



<b><u>Decision Ref:</u></b>	2020-0269
<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>	Rejected

#### **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 an overcharge of interest in the amount of €14,148.40 on the mortgage loan account. The mortgage loan that is the subject of this complaint is secured on the Complainants' investment property.

The loan amount was €141,000 and the term of the loan was 17 years. The particulars of the Loan Offer signed on **2 November 2005** detailed that the interest rate applicable was the Provider's commercial variable base rate of 3.25%.

The Complainants' 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 that account was deemed to be impacted under that Examination.

The Provider wrote to the Complainants in **August** and **December 2016** advising them of the error that had occurred on the mortgage loan account. The Provider detailed "*the circumstances that caused this failure to happen*" as follows;

*“When you took out your mortgage we gave you the wrong set of terms and conditions due to a manual error. Despite this error, we have now decided to honour these terms and conditions. These terms and conditions gave you a guarantee that your rate (the Buy to Let) could not be more than 1.50% over the European Central Bank (ECB) rate. But the actual rate on your account was often higher than this.”*

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

*“What does this mean for you?  
Now that we have completed the detailed review of your mortgage account and reduced your interest rate, we have been able to calculate the redress and compensation that is due from 30/06/2008, which was when your account was first impacted.”*

The Complainants’ mortgage loan account was restored to a tracker interest rate of ECB + 1.50% in **August 2016**.

The Provider made an offer of redress and compensation to the Complainants in the letter dated **09 December 2016**. The offer of €12,525.39 made by the Provider to the Complainants comprised of the following;

1. Redress of €10,784.51 covering;
  - i. The amount overpaid while on an incorrect rate.
  - ii. Interest to compensate for not having access to the money overpaid on the mortgage loan account (Time Value of Money).
2. Compensation of €1,125.88 for the Provider’s failure.
3. Independent Professional Advice payment of €615.00.

The Complainants’ mortgage loan account balance was adjusted by €4,227.17.

In **March 2017** the Complainants appealed the redress and compensation offering to the Independent Appeals Process. The basis of the appeal was the inadequacy of the redress and compensation offering. The Appeals Panel decided on **1 August 2017** that the Complainants were unsuccessful in their appeal, for the following reasons:

*“The Panel considered all information available to it and decided that, in the circumstances, it did not agree with [the Complainants] that the financial losses claimed, specifically the loss of investment income on the interest overcharged and*

*on pension arising from the loan repayments of €30,000 (2008) and €40,000 (2011), arose as a result of the failure by the Bank to apply the correct interest rate.*

*In coming to its decision, the Panel took into consideration that the lump sum repayments amounted to €70,000 which were considerably in excess of the overcharge of €9,921.23.”*

As the Complainants completed the Provider’s internal appeals process, this office is 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 account.

### **The Complainants’ Case**

The Complainants submit that the compensation offer made by the Provider is “*wholly inadequate*” and does not reflect “*the level of personal financial hardship and suffering that we have incurred over the past number of years.*”

The Complainants say that they made two lump sum payments to reduce the mortgage loan balance in **2008** and **2011** respectively, as they were “*very concerned that we could lose the property as the rental income had collapsed and interest rates had significantly increased*”.

They outline that in **2008** “*there was a huge increase in interest rates*” on the mortgage account. They say that at that time “*...we approached [the Provider] with a view to reducing the interest rate on our mortgage but nothing came of this approach*”. The Complainants detail that consequently they decided to make a lump sum payment of €30,000 in **October 2008** to reduce the mortgage loan balance.

The Complainants submit that in **2011** “*a similar situation arose where, still very concerned about the high interest rates we were paying we approached [the Provider’s branch] asking if anything could be done to reduce the amount of the loan and reduce the interest rate but were told nothing could be done except reduce the amount of capital outstanding, which we did.*” The Complainants then made a second lump sum payment of €40,000 in **November 2011** to reduce the mortgage loan balance.

The Complainants detail that in order to make the two lump sum payments in **2008** and **2011**, they had “*no choice but to dip into our pension savings pot*”. They want the Provider

to compensate them *“for the lost investment return on these amounts as this will directly impact on our future retirement”*.

The Complainants outline that they did not request forbearance on the mortgage loan in **2011**, as they had previously sought a longer interest only period in **2005** when the mortgage was applied for and were told by the Provider at that time that it was only prepared to offer them a two-year interest only period. They say *“[o]n that basis we believed that the Bank wouldn’t be prepared to give us an extension in 2011.”*

The Complainants are seeking compensation for the loss of investment income on the interest that was overcharged by the Provider. The Complainants submit that interest should be calculated on a per day basis in respect of the overcharge and take account of the impact of compounding for each year. They have queried why the Provider has used the figure of €9,921.23 as the basis for the redress calculation *“when the actual interest overcharged figure is €14,148.40”*.

The Complainants further detail that the Provider has based the Time Value of Money payment on *“the best annual deposit rates”* that it offered during the impacted period. They submit that the calculation should be based on *“the return the Bank itself earned on our money ie its own internal rate of return and not the significantly reduced rate payable to depositors.”*

The Complainants say that *“the situation caused a huge amount of stress”* and particularly in circumstances where the First Complainant suffers from *“a number of serious long-term illnesses”*. They say that the Provider has purported to compensate them for *“potential inconvenience, harm, personal suffering or hardship”*, however they can see *“no evidence of any of these factors being taken into the calculation of the compensation payment paid to us.”*

The Complainants are seeking the following in additional compensation;

- (i) €18,000 to reflect the loss of investment income on the lump sum payment of €30,000 in **2008**;
- (ii) €15,000 to reflect the loss of investment income on the lump sum payment of €40,000 in **2011**; and
- (iii) €4,216.03 to reflect the loss of investment income in respect of the interest overcharged on the mortgage loan account.

They submit that this amounts to a total of €36,090.15, allowing for compensation already paid of €1,125.88.

### **The Provider's Case**

The Provider submits that the criteria it considered in setting the level of redress and compensation offered to the Complainants, align to the principles of redress outlined under the Central Bank directed Tracker Mortgage Examination guidelines, in particular that redress will result in impacted customers being returned to the position they should have been in if the issue had not occurred, and that compensation is to be reasonable and reflect the detriment incurred.

The Provider states that when the Complainants took out the mortgage loan account, the Provider gave them the wrong set of terms and conditions due to a manual error. It says that despite this error, it has now honoured these terms and conditions, which gave a guarantee that the 'Buy to Let' rate could not be more than 1.50% over the European Central Bank rate. It states that to redress the Complainants in line with the Central Bank's requirements, the interest rate was reduced and redress and compensation was calculated from **30 June 2008**, which was when the account first became impacted.

The Provider details that the Complainants were paid €1,125.88 in compensation, which was calculated at 7.5% of the interest overcharged of €9,921.23 plus 7.5% of the Time Value of Money (TVM) payment of €863.28, as it relates to the Complainants' Buy-to-Let property. The Provider states that it has refunded the Complainants €9,921.23, which is the amount that they overpaid, and it also made a TVM payment of €863.28. The Provider details that it also made a payment towards Professional Advice of €615. It states that it reduced the balance of the mortgage by €4,227.17, which is the balance that would have applied had the Provider's failure not occurred.

The Provider states that the basis on which compensation was calculated as part of the Examination to compensate the Complainants for not having access to the money which they overpaid, or Time Value of Money, was calculated by selecting the best annual deposit rates the Provider offered during the impacted period and applying these monthly to the amounts overpaid during the impacted period. It states that this is a "*fair and reasonable*" calculation of TVM in accordance with the Central Bank's guidelines.

The Provider submits that the Complainants' decision to make additional lump sum payments to the mortgage loan account of €30,000 in **2008** and €40,000 in **2011**, was made independently by the Complainants. It states that the Provider did not request these additional payments to be made, or advise the Complainants to use their own funds to reduce the balance on their mortgage loan account at any stage. It submits that it is "*not unusual*" for customers in the normal course of business to make additional unscheduled payments in reduction of mortgage debt.

/Cont'd...

The Provider details that on **30 October 2008**, its records show that the Complainants telephoned to query if they made a partial redemption of €20,000, €30,000 or €40,000 what the repayments would be, and they were advised on this telephone call what the monthly repayments would be. It states that its telephone calls were not recorded in **October 2008**. It states that on **30 October 2008** a lump sum payment of €30,000 was made to the mortgage loan account by the Complainants by cheque.

The Provider details that it was not aware of any concerns the Complainants had in relation to the interest rate on their mortgage loan account in **2011**. It says that on **27 January 2011** its records show that the Complainants visited its branch and made enquiries with regard to making a payment of €20,000 towards their mortgage loan account. It outlines that staff in the branch discussed with them the effect of such a lump sum payment on the mortgage loan account. It states that the Complainants advised the branch that they would make an appointment to discuss the options on their mortgage and also stated that there was no-one living in the property at that time, however it has no records of an appointment taking place and repayments were continually met.

The Provider details that on **3 November 2011**, it received a letter dated **2 November 2011** from the Complainants' solicitor requesting the outstanding balance at that time and enquiring whether any allowance would be made to the Complainants in the event that they decided to redeem the loan early rather than on the loan expiry date. The Provider states that on **4 November 2011** it issued a full redemption letter outlining the figure required to redeem the loan and the daily interest payable. It states that it had no process in place at that time for any allowance to be made for customers who redeemed a mortgage loan before its termination date. It submits that on **11 November 2011** a lump sum payment of €40,000 was received in reduction of the mortgage loan balance.

The Provider states that it had no knowledge of any financial difficulty and there is no evidence to indicate that the Complainants were having trouble meeting their mortgage repayments. It states that where customers request forbearance in cases of financial difficulty, the Provider has a process in place for assessing the particular case and where available, offering a number of different options to the customers with a view to putting in place a solution that is supportive and appropriate. It states that this "*support*" was never sought by the Complainants. It details that all repayments were met on the mortgage since inception and no forbearance measures were sought at any point throughout the life of the loan.

The Provider believes that the redress and compensation payment made was "*fair*" and "*reasonable*". It states that the Complainants' appeal was heard by the Independent Appeals Panel who also agreed that the redress and Compensation received by the Complainants was "*sufficient*".

/Cont'd...

## **The Complaint for Adjudication**

The complaint for adjudication is that the Provider has failed to offer adequate redress and compensation to the Complainants for the Provider's failure on 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.

A Preliminary Decision was issued to the parties on **16 July 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.

The Provider has detailed that the redress and compensation offered and paid to the Complainants is in line with the Central Bank's Principles of Redress. The redress payment of €10,784.51 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €863.28 to reflect the time value of money. The Provider also paid the Complainants compensation of €1,125.88 and €615 for the purposes of seeking legal

/Cont'd...

advice. The Provider submits that the redress and compensation payment is fair and reasonable.

The Complainants have sought additional compensation because they made two lump sum payments totalling €70,000 in **2008** and in **2011**. The Complainants submit that the reason they made the lump sum payments was because of the “*huge increase*” in the interest rate on the mortgage account.

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

A **Loan Offer** dated **19 October 2005** issued to the Complainants which detailed as follows;

1. *Amount:* €141,000.00 (one hundred and forty one thousand euro)
2. *Term & Nature:* 17 year Repayment Loan (including a capital moratorium for the first 24 months).
3. *Purpose of Loan:* Towards the purchase of [Property Address] at a cost of €188,500 plus fees.
4. *Rate of Interest:* Variable at 3.25% p.a.  
Rate Basis: Variable Commercial Base Rate
5. *Repayments:* €381.88 per month comprising interest only for the first 24 months payments based on the above variable rate.

*After expiry of the initial 24 months capital moratorium, payments shall comprise of principal and interest and shall be calculated to amortise the loan and interest thereon over the remaining term by equal instalments.*

*All Payments shall be made by monthly direct debit on dates as may be determined by [the Provider] and advised to the Borrower in writing. Payments will vary in line with movements in the interest rate.”*

/Cont'd...



The **Standard Commercial Loan Conditions** detail as follows:

***"1. DEFINITIONS***

...

*"Buy to Let Rate" shall be the rate as determined by [the Provider] from time to time for variable residential investment loans. The dates on which the "Buy to Let Rate" shall vary shall be determined by the timing of changes to the ECB Rate and shall take place on the sooner of:-*

...

*Subject to the timing differences outlined above, [the Provider] shall undertake that the variable "Buy to Let" Rate shall not at any time be higher than 1.5% over the ECB rate, throughout the term of the Loan."*

The **Acceptance of the Loan** was signed by the Complainants on **02 November 2005**. The Complainants' mortgage loan account was drawn down in **September 2006** on the variable commercial base rate of 3.25%.

The overcharge of interest identified by the Central Bank Examination commenced on the Complainants' mortgage loan account from **July 2008**.

The Complainants made the first lump sum repayment of €30,000 to the mortgage loan account on **30 October 2008**. I note that the Provider's call log from **30 October 2008** records, as follows;

*"confd repayment if cust was to do part red or 20k 30k or 40k"*

The Complainants make reference to having sought a reduced interest rate at this time, however, I have not been provided with any evidence of these communications between the Complainants and the Provider. In any event, even if the Complainants did make such a request, there is no contractual or other obligation on the Provider to reduce the interest rate applicable to the Complainants' mortgage loan because they requested the Provider to do so.

In the period between **April 2008** and **October 2008**, the mortgage account remained on the Provider's variable commercial rate which fluctuated between 5.25% and 5.88%. The tracker interest rate that should have been applied was ECB + 1.5% from **July 2008**. Between **July 2008** and **October 2008**, the overall tracker rate (ECB + margin) fluctuated between a rate of 5.50% and 5.75%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 3 of the table below.

/Cont'd...

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **July 2008** and **October 2008**, is also represented in the table below at column 4:

Date	Rate charged (Variable)	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month
07 April 2008	5.25%	N/A	N/A	N/A
07 May 2008	5.33%	N/A	N/A	N/A
07 Jun 2008	5.33%	N/A	N/A	N/A
07 July 2008	5.53%	5.50%	0.03%	€3.53
07 Aug 2008	5.88%	5.75%	0.13%	€15.27
07 Sept 2008	5.88%	5.75%	0.13%	€15.27
07 Oct 2008	5.88%	5.75%	0.13%	€9.84

The lump sum payment of €30,000 made in **October 2008** reduced the balance on the Complainants' mortgage loan account to €110,519.19.

The Complainants appear to submit that they would not have made this redemption payment had the tracker interest rate of ECB + 1.5% been applied to their mortgage loan at the time.

The **Annual Loan Statements** which have been submitted in evidence show that the interest rate on the mortgage loan was rising even in advance of the overcharge commencing on the mortgage loan account from **July 2008**, as follows:

**April 2008:** from 5.25% to 5.33%

**June 2008:** from 5.33% to 5.53%

**31 July 2008:** from 5.53 to 5.88%

The evidence does not support the Complainants' submission that *"there was a huge increase in interest rates"* at that time which led to the redemption payment of €30,000. I accept that interest rates were rising generally at the time. The variable interest rate which was applied to the Complainants' mortgage loan account increased by 0.35% during the four month period from **July 2008**, when the overpayments commenced, to **October 2008**, when the redemption payment was made. However the tracker interest rate, had it been applied to the Complainants' mortgage loan account would also have increased from

/Cont'd...

5.50% to 5.75% over the same four month period from **July 2008** to **October 2008**. The monthly overpayments on the mortgage loan at the time were between €3.53 and €15.27 per month. The evidence does not support the Complainants' position that the application of the variable interest rate instead of the tracker interest rate in the period between **July 2008** and **October 2008**, influenced the Complainants' decision to make the redemption payment of €30,000.

The difference in interest charged and interest that would have been charged on the tracker rate between **November 2008** and **November 2011**, is represented in the table below;

<b>Date Range (inclusive)</b>	<b>Rate charged</b>	<b>Rate that would have been charged</b>	<b>Difference in Rate</b>	<b>Amount of overcharged interest per month</b>
Nov 2008 – Dec 2008	5.88%	5.25%- 4.75%	0.63% - 1.13%	Between €58.24 and €104.12
Jan 2009 – Mar 2009	5.13%	3.50% - 4.00%	1.13- 1.63%	Between €104.04 and €149.28
Apr 2009 – May 2009	4.63% - 4.88%	2.75% - 3.00%	1.88%	Between €171.09 and €171.49
Jun 2009 – Mar 2011	4.63%	2.50%	2.13%	Between €171.09 and €193.01
Apr 2011 – Jul 2011	4.93%	2.50%- 2.75%	2.18%- 2.43%	Between €187.56 and €208.05
Aug 2011 – Sept 2011	5.18%	3.00%	2.18%	Between €187.96 and €188.35
Oct 2011 – Nov 2011	5.43%	3.00%	2.43%	Between €206.86 and €207.29

The impact of the overcharge of interest on the monthly repayments within the same period (**November 2008** and **November 2011**) is represented in the below table;

<b>Date Range (inclusive)</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
Nov 2008 – Dec 2008	€928.62	Between €891.59 and €862.97	€37.03

/Cont'd...

Jan 2009 – Mar 2009	€885.09	Between €821.25 and €794.25	Between €63.84 and €90.84
Apr 2009	€871.05	€768.04	€103.01
May 2009 – Mar 2011	€857.02	€742.57	€114.45
Apr 2011 – Jul 2011	€871.86	Between €742.57 and €752.89	Between €129.29 and €118.97
Aug 2011 – Sept 2011	€883.89	€763.61	€120.28
Oct 2011 – Nov 2011	€895.88	€763.61	€132.27

I note that the Provider's call log from **27 January 2011** records, as follows;

*"advised member what 20k partial redemption would do on mortgage. member will make app to discuss options on mortgage as no one is living in the apartment at present"*

The Complainants' representative wrote to the Provider by letter dated **2 November 2011**, as follows;

*"You might please advise as to the amount now payable on foot of the above loan.*

*We are instructed by our above clients to enquire as to whether any allowance would be made to them in the event that they decide to redeem this loan now rather than on the anticipated termination date."*

The Provider replied to the Complainants' representative by letter dated **4 November 2011**, as follows;

*"The amount required to redeem on 4/11/2011 is EUR 94, 215.22 and the daily interest payable each day thereafter is EUR 14.20."*

The Complainants made the second lump sum payment of €40,000 to the mortgage loan on **11 November 2011**. This lump sum payment reduced the balance on the Complainants' mortgage loan account from €93,276.73 to €53,276.73.

The Complainants make reference to having again sought a reduced interest rate at this time. I have not been provided with any evidence of these communications between the Complainants and the Provider and in any event, as I have outlined above, even if the

/Cont'd...

Complainants did make such a request, there is no contractual or other obligation on the Provider to reduce the interest rate applicable to the Complainants' mortgage loan because they requested the Provider to do so.

The Complainants submit that they were *"struggling to pay the mortgage" at this time and "were very concerned that [they] could lose the property as the rental income had collapsed and interest rates had significantly increased"*.

It appears from the evidence that the variable interest rate that applied to the account was static at 4.63% during the period between **June 2009** and **March 2011**. The evidence shows that the variable interest rate that was applied to the Complainants' mortgage loan account increased three times, from 4.63% to 5.43%, during the period between **April 2011** and **November 2011**. Had the Complainants' mortgage loan account been on a tracker interest rate during that period the tracker interest rate would have moved downward initially between **November 2008** and **March 2011** and then upwards by 0.5% from 2.50% to 3.00% from **April** to **November 2011**, when the second redemption payment of €40,000 was made by the Complainants.

I note that the overpayments the Complainants were making gradually increased between **2008** and **2011** because of the incorrect interest rate being applied to the mortgage account. The overpayments rose from €63.84 in **January 2009**, to €129.29 by **April 2011** and upwards to €132.27 by **November 2011**. These are significant amounts to overpay on a monthly basis.

In the circumstances of this particular matter, I do not accept that the Complainants made the second lump sum payment of €40,000 in **November 2011** solely because of the higher interest repayments being charged on the mortgage account. Whilst I accept that the overpayments of interest and corresponding effect of monthly overpayments on the repayment amount were significant, I am of the view that the evidence shows there were other factors outside of the interest rate applying to the mortgage account that influenced the redemption payment. The Complainants themselves have submitted that *"[s]hortly after buying our property in [location], the property market crashed and we quickly went into negative equity, interest rates shot up and rental income decreased. At this time my [business] income also took a big hit. Keeping up the capital and interest repayments became a priority for us despite our income shortfalls"*.

I have not been provided with any evidence of income shortfalls. It would appear to me that there is in fact evidence to the contrary, in that, the Complainants had funds of €30,000 available to them in **October 2008** and then a further €40,000 built up in funds by **November 2011**.

/Cont'd...

With respect to the redemption payments totalling €70,000, the Complainants have sought compensation for investment income of 7.5% (€33,500) that they submit they could have earned on the €70,000. Either it is the case that the Complainants would, as they did, have reduced the capital sum owing on mortgage account at the times that they did, or they would not have made those capital redemption repayments and further interest would have accrued on that capital amount. It cannot be the case that the Complainants could, at the same time, use the same €70,000 to reduce the capital sum on their mortgage and otherwise invest it to earn income at 7.5%. In circumstances where the Complainants do not appear to want to unwind the redemption payments, I do not see a basis for this claim.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **December 2011** and **August 2016**, is represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
Dec 2011	2.43%	€506.66	€422.34	€84.32
Jan 2012 – July 2012	2.33%	€496.25	€415.89	€80.36
Aug 2012 – May 2013	2.58%	€496.25	€409.80	€86.45
Jun 2013 – Nov 2013	3.08%	€502.18	€403.83	€98.35
Dec 2013 – Jun 2014	3.33%	€502.18	€398.47	€103.71
Jul 2014 – Sept 2014	3.43%	€502.18	€396.01	€106.17
Oct 2014 – Mar 2016	3.58%	€502.18	€393.97	€108.21
Apr 2016 – Aug 2016	3.58%	€502.18	€390.99	€111.19

/Cont'd...

I note that the overpayments the Complainants were making continued to increase between **2011** and **2016** because of the incorrect interest rate being applied to the mortgage account. The overpayments rose from €84.32 in **December 2011**, to €11.19 by **August 2016**. These are significant amounts to overpay on a monthly basis.

The Complainants have received an interest payment to “*reflect the time value of money*” on the interest of €9,921.23 overpaid of €863.28 as part of the redress and compensation payment in **December 2016**. The Complainants are of the view that they are owed a time value of money payment of 7.5% on the total interest overcharged of €14,148.40.

It is important for the Complainants to be aware, that whilst the total interest overcharged is €14,148.40, only €9,921.23 of that money would have been available to the Complainants during the impacted period and that is why the TVM calculation has been based on the sum of €9,921.23. The portion of the interest overcharge of €4,227.17 would have been payable by the Complainants during the impacted period, however that sum would have reduced the capital sum owing during that time, instead of the interest owed. It is for this reason that the Complainants’ capital balance has been adjusted by the Provider by €4,227.17, as part of the redress. The sum of €4,227.17 would not have been available to the Complainants during the impacted period, for them to invest and earn income on that amount as they have submitted. The Complainants have not furnished any evidence of investment opportunities that they had available to them from **2008**, where they could have invested the interest overcharged and would have yielded a 7.5% income.

Having considered the documentary evidence submitted, it appears to me that the Complainants have not tendered any evidence which demonstrates that they have suffered the losses or damages that they have claimed, such that additional compensation to a minimum amount of €36,090.15 they have sought is warranted.

The Provider has paid compensation of €1,125.88 to the Complainants, together with redress of €10,784.51 (interest overpaid and time value of money payment), a balance adjustment of €4,227.17 and an independent professional advice payment of €615. In the circumstances of this matter I accept that the compensation paid by the Provider to be reasonable.

For the above reasons, I do not uphold this complaint.

### **Conclusion**

/Cont’d...

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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

**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

11 August 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.