	1.09%	€116.44
31 Mar 2009	3.54%	2.45%	1.09%	€115.43
30 Apr 2009	3.04%	2.20%	0.84%	€125.65
29 May 2009	2.79%	1.95%	0.84%	€89.96
30 Jun 2009	2.54%	1.95%	0.48%	€86.84
31 Jul 2009	2.54%	1.95%	0.59%	€68.38
31 Aug 2009	2.54%	1.95%	0.59%	€68.07

The Complainant wrote to the Provider by way of letter dated **25 August 2009** as follows;

“Please find attached completed fixed rate options form duly signed. I also enclose a cheque in the sum of €25,000 which is in part redemption of the above account. Please credit my account with these monies prior to fixing my rate so that I will not be liable for any penalties.”

The Complainant again wrote to the Provider by way of letter dated **05 September 2009** as follows;

“Please find attached completed fixed rate options form duly signed. I also enclose a cheque in the sum of €25,000 which is in part redemption of the above account.

Please credit my account with these monies prior to fixing my rate so that I will not be liable for any penalties.”

A Mortgage Form of Authorisation was signed by the Complainant on **25 August 2009**, which elected to apply a fixed rate of 3.15% to the mortgage loan account until **25 July 2011** has been submitted in evidence. A fixed rate was not applied to the mortgage loan at this time. It is unclear why the mortgage loan remained on a variable rate, however in any event, this has not been raised as an issue relevant to this complaint.

The capital redemption payments totalling €50,000 made in **September 2009** reduced the balance on the Complainant’s mortgage loan account from €135,258.96 to €85,258.96. The evidence shows that the variable interest rate that was applied to the Complainant’s mortgage loan account between **November 2008** and **August 2009** was continuously reducing during the period leading up to the €50,000 capital redemption payment. The variable interest rate dropped 5 times over the 10 month period and in total by 2.25%. As such, the evidence does not support the Complainant’s submission that *“rising interest rates”* led to the redemption payment of €50,000 at this time. It is also important to note that the tracker interest rate also dropped 5 times over the 10 month period and in total

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by 2.25%. There is no evidence to suggest that had the mortgage loan account been on a tracker rate of interest at this time then the redemption payment of €50,000 would not have been made by the Complainant.

It appears that the Complainant signed an MFA to apply a fixed interest rate of 3.15% to the account on **22 January 2010** until **19 January 2012**. The difference in interest charged (on the variable and then fixed rate) and interest that would have been charged on the tracker rate between **October 2009** and **January 2012**, is represented in the below table;

Date Range (inclusive)	Rate charged	Rate that would have been charged	Difference in Rate	Amount of overcharged interest per month
30 Oct 2009 – 31 Dec 2009	2.54%	1.95%	0.59%	Between €41.17 and €42.34
29 Jan 2010 – 31 Mar 2011	3.15%	1.95%	1.20%	Between €43.46 and €90.02
29 Apr 2011 – 30 Jun 2011	3.15%	2.20%	0.95%	Between €60.40 and €65.92
29 Jul 2011 – 28 Oct 2011	3.15%	2.45%	0.70%	Between €40.72 and €49.66
30 Nov 2011	3.15%	2.20%	0.95%	€58.60
30 Dec 2011	3.15%	1.95%	1.20%	€66.83

The fixed interest rate that applied to the Complainant's mortgage loan account expired in **January 2012** and a variable interest rate was applied to the mortgage loan. The Complainant made the third lump sum payment of €10,000 to the mortgage loan on **24 January 2012**. This lump sum payment reduced the balance on the Complainant's mortgage loan account from €74,664.56 to €64,664.56.

The evidence shows that in the intervening period between the last redemption payments in **September 2009** and the redemption payment in **January 2012**, the Complainant had elected to move from a variable rate of 2.54% to a 0.61% higher, 2 year fixed interest rate of 3.15% on the mortgage loan account. In the circumstances, the single rise in interest rate applicable to the mortgage loan account during that period was by virtue of the Complainant's election to apply a higher interest rate. Had the Complainant's mortgage loan account been on a tracker interest rate during that period that tracker interest rate would have also varied upwards by 0.5% during that period. There is no evidence to suggest that had the mortgage loan account been on a tracker rate of interest at this time

then the redemption payment of €10,000 would not have been made by the Complainant in **January 2012**.

The difference in interest charged on the variable rate and interest that would have been charged on the tracker rate between **February 2012** and **August 2012**, is represented in the below table;

Date Range (inclusive)	Rate charged	Rate that would have been charged	Difference in Rate	Amount of overcharged interest per month
29 Feb 2012 – 29 Jun 2012	4.05%	1.95%	2.10%	Between €105.22 and €113.61
31 Jul 2012 – 21 Aug 2012	4.05%	1.70%	2.35%	Between €84.39 and €124.09

The Complainant made the fourth lump sum payment of €50,000 to the mortgage loan on **22 August 2012**. This reduced the balance on the mortgage loan account from €62,415.79 to €12,415.79.

The evidence shows that in the intervening period between the redemption payment in **January 2012** and the **August 2012** redemption payment, the Complainant's loan account had remained on a variable rate of interest which had remained static between February and August at 4.05%. As such the evidence does not support the Complainant's submission that a rise in interest rates had led to the redemption payment in **August 2012**. There is a significant difference between the amount overcharged during this seven month period which totalled €758.02 and the amount of the redemption payment of €50,000. As such, there is no evidence to suggest that had the mortgage loan account been on a tracker rate of interest at this time then the redemption payment of €50,000 would not have been made.

The difference in interest charged on the variable rate and interest that would have been charged on the tracker rate between **October 2012** and **January 2014**, is represented in the below table;

Date Range (inclusive)	Rate charged (variable)	Rate that would have been charged	Difference in Rate	Amount of overcharged interest per month
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31 Oct 2012 – 30 Apr 2013	4.55%	1.70%	2.85%	Between €22.47 and €30.94
31 May 2013 – 31 Oct 2013	4.55%	1.45%	3.10%	Between €28.24 and €33.10
29 Nov 2013 – 31 Jan 2014	4.55%	1.20%	3.35%	Between €29.70 and €33.71

The Complainant wrote to the Provider on **12 February 2014**, stating as follows;

“In relation to the above account please can you increase the monthly payment from €110.56 to €600 monthly with immediate effect. Payments can continue to be deducted by direct debit.”

The difference in interest charged on the variable rate and interest that would have been charged on the tracker rate between **February 2014** and **October 2015**, is represented in the below table;

Date Range (inclusive)	Rate charged (variable)	Rate that would have been charged	Difference in Rate	Amount of overcharged interest per month
28 Feb 2014 – 30 May 2014	4.55%	1.20%	3.35%	Between €27.98 and €32.09
30 Jun 2014 – 29 Aug 2014	4.55%	1.10%	3.45%	Between €23.22 and €27.81
30 Sept 2014 – 30 Oct 2015	4.55%	1.00%	3.55%	Between €0.93 and €24.33

In **February 2014**, when the Complainant increased the monthly payments applicable to her mortgage loan account from €110.56 to €600 (by €489.44), the evidence shows that the variable interest rate applicable to the mortgage loan had remained static at 4.55% for 17 months. Again the evidence does not support the Complainant’s submission that a rise in interest rates led her to increase the payments at this time until the loan was fully paid off and redeemed in **October 2015**.

Over the course of the period between **November 2008** and **October 2015**, the Complainant made redemption payments totalling €110,000 and accelerated loan repayments of €9,508.83. The interest overcharged during this period was €4,547.86.

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There is also no evidence that the Complainant was at risk of falling into arrears during this period as she has submitted. It does not appear to me from the documentation that has been furnished in evidence, that the Complainant ever raised any concerns with the Provider in respect of any difficulties or concerns she may have had in meeting the mortgage repayments, before the mortgage loan account was redeemed in full on **30 October 2015**. The evidence in fact discloses that the Complainant was in a position to make accelerated payments which total €119,508.08 between **September 2009** and **October 2015**.

The Provider's failure has been accepted by it, and redress of €4,775.25 (to include a payment for the time value of money of €227.39) and compensation of €650 has been paid to the Complainant. The Complainant has also been paid a sum of €750 for legal advice.

Having regard to all of the evidence before me I do not accept that the accelerated payments which total €119,508.08 would not have been made by the Complainant had the tracker interest rate been applied to the Complainant's mortgage loan account from November 2008 as it should have been. There is also no evidence to show any link between the Provider's overcharging of interest of €4,547.86 and the "key impacts" that the Complainant has sought additional compensation for. I believe that the compensation paid by the Provider to be reasonable in the circumstances.

For the reasons set out above, I do not uphold the complaint.

Conclusion

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** 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**

15 January 2020

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—

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- (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.**

