



<b><u>Decision Ref:</u></b>	2020-0095
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer appropriate compensation or redress CBI Examination
<b><u>Outcome:</u></b>	Partially upheld

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

**Background**

This complaint relates the Complainants' three mortgage loan accounts held with the Provider and the overcharge of interest in the amount of €13,007.89 on the mortgage loan accounts. All mortgage loans are secured on the Complainants' principal private residence.

The Complainants' three mortgage loan accounts are held as follows:

- Mortgage loan account ending **0161** was drawn down in 1999 in the amount of €82,727.25;
- Mortgage loan account ending **3004** was drawn down in 2002 in the amount of €31,743.00; and
- Mortgage loan account ending **2571** came into being in 2013 in the amount of €21,247.46, when mortgage loan account ending **0161** was split.

The Complainants' three mortgage loan accounts were considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "Examination"). The Provider identified that a failure had occurred on all three mortgage loan accounts and as such the three mortgage loan accounts were deemed to be impacted under that Examination.

The Provider wrote to the Complainants in **December 2017/January 2018** in relation to the mortgage loan accounts advising them of the failures with respect to each 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 accounts ending **0161** and **3004** the Provider outlined as follows;

*“As a result of our failure, we can confirm that you were charged an incorrect interest rate between 31 March 2010 and 28 November 2017.”*

With respect to the effect of the failure on the mortgage loan account ending **2571** the Provider outlined as follows;

*“As a result of our failure, we can confirm that you were charged an incorrect interest rate between 19 November 2013 and 22 January 2018.”*

The Complainants’ three mortgage loan accounts were restored to a Tracker Interest Rate of ECB + 1.10% in **December 2017/January 2018**.

The Provider made an offer of redress and compensation to the Complainants relation to the three mortgage loan accounts as follows;

	Account ending <b>0161</b>	Account ending <b>3004</b>	Account ending <b>2571</b>
Redress covering; (a) Total Interest Overpaid. (b) Interest to reflect time value of money.	€6,756.55	€4,199.58	€2,702.15
Compensation	€1,000	€1,000	€1,000

Independent Professional Advice Payment	€1,000	€1,000	€1,000
<b>Total</b>	<b>€8,756.55</b>	<b>€6,199.58</b>	<b>€4,702.15</b>

The Complainant signed the **Acceptance Forms** and the amount of €19,658.28 was paid into the Complainants' nominated bank account.

In **January 2018**, the Complainants appealed the redress and compensation offering to the Independent Appeals Panel. The basis of the Complainants' appeal was the inadequacy of the redress and compensation offering.

On **1 February 2018** the Appeals Panel decided to uphold the Complainants' appeal and awarded additional compensation to the Complainants. The Appeals Panel upheld the appeal because of the *"impact of the level of overpayment on the customers' personal circumstances"* and awarded additional compensation as follows;

	<b>Additional Compensation Awarded</b>
Mortgage Loan Account ending <b>0161</b>	€1,000
Mortgage Loan Account ending <b>2571</b>	€400
Mortgage Loan Account ending <b>3004</b>	€600

The Complainants signed the Acceptance Forms on **07 February 2018** and the amount of €2,000 was paid into the Complainants' nominated bank account.

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

The conduct complained of that is being adjudicated on by this office is that the Provider has not offered adequate redress and compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan accounts.

### **The Complainants' Case**

The Complainants submit that they restructured their mortgage loans ending **0161** and **3004** and that in **February 2006**, those mortgage loans were placed on a tracker interest rate. In **March 2007**, the Complainants then placed those accounts on a fixed interest rate for 3 years. The Complainants state that they were not offered their tracker rate of interest back when the fixed interest rate periods expired in **March 2010** and as such they applied further fixed interest rates to those mortgage loans for 5 years.

/Cont'd...

The Complainants outline that in **June 2010** the Second Complainant was diagnosed with [illness redacted] and had to give up her employment and that the First Complainant had to close his business in **February 2011** due to the “[*type of business reacted*] collapse”.

The Complainants submit that between **2011** and **October 2013** they “struggled” with their repayments and they met with the Provider “many times”. They also submit that they enquired about reinstating the tracker interest rate but assert that they were “informed it was no longer available”. They detail that on two occasions it was suggested by the Provider to them that they sell their home, pay off the mortgages and move into rented accommodation.

The Complainants submit that the restructuring arrangements entered into in or around **October 2013** were as follows;

- A term extension of six years for mortgage loan account ending **3004**, extending the maturity of the mortgage loan account to **March 2028** as opposed to **March 2022**;
- Splitting mortgage loan account ending **0161** into two separate mortgage loan accounts, ending **0161** and **2571** with the maturity date of mortgage loan account ending **2571** being October 2028; and
- A term extension of ten years for mortgage loan account ending **0161**, extending the maturity of the mortgage loan account to **October 2028** as opposed to **December 2018**.

The Complainants submit that due to the Provider’s failures they had to agree to the Provider’s proposal to restructure the three mortgage loan accounts in **2013** as they “...struggled with [their] repayments”.

The Complainants contend that if the tracker interest rate had been applied to the mortgage loan accounts ending **0161** and **3004** on the expiry of the 3 year fixed interest rate period in **March 2010**, they would have “made all the payments” and would not have had to enter into the restructuring arrangement in **2013**.

The Complainants assert that in **December 2017**, they spoke with a financial advisor who they submit informed them that had they “...been put back on [their] tracker rate in March 2010, [they] would not have had to restructure [their] mortgages”.

The Complainants state that after eight years it is “now very easy” for the Provider to say that they could not have made the full repayments on mortgage loan accounts ending **0161** and **3004**, but because the Provider never offered the Complainants back the tracker rate, the Provider cannot say with any “degree of certainty that [the Complainants] would not or could not have made the payments in full”.

/Cont’d...

The Complainants outline that the fact that the Provider has had to reinstate the tracker interest rate on all three mortgage loan accounts is proof that what the Provider had done in “denying” them the tracker interest rate was “deliberate and in breach of [their] contract”

The Complainants are seeking the following from the Provider;

- (i) That mortgage loan accounts ending **0161** and **2571** be “combined” into one mortgage loan account ending **0161** with a maturity date of **December 2018** as opposed to **October 2028**, with the Provider incurring any financial loss this incurs.
- (ii) That mortgage loan account ending **3004** has a maturity date of **March 2022** as opposed to **March 2028** with the Provider incurring any financial loss this incurs.

### The Provider’s Case

The Provider submits that the Complainants have three mortgage loan accounts with the Provider which are all secured on the Complainants’ principal private residence.

The Provider details that tracker interest rates of ECB + 1.1% were applied to mortgage loan accounts ending **0161** and **3004** in **February 2006**. The Provider outlines that it was not under any contractual obligation to make a tracker rate available on either mortgage loan account. The Provider submits that in **March 2007**, the Complainants requested that a 3 year fixed rate of 4.89% be applied to both mortgage loan accounts.

The Provider outlines that prior to the expiry of the fixed interest rate periods applicable to both accounts in **March 2010**, it wrote to the Complainants setting out what rates were available to them at that time and enclosing a Mortgage Form Authorisation (“MFA”) to enable the Complainants to make their choice. The Provider outlines that it offered them a choice of a non-tracker variable rate and 3 different fixed rate options on each mortgage loan account (mortgage loan accounts ending **0161** and **3004**). The MFA did not include a tracker interest rate option as the Provider had withdrawn tracker rates generally in **2008**. The Provider details that the Complainants chose to apply a 5 year fixed interest rate of 4.25% to both mortgage loan accounts.

The Provider submits that mortgage loan accounts ending **0161** and **3004** were consistently in arrears from **October 2009** and the Complainants were afforded with a number of short term arrangements from **July 2010** until **October 2013**, as follows;

- In **28 July 2010**, the Complainants availed of 6 months interest only with respect to both accounts, with an agreement to make payments of €50 per month against existing arrears on mortgage account ending **0161**;
- In **January 2011**, the Complainants availed of a further 6 months interest only with respect to both accounts, with an agreement to make payments of €50 per month

/Cont’d...

against existing arrears on mortgage account ending **0161** and to clear the arrears on account ending **3004**;

- In **September 2011**, the Complainants availed of fixed reduced repayments for a period of 12 months with respect to both accounts;
- In **December 2012**, the Complainants availed of fixed reduced repayments for a period of 6 months with respect to both accounts;
- In **April 2013**, the Complainants availed of fixed reduced repayments for a period of 6 months with respect to both accounts;
- In **October 2013**, the Complainants availed of the following;
  - (a) A split mortgage and term extension until **01 October 2028** with respect to mortgage account ending **0161**. The implementation of the split mortgage gave rise to mortgage account ending **2571**, which the Provider submits was subject to the same terms and conditions as mortgage account **0161**.
  - (b) A term extension until **31 March 2028**, with respect to mortgage loan account ending **3004**.

The Provider outlines that on the expiry of the fixed interest rate period that applied to all three mortgage loan accounts **0161**, **3004** and **2571** in **April 2015**, the Complainants applied 3 year fixed interest rates of 4.00%.

The Provider outlines that it included the Complainants' mortgage loan accounts in the Examination because they were formerly on a tracker interest rate. The Provider submits that when the mortgage loan accounts ending **0161** and **3004** moved to a fixed rate from a tracker rate, the Provider failed to "provide sufficient clarity as to what would happen at the end of that fixed rate" and the language used by the Provider may have been "confusing or misleading". The Provider further submits that as mortgage loan account ending **2571** was established as a split mortgage from account ending **0161**, the impact continued into account ending **2571**.

The Provider submits that it "has not breached any contract" with the Complainants and that there was no positive representation made by the Provider before the Complainants entered either fixed rate that they could move to a new tracker rate on the mortgage loan at the end of the fixed rate period. The Provider outlines that the failure on its part was to "identify any type of variable rate that would apply at the end of the fixed rate period" and the Provider submits that this "is significantly less serious as a shortcoming in terms of conduct than (say) a breach of contract or miss-selling a fixed rate through positive misrepresentation that a new tracker rate would be provided when it ended."

The Provider details that it has “restored” all of the Complainants’ mortgage loan accounts to the tracker interest rate of ECB +1.10%. The Provider asserts that the redress payment with respect to each account was calculated to compensate the Complainants for the overpayments in the relevant period when they were paying higher rates than the tracker rates and that payment adequately compensates the Complainants for the absence of their tracker interest rate during the relevant period. The Provider states that they have included a sum for the “time value of money, in effect interest” and this is “the only feasible and accurate way of compensating for the loss of use of money when the Complainants were paying higher rates than the tracker rates” and are of the view that therefore this is adequate compensation. The Provider submits that the Appeals Panel awarded an additional sum of €2,000 in compensation and this “strengthens the argument that compensation paid was at least adequate”.

The Provider submits that it “refutes” the following assertions made by the Complainants;

- If the Complainants’ mortgage loan account ending **0161** had been on the tracker rate from **March 2010** they would not have had to restructure it in **October 2013**.
- If the Complainants mortgage loan account ending **3004** had been on the tracker rate from **March 2010** they would not have had to extend the term on mortgage loan account ending **3004** in **October 2013**.

The Provider states that these assertions “incorrectly assume” that the Complainants had the “affordability” to maintain capital and interest repayments on both mortgage loan accounts throughout the impacted period which started in **March 2010**. The Provider submits that the Complainant’s request for further redress and compensation does not take account of the “actual repayment history on the account and the Complainants circumstances throughout including repayment capacity”. In this regard, the Provider highlights that the Complainants requested interest only in **July 2010** on the basis that they could not afford to maintain repayments of €560.23 and €204.76, respectively on mortgage accounts ending **0161** and **3004**. The Provider details that the capital and interest repayments would have been €503.82 (account ending **0161**) and €176.54 (account ending **3004**), if the mortgage loans were on the tracker interest rates of 2.1% at the time.

The Provider outlines that the evidence, in the form of **Standard Financial Statements (“SFS”)** completed at the time, shows that the Complainants’ repayment capacity for the two mortgage loans was circa €350 per month. The Provider states that per the further SFS’s completed the Complainants’ repayment capacity was €300 in **August 2011**, and €320 in **September 2012**. The Provider also details that it is important to note that the effect of the forbearance in the form of interest only periods, meant that the capital and interest payment to redeem the loans within the original term would have been higher at the end of those forbearance periods. The Provider further highlights that between **July 2010** and **July 2011**, the ECB base rate increased from 1.00% to 1.5%, which would have had an effect on

/Cont’d...

the monthly repayment to redeem the loans within the original period. The Provider outlines that the history of the accounts *“demonstrates that [the] Complainants’ financial difficulty is more correctly attributable to the change in their personal circumstances ie. their periods of unemployment and illness (demonstrated by their income being made up of Social Welfare) and not the tracker issue.”*

The Provider submits that by extending the loan terms and providing a split mortgage in **October 2013**, the Complainants’ monthly outgoings were substantially reduced in line with their level of affordability. The Provider details that it is open to the Complainants to reduce the effect of the term extension or the split mortgage through the application of the redress and compensation against the mortgages. The Provider submits that the Complainants request to unwind the alternative repayment arrangements entered into by the Complainants in **October 2013**, with the Provider incurring financial loss is not *“reasonable or proportionate”*.

The Provider asserts that the redress offered *“was made to restore the Complainants to the position they would have been in as if they had been offered and had chosen a tracker rate of ECB 1.10% in the MFAs of March 2010 and did not move from that rate since”*.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider has not offered adequate redress and compensation to the Complainants by consequence of the Provider’s failure in relation to their mortgage loan accounts.

### **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

/Cont’d...



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 **11 February 2020** 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.

At the outset, I note that the Provider has made submissions about its view that there was no breach of contract and no misrepresentation in the sale of a fixed rate. I will not be making any determination as to the nature of the Provider's failure as I do not think that this is necessary in the circumstances of this matter. The issue for decision is whether the Provider has offered adequate compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan accounts. This failure has been admitted by the Provider in its letters to the Complainants in **December 2017**.

The Provider has detailed that the redress and compensation offered and paid to the Complainants 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 €13,658.28 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €650.39 to reflect the time value of money. The Provider also paid the Complainants €3,000 for the purposes of seeking legal advice and compensation of €3,000. The Provider submits that the Appels panel added a further sum of €2,000 which the Provider is bound by. The Provider submits that the Complainants have not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel has already provided for and was paid by the Provider to the Complainants.

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

The Complainants held two mortgage loan accounts with the Provider, as follows;

- Mortgage loan account ending **0161** which was drawn down in **1999** in the amount of £65,153.00 (€82,727.25) for a term of 20 years, commencing on a ten year fixed interest rate of 6.25%. Between **1999** and **2001**, the Complainants amended the interest rate applicable to the mortgage loan in favour of different fixed interest rates.

/Cont'd...

- Mortgage loan account ending **3004** was drawn down in **2002** in the amount of €31,743 for a term of 20 years, commencing on a variable rate of 4.7%;

On **13 February 2006**, the Complainants signed two **Mortgage Form Authorisations** to apply the *“Tracker Variable ECB plus 1.1%”* to both mortgage loan accounts.

On **13 March 2007**, the Complainants signed two **Mortgage Form Authorisations** to apply fixed interest rates of 4.89% until **31 March 2010** to both mortgage loan accounts. It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainants’ mortgage loan accounts, in that, the Provider failed to provide the Complainants 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 or misleading.

The Provider has submitted in evidence **screen-shots from the Provider’s internal system** and **statements** with respect to both mortgage loan accounts, which show that throughout **2009** on the following occasions the first direct debits that were presented were returned unpaid and had to be represented for payment by the Provider. The repayments were successfully made when the debits were represented for payment on the following occasions;

- In **March 2009** on both mortgage loan accounts (ending **0161** and **3004**);
- In **April 2009** on mortgage loan account ending **0161**;
- In **June 2009** on mortgage loan account ending **0161**;
- In **July 2009** on mortgage loan account ending **0161**;

I note that the **October 2009** repayments of €560.23 (mortgage account ending **0161**) and €204.76 (mortgage account ending **3004**) were not paid by the Complainants and both mortgage loan accounts went into arrears.

The mortgage statements show that the Complainants met their mortgage payments on both mortgage loan accounts between **December 2009** and **March 2010**. The monthly repayments at this time were €560.23 on mortgage loan account ending **0161** and €204.76 on mortgage account ending **3004**.

When the fixed interest rate periods on both mortgage loan accounts expired in **March 2010**, the Complainants were offered the following:

<i>“Existing Variable LTV Rate</i>	<i>2.700%</i>
<i>Fixed to 06/04/2012</i>	<i>3.150%</i>
<i>Fixed to 05/04/2013</i>	<i>3.600%</i>
<i>Fixed to 06/04/2015</i>	<i>4.250%”</i>

At the time, in **March 2010**, the Complainants signed two **Mortgage Form Authorisations** electing to apply the fixed interest rate of 4.25% to both mortgage loan accounts. The monthly repayments on the fixed interest rate at this time were €560.23 on mortgage loan account ending **0161** and €204.76 on mortgage account ending **3004**. The Provider has submitted that the capital and interest repayments that would have been payable had the mortgage loan accounts been on tracker rates of interest of ECB + 1.10% (2.10%) are €503.82 (account ending **0161**) and €176.54 (account ending **3004**). The difference between what the total repayments were and what they should have been is €84.63 per month. I have not been provided with any evidence to support this submission by the Provider, however I have no reason to doubt the Provider’s submission.

The Complainants then signed two **Mortgage Form Authorisations** on **28 July 2010** requesting that both mortgage loan accounts be amended from annuity payments to interest only payments for a period of 6 months and that the Complainants would make additional payments of €50 per month to clear the arrears on mortgage account ending **0161**. This office has not been provided with any evidence of the discussions or interactions between the Complainants and the Provider that led to the interest only periods being implemented on the mortgage loan accounts. It appears to me that it is accepted between the parties that these arrangements were entered into at the request of the Complainants.

The **mortgage loan statements** show that throughout the interest only period (**August 2010 – January 2011**), the Complainants made the following repayments on each mortgage account;

	<b>A/C 0161</b>	<b>A/C 3004</b>
Aug 2010	€300	
Sept 2010	€200	€100
Oct 2010	€200	€100
Nov 2010	€200	€100
Dec 2010	€200	€100
Jan 2011	€200	€100

/Cont’d...

The difference in interest charged on the fixed rate (4.25%) and interest that would have been charged on the tracker interest rate of ECB + 1.1% (2.10%) between **April 2010** and **January 2011**, is represented in the below table;

Date	Rate Charged (Fixed)	Rate that would have been charged (Tracker)	Difference in Rate	Amount of overcharged interest per month		
				A/C 0161	A/C 3004	Total
April 2010	4.25%	2.10%	2.15%	€87.28	€39.67	€126.95
May 2010	4.25%	2.10%	2.15%	€89.41	€40.73	€130.14
June 2010	4.25%	2.10%	2.15%	€85.73	€39.16	€124.89
July 2010	4.25%	2.10%	2.15%	€85.11	€38.96	€124.07
Aug 2010	4.25%	2.10%	2.15%	€90.54	€41.68	€132.22
Sept 2010	4.25%	2.10%	2.15%	€84.78	€39.05	€123.83
Oct 2010	4.25%	2.10%	2.15%	€81.94	€37.73	€119.67
Nov 2010	4.25%	2.10%	2.15%	€90.35	€41.59	€131.94
Dec 2010	4.25%	2.10%	2.15%	€84.70	€40.26	€124.96
Jan 2011	4.25%	2.10%	2.15%	€87.41	€40.20	€127.61

The Provider's system notes from **19 January 2011** records as follows;

*"FRF REVIEWED. MTM 26.4%, arrs 854.76. Mr unemployed [occupation], taking time out to be with wife. Mrs diagnosed with [illness] and starting [treatment] this Tuesday [DATE]. Cust has had previous 6 month period of io on account. Income – Salary 1400pm, sick ben 271.12pm, Total 1671.20 outgoing – mort 765pm, car loan 635.17pm Total 1400 (figures less foo[d], utilities etc during current period of io cust has made all repayments and arrs (300 Total pm across both acc's). Cust also made undertaking to clr the arrs in full by end of new io term. Sent [mail] to CRU requesting to issue MFA with conditions attached."*

The Complainants then signed two **Mortgage Form Authorisations** on **29 January 2011** for interest only repayments to be applied to both mortgage accounts for a period of 6 months. The MFA's also provided for additional payments of €50 per month to clear the arrears on mortgage account ending **0161** and for the Complainants to clear the arrears in full on mortgage account ending **3004** before the interest only period elapsed. The **mortgage loan statements** show that throughout the interest only period (**February 2011 – July 2011**), the Complainants made the following repayments on each mortgage account;

/Cont'd...

	<b>A/C 0161</b>	<b>A/C 3004</b>
Feb 2011	€200	€100
March 2011	€200	€100
April 2011	€200	€100
May 2011	€500	€200
June 2011	€200	€100
July 2011	€200	€100

The difference in interest charged on the fixed rate (4.25%) and interest that would have been charged on the tracker interest rate of ECB + 1.1% between **February 2011** and **July 2011**, is represented in the below table;

Date	Rate Charged (Fixed)	Rate that would have been charged (Tracker)	Difference in Rate	Amount of overcharged interest per month		
				<b>A/C 0161</b>	<b>A/C 3004</b>	<b>Total</b>
Feb 2011	4.25%	2.10%	2.15%	€78.87	€36.26	€115.13
Mar 2011	4.25%	2.10%	2.15%	€87.24	€40.29	€127.33
Apr 2011	4.25%	2.35%	1.90%	€76.36	€35.08	€111.44
May 2011	4.25%	2.35%	1.90%	€79.46	€36.53	€115.99
Jun 2011	4.25%	2.35%	1.90%	€74.06	€34.05	€108.11
Jul 2011	4.25%	2.35%	1.90%	€66.34	€30.49	€96.83

The Provider's system notes from **29 July 2011** records as follows;

*"Recd call from customer [name] he queries amts owed on accounts. Gave same figures, he will lodge to clear same. Customer advised looking to extend term of mortgage by 1 year. Advised would need to complete SFS to apply for same. Cust advised doesn't think will be able to afford the extra E30 a month. Advised would send out today. Advised customer can get help in [Provider] branch if needed."*

The Provider's system notes from **04 August 2011** records as follows;

*"IC from [the Complainant] to say that has paid arrears on both accounts on 02.08.11 also received SFS letter but no SFS form....sent another today."*

A **Standard Financial Statement ("SFS")** was completed and signed by the Complainants on **15 August 2011**. The SFS recorded the "reason for review/arrears" as "reduce income". The **Financial Statement Summary**, recorded the following;

/Cont'd...

"Total Monthly Income	1660
Less Total Monthly Expenditure	1093
<b>Sub Total</b>	<b>567</b>
Less Mortgage Repayments Due	815
Less Other Monthly Debt Due	50
<b>Total Surplus/Deficit</b>	<b>-298"</b>

The Complainants signed two **Mortgage Form Authorisations** on **26 September 2011** for interest only repayments to be applied to both mortgage accounts for a period of 12 months. The MFA's also provided for additional payments of €32 and €23 per month, respectively, to clear the arrears on mortgage accounts ending **0161** and **3004**.

The difference in interest charged on the fixed rate (4.25%) and interest that would have been charged on the tracker interest rate of ECB + 1.1% between **October 2011** and **September 2012**, is represented in the table below. The statements show that the monthly repayments on the mortgage loan accounts during this time period were €198.27 (ending **0161**) and €101.73 (ending **3004**).

Date	Rate Charged (Fixed)	Rate that would have been charged (Tracker)	Difference in Rate	Amount of overcharged interest per month		
				A/C 0161	A/C 3004	Total
Oct 2011	4.25%	2.60%	1.65%	€59.80	€27.43	€87.23
Nov 2011	4.25%	2.35%	1.90%	€77.24	€35.41	€112.65
Dec 2011	4.25%	2.10%	2.15%	€78.78	€36.09	€114.87
Jan 2012	4.25%	2.10%	2.15%	€88.89	€40.71	€129.60
Feb 2012	4.25%	2.10%	2.15%	€80.51	€36.86	€117.37
Mar 2012	4.25%	2.10%	2.15%	€83.22	€38.08	€121.30
Apr 2012	4.25%	2.10%	2.15%	€85.94	€39.30	€125.24
May 2012	4.25%	2.10%	2.15%	€85.88	€39.25	€125.13
Jun 2012	4.25%	2.10%	2.15%	€80.20	€36.76	€116.96
July 2012	4.25%	2.10%	2.15%	€94.71	€43.68	€138.39
Aug 2012	4.25%	1.85%	2.40%	€95.37	€43.96	€139.33
Sept 2012	4.25%	1.85%	2.40%	€86.10	€39.66	€125.76

/Cont'd...

The Complainants submitted an **SFS** to the Provider dated **19 September 2012**. The SFS recorded that their “*situation*” was still the same. The **Financial Statement Summary**, recorded that the Complainants had the same income and expenditure as per the Statement completed in **August 2011** (detailed above).

The Complainants signed two **Mortgage Form Authorisations** on **06 November 2012**, agreeing to make reduced repayment instalments to the mortgage loans for 6 months. The terms of the MFA provided for payments of the greater of, €100 on mortgage account ending **3004** and €200 on mortgage account ending **0161**, or the amount of interest due on each mortgage account.

A further **SFS** was submitted by the Complainants to the Provider dated **25 February 2013**. The summary of the **SFS** records as follows;

*“Forbearance expires in April and customers are again requesting extension of same arrangement. [system] is proposing term extension & split mortgage & restructure of [third party bank] loan. Customer states that he is not in a position to do this at this time. He recently cleared [Bank] loan which he had been paying half as evidenced by [Bank] current account statement. Customer has small loan with [Bank] which he has been paying interest only E16.53 p.m. but that was conditional that when other loan cleared that new repayments schedule would be set up. Customer is now in agreement for E191.73 per month for 16 months. I have stressed the importance of prioritising his mortgage repayments and he is aware of this. His request is to continue with same repayments, ie. E220 & E100 for final 12 months.”*

The Complainants signed two **Mortgage Form Authorisations** on **10 December 2012**, agreeing to the same arrangement as had previously applied, for a further 6 months.

The difference in interest charged on the fixed rate (4.25%) and interest that would have been charged on the tracker interest rate of ECB + 1.1% between **October 2012** and **October 2013**, is represented in the below table.

The statements show that the monthly repayments on the mortgage loan accounts during this time period were €220.00 (ending **0161**) and €100.00 (ending **3004**).

Date	Rate Charged (Fixed)	Rate that would have been charged (Tracker)	Difference in Rate	Amount of overcharged interest per month		
				A/C 0161	A/C 3004	Total
Oct 2012	4.25%	1.85%	2.40%	€101.39	€46.66	€148.05
Nov 2012	4.25%	1.85%	2.40%	€92.13	€42.39	€134.52
Dec 2012	4.25%	1.85%	2.40%	€95.04	€43.73	€138.77
Jan 2013	4.25%	1.85%	2.40%	€95.16	€43.71	€138.87
Feb 2013	4.25%	1.85%	2.40%	€85.94	€39.48	€125.42
Mar 2013	4.25%	1.85%	2.40%	€85.76	€39.39	€125.15
Apr 2013	4.25%	1.85%	2.40%	€100.89	€46.36	€147.25
May 2013	4.25%	1.60%	2.65%	€101.72	€46.94	€148.66
Jun 2013	4.25%	1.60%	2.65%	€114.64	€43.54	€158.18
July 2013	4.25%	1.60%	2.65%	€90.84	€51.29	€142.13
Aug 2013	4.25%	1.60%	2.65%	€100.85	€46.54	€147.39
Sept 2013	4.25%	1.60%	2.65%	€104.13	€48.07	€152.20
Oct 2013	4.25%	1.35%	2.90%	€103.96	€47.99	€151.95

A further SFS was submitted by the Complainants to the Provider dated **07 October 2013**. The summary of the SFS records as follows;

*“Previous forbearance expires in October. Customer aware that no further periods of short term forbearance will be approved. Their situation is still the same....Discussed [system] proposal of term extension and split mortgage. Customer happy to proceed with this and repayment maximum E422 per month.”*

The Provider’s internal notes record a telephone call took place between the Complainants and the Provider on **25 October 2013**. The note of the call records as follows;

*Called [Complainants] as requested. Cust not happy with offer, ie. split mortgage, still owing E40k at end of term.”*

The Provider’s internal notes on **11 November 2013**, records as follows;

*“New MFA issued at customers request. We originally gave them a split mtg with 60% on I/O & repayments of 347pm. NAM advised that customer was not happy with the larger residual balance and wanted a higher repayment of €422 pm which would leave them with a lower residual balance on maturity so new MFA issued.”*

/Cont’d...



The Complainants signed an **Agreement to amend your Mortgage Loan Offer Letter to Split Mortgage** with respect to mortgage account ending **0161** on **11 November 2013**, which outlined as follows;

*“SECTION A: WHAT THIS FORM WILL DO*

*This form allows you to split your mortgage loan into*

- *a part on which you pay interest only in your regular instalment payment: you will be obliged to repay the principal amount of this part in a lump sum on or before 1/10/2028: and*
- *a part which you repay on an annuity basis which means your regular repayment instalments will include repayments of principal and payment of interest on this part, so that this part is repaid in full by 1/10/2028.”*

The Complainants signed a **Mortgage Form of Authorisation** with respect to mortgage account ending **3004** on **11 November 2013**, which outlined as follows;

*“I wish to extend the period of the Loan for 72 months to a new loan maturity date of 31/03/2028”*

I understand that the Complainants have continued to meet their repayments under the restructure arrangement, implemented in **November 2013**.

The Complainants submit that in **December 2017** and **January 2019**, they met with a financial advisor/consultant and having reviewed the Complainants documents from **2009** to that date, they were given a “*professional opinion*” that if they had been put back on the tracker rate in **March 2010**, “*given that it was [their] family home*” they would have “*managed to make*” the repayments on their mortgage loan accounts and they would not have had to enter into the restructure in **November 2013**. The Complainants have not furnished in evidence the assessment conducted by their financial advisor/consultant or any documented professional opinion to support this submission.

Taking the evidence before me into consideration, I am of the view that the restructure that took place in **November 2013** would have been necessary regardless of the error of the Provider in overcharging interest on the Complainants’ mortgage loan accounts from **April 2010**. The contemporaneous evidence, as outlined above, shows that the Complainants had found themselves in the position where they had entered into arrears on the mortgage loans in **late 2009** and thereafter had to agree a number of short term arrangements with the Provider in order to clear those arrears. The purpose of the short term arrangements was also to assist to Complainants to make repayments on the mortgage loan accounts, in circumstances where, both of their incomes had been reduced owing to “*business failure*”

/Cont’d...

and “illness”. The evidence in the form of the **Standard Financial Statements** completed in **August 2011, October 2012, February 2013** and **October 2013** shows that the Complainants’ cumulative income throughout the period was between €1,660 and €1,750 per month and total monthly expenditure of between €1,100 and €1,300. I believe these factors had a direct impact on the funds that the Complainants had available to them to service their mortgage loans during this time period.

It is clear that the Complainants engaged with the Provider in relation to arrangements to pay their mortgage. In that regard, I accept that the Complainants throughout the period from **April 2010 to November 2013** had made the mortgage repayments that were agreed as part of the alternative repayment repayments. I also accept that these repayments may have been less had the tracker interest rate been applied during the period from **April 2010** to when the mortgage restructure was entered into in **November 2013**. However the Complainants do not appear to have taken into account that the repayments that were being made were not full capital and interest repayments and that the effect of entering into reduced and interest only repayments for nearly 2.5 years is that the capital sums owed by the Complainants on both mortgage accounts ending **0161** and **3004** were not reducing in the way they would have, had the Complainants been making full mortgage repayments. There is no evidence that the Complainants from July 2010, could have met the full capital and interest monthly repayments required on both mortgage loan accounts (**0161** and **3004**) of in excess of €600.

It is quite clear to me that the Complainants would still have needed to enter into the long term restructuring arrangements with the Provider in **November 2013**, regardless of whether or not the Provider had offered them a tracker interest rate in **March 2010**. I accept that the Complainants did not want to enter into an arrangement that meant that the term of the loans would be extended and the contemporaneous evidence shows the Complainants’ reluctance to do this. Nonetheless there is no evidence that the Complainants had alternative finances available to them that would enable them to meet increased repayments to keep within the original 20 year repayment terms applicable to both mortgage loans (accounts ending **0161** and **3004**)

I note that the Provider has offered to “work” with the Complainants to reassess their current circumstances if they wish to. The Provider has also submitted that it is open to the Complainants to reduce the effect of the term extension and split mortgage through the application of the redress and compensation against the mortgage. These are matters for the Complainants to consider.

/Cont’d...

The Provider has paid compensation of €5,000 to the Complainants, together with redress of €13,658.28 and an independent professional advice payment of €3,000. I do not accept that the compensation paid by the Provider is reasonable or sufficient given the Complainants' individual circumstances.

The evidence before me shows that both Complainants underwent periods of unemployment during the impacted period (**April 2010 – November 2017**) and the second Complainant was diagnosed with [illness redacted]. I am of the view that for a couple dealing with very serious illness, struggling within the economic climate and relying solely on social welfare for financial support, an overpayment of interest on average of €141.39 per month for a period of 92 months is significant. I am of the view that if the Complainants had the monies overpaid available to them at the time it would have led to a change in their living conditions. Indeed, the evidence presented by the assessments of the SFS's submitted shows that the Complainants' expenses were below the Provider guidelines.

I have no doubt that the overpayment caused a significant level of stress and inconvenience on an already stressful situation. It cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused additional hardship and inconvenience to the Complainants during this seven and a half year period.

Taking into consideration all of the evidence before me in terms of the particular circumstances of the Complainants, the level of overcharging and the extended period over which the overcharging occurred, the impact such overcharging had on the Complainants, I am of the view that the level of compensation paid of €5,000 is not sufficient or reasonable to compensate the Complainants for the loss, stress and inconvenience suffered by the Complainants during the impacted period.

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 €8,000 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 €8,000 is inclusive of the €5,000 compensation already paid to the Complainants for the Provider's failure.

## **Conclusion**

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

Pursuant to **Section 60(4)** 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 €8,000, 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 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**

04 March 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—

- (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.