



<b><u>Decision Ref:</u></b>	2020-0270
<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 Complainant with the Provider and an overcharge of interest in the amount of €44,946.79 on that mortgage loan account.

The Loan Offer signed on **8 March 2005** detailed that the loan amount was €280,000 and the term of the loan was 35 years. The mortgage loan account is secured on the Complainant's private dwelling house.

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 a failure had occurred on the mortgage loan account and as such that account was deemed to be "impacted" as part of the Examination.

The Provider in its letter to the Complainant dated **12 December 2017** detailed the circumstances that caused this failure to happen 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 03 Dec 2008 and 23 Nov 2017”*

The Provider made an offer of redress and compensation to the Complainant by letter dated **12 December 2017**. The offer of €52,163.54 made by the Provider to the Complainant comprised of the following;

1. Redress of €47,194.13 covering;
  - Total interest overpaid
  - Interest to reflect the time value of money
2. Compensation of €4,719.41 for the Provider’s failure
3. Independent Professional Advice payment of €250.00.

The Provider restored the Complainant’s mortgage loan account to a tracker interest rate of 1.05% on **24 November 2017**.

The Provider increased the independent advice payment from €250.00 to €750.00 on **31 January 2018**.

The Complainant submitted an appeal to the Independent Appeals Panel in **June 2018**. On **27 July 2018** the Appeals Panel decided to uphold the Complainant’s appeal and awarded additional compensation of €5,000 to the Complainant. In determining the appeal the Panel outlined that *“having regard to the level of overpayment, it would be appropriate to provide additional compensation of €5,000.”*

The Complainant accepted the award of €5,000 by signing the Appeal Payment Instruction Form received by the Provider on **24 September 2018**.

As the Complainant had completed 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 I am now adjudicating on is that the Provider has not offered the Complainant adequate compensation for its failure on her mortgage loan account.

### **The Complainant's Case**

The Complainant outlines that during the impacted period she constantly worried about her ability to repay the mortgage. She submits that she was *"absolutely terrified"* that she would not be able to pay off the mortgage and own the house before she retires.

The Complainant outlines that *"as a consequence of the stress and worry I developed grinding (bruxism). In November 2018, I lost my two front teeth as a result of all the years of grinding. My two front teeth cost me €1,800 to replace and I have other front teeth badly ground down which will ultimately need to be replaced. This is another huge cost that I suffered both financially and personally"*.

The Complainant outlines that when she applied for the mortgage she had *"intended to rent two rooms for a period of two years maximum"*. However, due to the overcharge on the mortgage loan account she states that she *"had no choice but to continue renting the two rooms indefinitely to ensure that I could fund my mortgage"*.

The Complainant details that due to a lack of adequate cash flow she has had to rent two rooms in her house to lodgers for the last 10 years. She submits that she has *"had to endure the inconvenience of living with tenants for so long that my home became nothing better than rental accommodation but it was the only way I could ensure my repayments were met."*

The Complainant further submits that she has been forced to sacrifice her social life and to forego holidays and family events such as weddings, in order to fund the mortgage repayments and unexpected expenses such as house repairs. She states *"I request to be compensated for the personal impact and cost to me of not being able to attend such occasions and events due to lack of cash flow at the time."*

The Complainant submits that the money overpaid is money that should have been at her disposal to reduce the balance on the mortgage loan account and/or to fund her retirement. She outlines that she could have invested this money in a pension fund which would have attracted tax relief of 52%. The Complainant submits that tax relief of 52% on the overcharged sum equates to an approximate loss of €23,000.

She details that she incurred *"car loan interest costs"* because *"[t]he Provider took my cash (through overcharged mortgage interest repayments) that should have been available to*

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*me to fund changing my car. As a result I had to take out car loans and incur more interest costs”.*

The Complainant submits that *“[t]he provider argues that I had savings circa €17,000 and an SSIA due to mature of circa €20,000 at the time of my mortgage application ... This is correct, but that is ALL I had and I used every penny of it to furnish my house and make it functional.”* She asserts *“I did not have this money when the Provider commenced overcharging me”* in **2008**.

The Complainant further outlines that *“[t]he provider argues that I had a guaranteed bonus of 15% ... My bonus is linked to company performance ... when the economy fell into recession my employer like all other employers suffered the effects of the financial crisis and bonus payments were reduced significantly, so much so, that in 2008 there were no bonus payments at all.”*

The Complainant details that *“I never expressed my financial difficulty to the Provider as I did not want to draw the Providers attention to the fact that I was struggling and any solution the Provider could potentially offer me was ultimately going to cost me more money in the longer term, and further increase the repayment term of my mortgage”.*

The Complainant submits that *“[t]he Provider repeatedly uses my request to increase my mortgage repayments to support its claim that I did not indicate any signs of financial difficulty”.* She details that when she was redressed and compensated by the Provider for the failure identified on the mortgage account in **December 2017**, the mortgage repayments were reduced from €1,275.00 per month to €690.00 per month *“which resulted in a EUR585 differential between what my monthly repayments should have been and what I was actually repaying every month.”* She states that *“the large outstanding balance on my mortgage dictated my decision to request the overpayment arrangement from the significantly lower corrected monthly repayment (following the investigation) of EUR690 per month back up to €1,200 which is EUR75 less than I had been required to repay to the Provider up until that time.”*

She further details that *“my family and friends strongly advised me to continue making the repayments that I had been making prior to the date of the restatement of my interest rate to the correct reduced rate for as long as I could keep renting my house, in an effort to reduce the principle and the years outstanding on my mortgage, especially given I am single with no other future guaranteed income. I took their advice and increased the repayment back up to €1,200”.* She further outlines that *“the time horizon for me being able to continue to make higher repayments is unknown and decreasing rapidly because as I get older and being the landlord living in the house, it is becoming increasingly less attractive to tenants to move in with me”.*

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The Complainant submits that “[t]he compensation I received for 10 years of worrying and hardship was a paltry inadequate amount of €4,719.41. This is not a just or equitable amount of compensation” and she is seeking additional compensation.

### **The Provider’s Case**

The Provider submits that the Complainant drew down a mortgage of €280,000 on **27 April 2005** for a term of 35 years pursuant to a **Mortgage Loan Offer Letter** dated **28 February 2005**, which was signed and accepted by the Complainant on **08 March 2005**. The Provider details that the rate of interest applicable was set out in **Special Condition (iii)** of the Offer Letter which provided that the interest rate would be “no more than 1.05% above the European Central Bank Main Refinancing Operations Minimum Bid Rate for the term of the loan”.

The Provider submits that the Complainant made a number of changes to the interest rate applicable to the mortgage loan as follows;

- The Complainant signed a **Mortgage Form Authorisation (“MFA”)** on **25 November 2005** choosing to fix the rate for two years at 3.39% and the Provider applied a 0.05% discount to this interest rate. The interest rate of 3.35% was applied to the mortgage account on **5 December 2005**.
- On **04 December 2007** the Complainant signed a MFA choosing to fix the interest rate for a further two years at 5.39%. The Provider states that it offered the Complainant a tracker rate of interest in this MFA which she did not choose. The fixed rate was implemented on **6 December 2007**.
- On **02 December 2008** the Complainant chose to break the fixed rate to apply a home loan standard variable rate of 4.95% and the Provider applied a 0.10% discount to this interest rate, which was implemented on **03 December 2008**.
- On **05 May 2010** the Complainant signed a MFA choosing to fix the interest rate for two years at 3.5%, which was implemented on **11 May 2010**.
- On **11 May 2012**, the mortgage loan account rolled to the standard variable rate of 3.85%.
- On **14 July 2015**, the Complainant signed a MFA choosing to fix the rate for three years at 3.8%, which was implemented on **16 July 2015**.
- The mortgage loan account was reverted to a tracker interest rate of ECB + 1.05% on **24 November 2017**.

The Provider outlines that the Complainant’s mortgage loan was included in the Central Bank directed Tracker Mortgage Examination because it was formerly on a tracker interest rate. The Provider submits that it found that when the Complainant moved from a tracker

rate to the standard variable rate and then to a fixed rate, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed rate period and the language used by the Provider may have been confusing and misleading.

The Provider details that it has “restored” the Complainant’s mortgage loan account to the tracker interest rate of ECB + 1.05% since **November 2017**. The Provider asserts that the redress payment was calculated to compensate the Complainant for the overpayments in the relevant period when she was paying higher rates than the tracker rates, and that payment adequately compensates the Complainant for the absence of her tracker interest rate during the relevant period. The Provider states that it has 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 due to overcharging*” and is of the view that therefore this is adequate compensation. The Provider submits that the Appeals Panel awarded an additional sum of €5,000 in compensation and this “*strengthens the argument that compensation paid was at least adequate*”.

The Provider states that its internal notes detail that, at the time of the mortgage loan application, “*the Complainant was earning €47,000 basic salary plus a guaranteed bonus of 15% her salary paid annually. The Complainant also had €17,000 in savings and an SSIA due to mature the following year which would provide her with further savings of approximately €20,000. The Complainant had no liabilities. The Complainants proposition to the Provider was that she intended to rent out two rooms in the Property which would net €500 per month.*” The Provider submits that the Complainant’s application was approved on the basis of the details submitted by her.

The Provider submits that the Complainant had the full benefit of legal advice at the time of loan drawdown and her solicitor had a “*clear duty*” to explain the full implications of her commitments in respect of this transaction. It states that if she had any doubts about the contents of the Offer Letter and its implications she should have raised this with her solicitors at the time.

The Provider submits that it was always the Complainant’s intention to rent out two rooms in the property. It details that at the time of drawdown the mortgage loan repayments were €1,084.19 per month and her mandated salary was €2,464.00 per month, not taking into account her annual bonus. The Provider further submits that the costs of the building works on the property “*are not within the control of the Provider*”.

The Provider submits that the FSPO does not have the power to make an award for “*such things as “stress and worry” or that the Complainant asserts that she was “absolutely terrified” that she would not be able to pay off the mortgage and own the property before*

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*she retires*” as it suggests that these are not in the nature of a “*loss, expense or inconvenience*” provided for in **Section 60(4) (d)** of the **Financial Services and Pensions Ombudsman Act 2017**. The Provider further submits that the FSPO does not have the power to make an award for stress, on the basis that it is not a “*loss or expense*” and it does not believe that the Complainant has demonstrated any inconvenience.

The Provider states it is of the view that for a claim of stress to succeed, even in a court action for tort, there must be personal (psychiatric) injury. It refers to *Larkin v Dublin City Council* [2007] IEHC 416. It submits that the FSPO does not have the power to make an award for personal injury and refers to *Carr v Financial Services Ombudsman* [2013] IEHC 182. The Provider further submits “*a court will not make an award for stress arising from a breach of contract or professional negligence (with certain exceptions such as holidays or leisure or arrangements that had peace of mind as a particular aim)*”. In this regard it refers to *Murray v Budds* [2017] IESC 4 and to *Addis v Gramophone Co. Ltd* [1909] AC 488.

The Provider outlines that at all times the Complainant has maintained all repayments with no arrears. It outlines that “*at no point to date during the life of the mortgage loan account, has the Complainant indicated to the Provider that she is/was in financial difficulty of any sort. In fact, upon receipt of the Provider’s Redress and Compensation and the restoration of the tracker interest rate to the mortgage loan account, the Complainant contacted the Provider on 8 January 2018 and put an overpay arrangement in place on her mortgage loan account.*” It details that at that time the Complainant increased her loan repayments from €692.21 per month to €1,200.00 per month, which is an overpayment of €507.79. The Provider submits that the Complainant’s request to increase her mortgage repayments “*is at odds with her assertion that she is/was in any financial difficulty*” and “*indicates that the Complainant was comfortable with that level of repayment.*”

The Provider states that this office does not have the power to award compensation for “*such things as holidays or family events forgone*” as these are not in the nature of a “*loss, expense or inconvenience*” mentioned in **Section 60(4) (d)**. It states that in its view, the only viable compensation for the loss of use of money is interest, which was included in the redress and compensation paid to the Complainant.

The Provider does not accept the Complainant’s submission that she lost the “*use of the money overpaid on the mortgage loan account. She has suffered no loss as the mortgage loan account has been restored to the same position it would have been in had the tracker issue not occurred. In particular there is no loss within the meaning of S60(4) (d) of the FSPO Act.*”

The Provider submits that it does not believe that it is fair and reasonable for the Complainant to seek compensation at a rate of 52% in addition to that awarded to her by the Provider and the Appeals Panel.

### **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 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 Complainant is in line with the Provider's Redress and Compensation Framework which is

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based on the Central Bank's Principles for Redress. The redress payment of €47,194.13 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €2,247.34 to reflect the time value of money. The Provider also paid the Complainant €750.00 for the purposes of seeking legal advice and compensation of €4,719.41. The Provider submits that the Provider paid 10% compensation under the framework and the Appeals Panel added a further sum of €5,000 which the Provider is bound by. The Provider submits that the Complainant has 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 Complainant.

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

The Provider has furnished in evidence an undated internal document titled "*Mortgage Desktop – INFO Note - Mortgage Application Details*". This document details as follows;

*"Applicants work in [Named location] and intends purchasing pdh there for e279k. She will rent out two rooms and net e500 per month. She has savings of e17k with [third party Provider] and also has the ssia maturing next year – this should net her e20k approx. as she is contributing the max.  
..."*

A **Loan Offer** dated **28 February 2005** issued to the Complainant which detailed as follows;

1. *Amount of Credit Advanced €280,000*
2. *Period of Agreement 35 Years*
3. *Number of Repayment Instalment*  

<u>Instalments</u>	<u>Type</u>
420	Variable at 3.050%"

**Part 4 – The Special Conditions** to the **Loan Offer**, detail as follows;

*"The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.05% above the European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the Loan. Variation in interest rates shall be implemented by the lender not later than close of business on the 5<sup>th</sup> working day following a change in the Repo rate by the European Central Bank. Notification shall be given to*

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*the Borrower of any variation in interest rate in accordance with General Condition 6(b) of this Offer letter. In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.”*

The Complainant signed the **Acceptance and Consent** on **8 March 2005** on the following terms;

*“I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions.”*

The tracker interest rate applied to the account until **December 2005**, when the Complainant requested to apply a two year fixed interest rate of 3.39% to the mortgage account by way of **Mortgage Form of Authorisation** (“MFA”) signed and accepted by her on **25 November 2005**.

On the expiry of the fixed interest rate period, the Complainant requested to apply a two year fixed rate of 5.39% by way of **MFA** signed and accepted by her on **4 December 2007**, which was applied to the account on **06 December 2007**.

The Complainant subsequently requested to break from the fixed interest rate to apply a variable rate of 4.95% to the mortgage account, by way of **MFA** signed and accepted by her on **2 December 2008**. I note from the **mortgage loan statements** that an interest rate of 4.85% was applied to the account on **3 December 2008**. It was at this time that the failure that was subsequently identified in **December 2017** as part of the Tracker Mortgage Examination occurred on the Complainant’s mortgage loan account.

In order to redress the failure, the Provider has retrospectively applied the tracker interest rate of ECB + 1.05% to the Complainant’s mortgage loan account from **December 2008**. This has restored the Complainant to the position that she would have been in if she had been placed on a tracker interest rate (ECB + 1.05%) instead of a variable interest rate of 4.85% when she broke from two year fixed interest rate period early.

The variable interest rate that applied to the mortgage loan between **December 2008** and **April 2010** commenced at 4.85% and moved downward over the period to 2.60%. Between **December 2008** and **April 2010**, the overall tracker rate (ECB + 1.05% margin) commenced at 4.30% and reduced to 2.05% over the time period.

The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table

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below. 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 + 1.05%) had been applied to the mortgage account between **December 2008** and **April 2010**, is also 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>
19 Dec 2008 – 30 Dec 2008	0.55%	€1,253.89	€1,169.70	€84.19
30 Jan 2009 – 28 Feb 2009	0.55%	€1,179.95	€1,097.54	€82.41
20 Mar 2009 – 30 Mar 2009	0.55%	€1,105.68	€1,025.89	€79.79
30 April 2009	0.55%	€1,068.68	€991.49	€77.19
30 May 2009 – 30 Mar 2010	0.55%	€1,034.10	€958.28	€75.82
30 April 2010	1.05%	€1,103.00	€958.28	€144.72

The Complainant applied a two year fixed rate of 3.50% to the mortgage loan account on **11 May 2010** by way of MFA signed and accepted by her on **5 May 2010**. The Complainant has not given any rationale for applying a fixed interest rate of 3.50% to the mortgage loan at this time, in circumstances where the evidence shows that it was higher than the variable rate that applied to the mortgage account between **March 2009** and **April 2010**.

The fixed interest rate that applied to the mortgage loan between **March 2009** and **April 2010** was 3.5%. Between **March 2009** and **April 2010**, the overall tracker rate (ECB + margin) fluctuated between 2.05% and 2.55% over the time period.

The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below. 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 + 1.05%) had been applied to the mortgage account between **May 2010** and **April 2012**, is also represented in the table below;

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Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual monthly repayments	Monthly repayments if the mortgage was on the tracker rate	Overpayment per month
30 May 2010 – 30 Mar 2011	1.45%	€1,159.07	€958.28	€200.79
30 Apr 2011 – 30 June 2011	1.20%	€1,207.02	€989.88	€217.14
30 July 2011 – 30 Oct 2011	0.95%	€1,207.02	€1,021.84	€185.18
30 Nov 2011	1.20%	€1,159.07	€989.98	€169.09
21 Dec 2011 – 30 Apr 2012	1.45%	€1,159.07	€959.24	€199.83

On the expiry of the fixed interest rate period on **11 May 2012**, the mortgage loan account rolled onto a standard variable rate which applied until **14 July 2015**.

I note that the Provider's internal email dated **14 May 2012** detailed as follows;

*"[The Complainant] is asking if she had the option of a Tracker rate which she has lost out on when she changed rates?"*

The Provider's internal email dated **16 May 2012** detailed as follows;

*"The customer didn't have the tracker rate when she last changed rates in 2010."*

A further internal email on **16 May 2012** details;

*"She believes she had a Tracker rate & is asking the question of when she lost it? Could you check this please?"*

A further internal email on **21 May 2012** details;

*"She lost the tracker rate in December 2005 when she choose to change to a fixed rate."*

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The variable interest rate that applied to the mortgage loan between **May 2012** and **June 2015** commenced at 3.85% and moved upward to 4.35%. Between **May 2012** and **June 2015**, the overall tracker rate (ECB + 1.05% margin) commenced at 2.05% and reduced to 1.10% over the time period.

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 2 of the table below. 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 + 1.05%) had been applied to the mortgage account between **May 2012** and **June 2015**, is also represented in the table below.

The difference in monthly repayments if the tracker interest rate had been applied, is represented in the below table;

<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 on tracker rate</b>	<b>Difference per month</b>
30 May 2012 – 30 June 2012	1.80%	€1,207.02	€959.24	€247.78
30 July 2012 – 30 Sep 2012	2.05%	€1,207.02	€929.18	€277.84
30 Oct 2012 – 30 Apr 2013	2.55%	€1,275.29	€929.18	€346.11
30 May 2013 – 30 Oct 2013	2.80%	€1,275.29	€900.53	€374.76
30 Nov 2013 – 30 May 2014	3.05%	€1,275.29	€873.39	€401.90
20 June 2014 – 30 Aug 2014	3.15%	€1,275.29	€862.45	€412.84
19 Sep 2014 - 30 Jun 2015	3.25%	€1,275.29	€851.97	€423.32

The Complainant applied a three year fixed rate of 3.80% to the mortgage loan account on **16 July 2015** by signing a MFA on **14 July 2015**. Between **July 2015** and **November 2017**, the overall tracker rate (ECB + 1.05% margin) commenced at 1.10% and reduced to 1.05% over the time period.

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The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below. 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 + 1.05%) had been applied to the mortgage account between **July 2015** and **November 2017**, is also 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 on tracker rate</b>	<b>Difference per month</b>
30 July 2015 – 29 Feb 2016	2.70%	€1206.49	€851.97	€354.52
21 Mar 2016 – 23 Nov 2017	2.75%	€1206.49	€847.18	€359.31

The mortgage loan account reverted to a tracker rate of ECB + 1.05% on **24 November 2017**.

I note that the overcharge on the Complainant's mortgage loan account occurred over approximately a nine year period (**December 2008 – November 2017**).

The Complainant has submitted that it was her intention to rent rooms in the property for "*a period of two years maximum*" from when her mortgage loan was taken out in **2005** and submits that she has continued to do so up until her complaint to this office in **2018**. The Complainant has not submitted any evidence to support the length of time that she has rented rooms in the property, nor has she given any indication or evidence of the amount of rental income that she has earned during this period. In any event, it does not appear to be in dispute between the parties that the Complainant was renting two rooms in her property over this period of time. The overcharge on the Complainant's mortgage loan commenced in **December 2008**, some three years after the loan was drawn down. In these circumstances, it appears that the Complainant had decided to continue to rent rooms beyond the two year period (**December 2005 to December 2007**) that she initially foresaw herself doing so, in advance of the overcharge occurring on her mortgage loan. Further, it appears that the Complainant has continued to rent rooms after the redress and compensation payment as a result of the overcharge that was made to her in **December 2017**. In this regard, the Complainant submits she has been advised by friends and family

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to make overpayments on her mortgage loan for as long as she can “*keep renting my house*”. I accept that during the period of the overcharge the rental income may have been of assistance to the Complainant in making her mortgage repayments. However, the evidence shows that despite the purported “*inconvenience*” of renting rooms in her property, the Complainant was, prior to the overcharging and since the cessation of the overcharging has been renting rooms in her property to have an additional source of income available to her.

The Complainant submits that “*for a single girl a 35 year mortgage was a life sentence*” and that she had “*sleepless nights worrying about the future, old age and being homeless.*” The Complainant has outlined that she is “*absolutely terrified*” of not owning her property before she retires. The Complainant should have been aware from the inception of the mortgage in **2005** that the mortgage would be repayable over a 35 year term. The 35 year term was provided for in the Offer Letter signed by the Complainant on **3 March 2005**. In the ordinary course the mortgage loan was not due to mature until **2040**. The Complainant has not submitted any evidence as to when she expects to retire. However, in any event, the overcharging on the Complainant’s mortgage loan has not affected the prospective 35 year term on the Complainant’s mortgage as she did not enter into any forbearance or other arrangement during the impacted period from **December 2008** to **November 2017** that could have affected the projected term.

I note that the Provider’s internal note dated **8 January 2018** details as follows;

*“Please note maximum overpay while account is on fixed rate is 65.00 euro per month.*

*Hi*

*I have spoken to [the Complainant] today & she now wishes to overpay her mortgage.*

*Can you please increase the repayments on this mortgage to 1200 per month. That is an overpayment of 507.10.*

*Please do this for next direct debit”*

It appears since the Complainant’s interest rate has been restored to the tracker interest rate of ECB + 1.05% that the Complainant has made repayments of €1,200.00 per month from **30 January 2018** onwards. This is almost double the required monthly payment. Further it appears from the mortgage statements that the Complainant lodged the redress payment of €47,194.13 against the mortgage loan in **December 2017** to reduce the

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balance owing. Both of these actions will assist the Complainant to repay the mortgage loan ahead of the projected 35 year term.

The Complainant submits that as a result of the overcharge she suffered a *“lack of cash flow”* and as such was unable *“to afford holidays or to attend family events”* and incurred *“car loan interest costs”*. She also details that she could have invested the money overcharged in a pension fund and that her health has suffered; she suffers from a medical condition called *“Bruxism”* which may be due to the stress caused by the overcharge.

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 cash flow difficulties or concerns she may have had in meeting the mortgage repayments during the period of the overcharge. However, that is not to say that the Complainant did not experience cash flow problems during this nine year period.

Throughout the nine year period, the Complainant was denied the opportunity of making informed decisions about her finances as she did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan. The evidence shows that the overcharging in the period from **December 2008** to **May 2009** was between €75 and €85 monthly, rising between **April 2010** and **April 2012** to between €144 and €200 monthly, rising again between **May 2012** and **June 2015** to between €245 and €423 monthly and then decreasing to €350 monthly between **July 2015** and **November 2017**. These are significant sums on a monthly basis. I have no doubt that the Complainant suffered inconvenience as a result of the Provider’s overcharging. In this regard, I find it extraordinary that the Provider has stated that it does not believe that the Complainant has demonstrated any inconvenience. These comments by the Provider demonstrate a complete lack of empathy on the part of the Provider and an incredible lack of understanding of the implications and impact of its conduct. Furthermore, and for the record, I would inform the Provider that I do not accept its assertions in relation to the matters and conduct for which I can direct compensation.

I am of the view that the interest overcharge of €44,946.79 between **December 2008** and **November 2017** is a significant sum and the conduct of the Provider in overcharging the Complainant during this period is most unsatisfactory. I note that the Complainant has received compensation of €9,719.41, including the Independent Appeals Panel award of €5,000. This compensation was paid together with redress of €47,194.13, (interest overpaid €44,946.79 and time value of money payment of €2,247.34). Therefore, despite the unnecessary, unwarranted and incorrect assertions and comments by the Provider, I accept that the amount of compensation which has been paid to the Complainant is reasonable in the circumstances of this particular matter.

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

**Conclusion**

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  
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.**