



<u>Decision Ref:</u>	2020-0274
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to apply a tracker rate at a point in time CBI Examination Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to mortgage loan account ending **1389** which is secured on the Complainants' private dwelling house. The loan amount was €300,000 and the term of the loan was 20 years. The **Letter of Offer** dated **26 August 2008** detailed that the interest rate applicable was a variable rate of 5.5%.

The purpose of the loan was to redeem the First Complainant's existing mortgage loan with the Provider (account ending **5220**) and to fund an extension to the Complainants' private dwelling house.

The Complainants' mortgage loan account ending **1389** was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "Examination"). The Provider identified that an error had occurred on the mortgage loan account and as such that mortgage loan account was deemed to be impacted under that Examination.

The Provider wrote to the Complainants in **August 2016** as follows:

“As part of the review we have established that you were charged too high a rate of interest on your mortgage account [account number], a failure on our part that we deeply regret and for which sincerely apologise.

This letter sets out the actions that we are taking to put our failure right.

What are we doing about this?

In order to ensure that you do not experience any further detriment as a result of our failure, the first step we are taking is to reduce the interest rate on your account from the fixed rate you are on now, 3.65% to a tracker rate 0.95%, which is the European Central Bank (ECB) rate (currently 0.00%) plus a margin of 0.95%.”

The Provider wrote to the Complainants again in **December 2016** and detailed as follows;

“What are the circumstances that caused this failure to happen?

When you requested to change the borrowers named on your mortgage account, we didn't offer you the option to keep a tracker interest rate. This was because we had withdrawn trackers in October 2008. While we agreed a different interest rate with you at the time, we now believe this approach was unfair to you.

...

When we wrote to you last, we put your account back on the last tracker margin applied to your account. We have now recalculated your account as if the tracker portion of your loan was on the correct tracker margin, as outlined in your Financial Summary.

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 04/11/2008, which was when your account was first impacted.”

The Provider made an offer of redress and compensation to the Complainants. The offer of €13,300.71 comprised the following;

1. Redress of €10,423.65 covering;
 - The amount overpaid while on the incorrect rate.
 - Interest to compensate for not having access to the money overpaid on the mortgage loan account (Time Value of Money).

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2. Compensation of €2,262.06 for the failure on the mortgage loan account.
3. Independent Professional Advice payment of €615.00.

The Complainants' mortgage loan account balance was also adjusted by €4,656.78.

The Complainants appealed the redress and compensation offering to the Provider's Independent Appeals Panel, as part of the Examination. The Appeals Panel decided on **16 March 2018** that the appeal was partially upheld. The key factor in determining the decision by the Appeals Panel was as follows;

"it was reasonable to conclude that the financial losses claimed by [the Complainants] could be partially attributable to the [Provider's] failure on their account."

The Appeals Panel awarded the Complainants additional compensation of €2,500. The Complainant signed the Rejection Form on **4 April 2018** rejecting the decision of the Appeals Panel.

As the Complainants have been through the Provider's Independent Appeals Process, this office is now in a position to progress the investigation and adjudication of the complaint and issue a legally binding decision.

In **November 2018**, during the investigation of this complaint, the Provider wrote to this office and outlined that the Complainants' mortgage loan account should not, in fact, have been deemed impacted under the Tracker Mortgage Examination. In this regard, the Provider outlined as follows:

"However, while investigating your Financial Services and Pensions Ombudsman (FSPO) complaint reference [number], we established that the Letter of Offer for mortgage account [number] was issued in August 2008 when tracker rates were still available.

We have no record of you requesting a tracker rate at that time. We also have no record that a tracker rate was denied to you. Tracker rates were freely available and on offer by the Bank when you applied for additional funds. The tracker rate that was available to you at the time the Letter of Offer was issued was 5.75% (ECB plus a margin of 1.5%).

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Your Letter of Offer dated 26 August 2008, quotes a standard variable rate of 5.5% and you signed and accepted this in the presence of your solicitor.

...

Because of this we should not have adjusted your account or issued payment to you. As confirmed in our letter of 17 August 2016, your full loan balance is on a tracker rate going forward. We apologise for giving you incorrect information and advise that we will not reverse the advantage to you of the steps we have taken to date."

The conduct that is being adjudicated by this office, is as follows;

- A.** the Provider did not apply the tracker interest rate (ECB + 0.95%) to their entire mortgage loan account between November 2008 and July 2016.
- B.** the Provider has failed to offer adequate compensation to the Complainants for the failure identified on their mortgage loan account.

The Complainants' Case

The Complainants submit that the First Complainant previously held a mortgage loan (account ending **5220**) with the Provider in his sole name. They state that in **2008** they wanted to build an extension on the mortgaged property.

The Complainants outline that at a meeting with a representative of the Provider in **May 2008** they *"...initially requested to have the extra cost of extension on [the First Complainant's] existing tracker mortgage. We were told that this was not possible as the mortgage would have to be in both our names so a new mortgage would have to apply. We were then told that a tracker mortgage was not available as [the Provider] and all other banks were not giving out tracker mortgages any more."* The Complainants detail that they were told by the Provider that *"since the property was now a family home, both my wife's name and my name had to be on the mortgage."*

The Complainants submit that they should have been *"allowed to add my wife's name to my original mortgage and obtained the increased amount for our extension at this rate. Failing this, the new joint mortgage should have attracted the tracker rate for the amount borrowed in total €330,000, as our request for a tracker rate preceded, by at least 5 months"* the Provider's withdrawal of tracker interest rates.

The Complainants subsequently drew down the mortgage loan account ending **1389** on a variable rate of 5.5% in **September 2008**. The First Complainant's mortgage loan account ending **5220** was redeemed in full on drawdown of the joint mortgage loan account.

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The Complainants outline that the Provider has failed to offer the appropriate balance adjustment on the mortgage loan account ending **1389**. They state that a tracker interest rate of ECB + 0.95% should have been applied to their entire mortgage loan account from the outset in **September 2008**.

They further submit that the offer made by the Provider does not adequately take into account the entirety of the mortgage loan account from **November 2008** to **July 2016**. The Complainants submit that the redress and compensation is calculated based only on 33% of the mortgage loan account. They detail *"We have been told we are being compensated on the original tracker mortgage amount. Why this amount and not the full amount?"*

The Complainants do not agree with the Provider's submission that new information has come to light which shows that their mortgage loan account should not have been deemed impacted as part of the Tracker Mortgage Examination. They submit that they *"strongly dispute"* the Provider's submission that tracker mortgages were *"freely available"* at the time of their initial request to add the additional borrowing to the First Complainant's existing tracker mortgage (account ending **5220**) in **2008**.

The Complainants detail that had a tracker interest rate been applied to their mortgage loan from the outset, the capital amount owing on the loan would be substantially less than what it is now. They state as follows:

"We are a family that is no different from countless others in this country now and over the last 10 years. We have had sleepless nights over our mortgage and other financial matters before we learned of the redress package. These sleepless nights we believed were tied to our own decisions and actions and we believed no one could be blamed but ourselves and we got on with our lives, same as most others.

Thankfully we did not suffer as terribly as some due to this debacle.

But the sleepless nights we now endure due to our mortgage are not our fault. We are not talking about the pressure of paying back our existing tracker mortgage, but of the amount of money we wasted on interest on paying back a mortgage that we were entitled to have on a more preferential tracker rate.

It is a source of appreciable stress to us at the moment."

The Complainants are seeking that a tracker interest rate of ECB + 0.95% be applied to their entire mortgage loan account from **November 2008** to **July 2016** and not just the portion of €99,728.22 which related to Mortgage Loan Account ending **5220** and that additional compensation be awarded.

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The Provider's Case

The Provider submits that the First Complainant originally had a mortgage loan account in his sole name (account ending **5220**) which drew down on **22 September 2004** and had a tracker interest rate of ECB + 0.95%. The Provider states that its records detail that in **August 2008**, the Complainants requested a top up loan of €200,000 and that the mortgage loan account ending **5220** move from the sole name of the First Complainant to the joint names of both Complainants. The Provider details that to facilitate this request, a new mortgage loan account ending **1389** had to be opened.

The Provider details that the purpose of the mortgage loan account ending **1389** was to clear the existing loan account ending **5220** of €99,728.22 and to enable the Complainants to build an extension to their property with the remaining funds of €200,271.78. The Provider outlines that the €99,728.22 used to clear mortgage loan account ending **5220** was the amount deemed to be impacted by the Provider.

The Provider states that it wrote to the Complainants on **6 December 2016** to inform them of the findings under the Provider's Tracker Mortgage Review of their mortgage loan account, and provided them with a payment of €13,300.71 which covered redress, compensation and a payment towards the cost of obtaining independent professional advice. It states that at the time the Provider believed that the mortgage loan account was impacted because when the Complainants requested to change the persons named in the account and borrow additional funds, the Provider did not offer them the option to keep a tracker rate because they had been withdrawn in **October 2008**.

The Provider submits however that while investigating this complaint, it established that the **Letter of Offer** was issued on **26 August 2008** when tracker interest rates were still available and on offer by the Provider. It states that therefore, the Complainants' mortgage loan account ending **1839** was deemed impacted "*in error*" and the Provider should not have adjusted the Complainants' mortgage loan account, issued a redress and compensation payment to them or applied the tracker interest rate of ECB + 0.95% to the account.

The Provider outlines that it has reviewed its records and there is no record of the Complainants requesting a tracker rate at the time of mortgage sanction and furthermore, there is no record to indicate that a tracker rate was denied to the Complainants. It details that there is nothing to suggest that the Complainants were refused a tracker rate by the Provider's Branch and the Provider denies the claim that the Complainants were advised that tracker interest rates were no longer available at the time of application. The Provider outlines that the Provider has "*found a number of different mortgage loan accounts,*

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between the time of the Complainants application and the date that tracker rates were no longer available, which were sanctioned on tracker rates within the [Named] branch.”

It submits that of the interest rates available to the Complainants at that time, the standard variable rate of 5.5%, which was offered to and accepted by the Complainants, was lower than the tracker interest rate that was available to them. The Provider details that the tracker interest rate that the Complainants were eligible for at the time of their application, in line with their Loan to Value of 85%, was 5.75% (ECB rate of 4.25% plus a margin of 1.5%).

The Provider submits that it is satisfied that following a full review of the Complainants' mortgage loan account that the standard variable rate quoted in the **Letter of Offer** dated **26 August 2008** was the correct interest rate that was to apply to the mortgage loan account, and this is evidenced by the Complainants' signed acceptance of same which was witnessed by their solicitor. The Provider states that notwithstanding this, it will not reverse the *“advantage which was given”* to the Complainants, which it states means that the Complainants have received redress and compensation for a failure that did not actually occur, and the rate on their entire mortgage loan account has been changed to a tracker rate of ECB + 0.95% from **August 2016**.

The Provider submits that it would like to apologise for giving the Complainants incorrect information. It states that as a result of its misinformation to the Appeals Panel, it accepts the Appeal Panel's decision to award additional compensation of €2,500 to the Complainants, and is agreeable to pay this amount to the Complainants should they choose to accept it. It further states that as a gesture of goodwill it wishes to offer an additional payment of €2,500 to the Complainants for the confusion and inconvenience caused as a result of the error that was made in incorrectly deeming them impacted under its Tracker Mortgage Review.

The Complaints for Adjudication

The complaints for adjudication are;

- A. The Provider did not apply the tracker interest rate (ECB + 0.95%) to their entire mortgage loan account ending **1389** between November 2008 and July 2016; and
- B. The Provider has failed to offer adequate compensation to the Complainants for the failures identified on their mortgage loan account ending **1389**.

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 **22 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, my final determination is set out below.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation, including the mortgage loan held by the First Complainant under account ending **5220** and details of certain interactions between the Complainants and the Provider in **2008**, when the mortgage loan was applied for and drawn down. The interactions between the parties with respect to the outcome of the Central Bank directed Tracker Mortgage Examination are set out in the background section of this Decision. I will, therefore, not set out that evidence again, however it will be necessary to comment on that evidence for the purposes of determining this complaint.

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The First Complainant held a mortgage loan with the Provider under mortgage account ending **5520**. The **Particulars of Offer** with respect to that mortgage loan, which was signed by the First Complainant on 02 September 2004, detailed as follows:

<i>“Mortgage Loan Amount</i>	<i>E127,000</i>
<i>Loan Term</i>	<i>15 years / 180 months</i>
<i>Loan Type</i>	<i>Annuity</i>
<i>Applicable Interest Rate (Offer Date)</i>	<i>2.95% varying – (includes margin of 0.95% over Tracker Rate) APR 2.99%</i>

....

The title to the above property must be registered in the name(s) of [First Complainant] by whom the mortgage was required to be executed.”

The **Special Conditions** in **Part 2** of the mortgage loan documentation detail as follows:

“The Tracker Rate will equal the European Central Bank main refinancing operations Minimum Bid Rate. The rate will change within 5 working days of an ECB rate change.

The existing Home Loan, account number [number] must be cleared in full on drawdown of the facility now approved.....The existing Legal Mortgage over the property described in Part 1 of the Letter of Offer will continue to be relied on as security for the facility now sanctioned.”

Part 5, Spouse’s consent to the Home Loan under the Family Home Protection Act 1976 was not completed or signed by the Complainant. **Part 6, Acceptance and Consent** was signed by the First Complainant on **02 September 2004** and detailed as follows:

“6. No third party has or claims any financial beneficial interest in the Property”.

The Complainants approached the Provider with a view to securing additional finance from the Provider to build an extension on the First Complainant’s property which was the subject of mortgage account ending **5520**.

There is a dispute between the parties about the discussions that took place between the parties in or around **May 2008**. There is no documentary or other evidence available from either party that shows the specific discussions that took place at that time.

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The Provider has submitted a copy of the **Lending Notes** and **Internal Sanction** in evidence. The **Lending Notes** detail as follows:

“Branch Recommendation

Married Couple, no children, both in f/t perm employment. H/Ln [account ending 5220] relates to principal residence sole name [First Complainant] & H/Lm [account] relates to inv pdh sole name [Second Complainant]. Proposal: New 20 yr mortgage sought in JOINT NAMES on pdh at [address], to take out existing H/Ln E100k + addl E200k for new extension , E300k in all. Copy of Builders Fixed Price Contract furnished showing construction costs E150k – clts allowing E50k for possible overruns/fittings & furnishings etc. RPYT CAP: NMI 7218 –v- repyts E3780 [pdh: 2409 + inv: 1371 (stressed @ 7.5%) = surplus E3348. LTV 86% within criteria – will decrease to <50% on completion of new extn. DSR @ 32% well within the Bank’s criteria 46%. Apart from [First Complainant’s] savings, [Second Complainant] also has [redacted]. Excellent clts, trouble free a/c holders with first class repyt history. Clear ICB – sanction strongly recommended.

Lender Recommendation

Sought 300k over 20yrs LTV 86% DSR 34 Basle 247

-Takeover existing 100k mort which is in [First Complainant’s] sole name, and release equity of 200k for extension.

- p60s on file confirm incomes at [redacted] for [First Complainant] and [redacted] for [Second Complainant]. On these incomes over max term customers q for 402k, dsr 34 v 46.

-[Second Complainant] a/c perf with [redacted] is satisfactory. [redacted] Repts here will be 2114pm stressed over max term. Rent of 17k pa which would be 941pm stressed.

- Good equity in BTL, mor bal 180k v m/v 430k.

-FPC on file for 200k, property will be worth well in excess of 350k on completion.

Agree Sanction [redacted] 26/08/2008”

The Complainants are of the view that the Provider erred in two respects when the parties met before the mortgage application was submitted. Firstly, the Complainants submit that they “requested to have the extra cost of extension on [the First Complainant’s] existing tracker mortgage” and were told by the Provider that this was not possible and that the “mortgage would have to be in both our names so a new mortgage would have to apply.” There is no record of this discussion in or around **May 2008**. However even if it is the case that the Complainants made this request, there was no obligation on the Provider to advance the First Complainant the additional funds of €200,000 under the existing mortgage loan under account ending **5220**.

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At this time in **May 2008** the First Complainant's personal circumstances had changed, in that, the property on which the mortgage loan was sought was now being occupied by himself and the Second Complainant as their family home. The evidence shows that the property was not a family home in **September 2004**, when the mortgage loan under account ending **5520** was taken out by the First Complainant. In these circumstances, I accept that it was reasonable of the Provider to request that the Complainants take out a new mortgage loan at the time for the entire sum being sought €300,000, that is, circa €100,000 to redeem the existing mortgage loan and €200,000 to fund the extension works.

Secondly, the Complainants submit that when the application was proceeding for a new mortgage loan for the entire amount of €300,000, the Provider should have applied a tracker interest rate of ECB + 0.95% to the mortgage loan under account ending **1389** at the time. The Complainants submit that they were told that *"a tracker mortgage was not available as [the Provider] and all other banks were not giving out tracker mortgages any more"*.

The Provider disputes this and submits that there is no record of the Complainants' requesting a tracker rate at sanction stage and that there was nothing to suggest that the Complainants were refused a tracker interest rate and the Provider states that it has found *"a number of different mortgage loan accounts, between the time of the Complainants application and the date that tracker rates were no longer available, which were sanctioned on tracker rates within the [Named] branch"*. The Provider has not proffered any evidence the other mortgage loans were sanctioned on tracker interest rates at the time between **May** and **September 2008**. I accept it would not be appropriate for the Provider to do so having regard to its data protection obligations. Furthermore it is hard to see the relevance of the Provider's Branch sanctioning other mortgage loans on tracker interest rates, to this complaint and the purported discussions that took place between the parties at the time.

The evidence shows that the mortgage application ultimately proceeded on the basis of the Complainants requesting a variable interest rate mortgage loan. The **Letter of Offer** dated **26 August 2008** details as follows;

"

	Term	Loan Type	Interest Rate Description	Rate	Margin	Net Rate	Amount of Each Instalment
1	20 Years	Variable Annuity	Variable Rate	5.5%	0%	5.5%	€2,060.21

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The **Special Conditions** to the Letter of Approval detail as follows;

“Special Conditions

The existing Home Loan, account number [ending] 5220 must be cleared in full on drawdown of the facility now offered.”

The Provider subsequently deemed the Complainants’ mortgage loan account ending **1389** impacted as part of the Central Bank directed Tracker Mortgage Examination in **August 2016** for the following reason:

When you requested to change the borrowers named on your mortgage account, we didn’t offer you the option to keep a tracker interest rate. This was because we had withdrawn trackers in October 2008. While we agreed a different interest rate with you at the time, we now believe this approach was unfair to you.

The Provider two years later in **November 2018** decided that the classification of the Complainants’ mortgage loan account as impacted as part of the Examination was an error. In this regard, the Provider submits that as the Complainants’ mortgage **Letter of Offer** issued in **August 2008**, when trackers were still available and as there was no record of the Complainants requesting a tracker interest rate or the Provider denying the Complainants a tracker interest rate, the standard variable rate of 5.5%, which was accepted by the Complainants was the interest rate that should have applied to the Complainant’s mortgage loan from **November 2008**, when the mortgage loan was drawn down.

It appears to me that the Provider’s rationale is somewhat flawed. Either it was the case that the Provider should have offered the Complainants the option to keep a tracker interest rate of ECB + 0.95% on the €100,000 portion of the new mortgage loan that previously was the subject of a tracker interest rate of ECB + 0.95% or the Provider was not obliged to give that option to the Complainants in **August 2008**. In this regard, I fail to see the relevance of the fact that a tracker interest rate of ECB + 1.5% was available as a product option from the Provider in **August 2008** when the **Letter of Offer** issued to the Complainants or the fact that tracker interest rates were withdrawn generally from the Provider’s suite of products in **October 2008**, to the circumstances of the Complainants.

I also find it be entirely unacceptable for the Provider to present and admit an error to the Complainants in **August 2016** as part of the Tracker Mortgage Examination and to enter into and respond within the Independent Appeals process in early **2018**, only to subsequently establish a different position and outcome in **November 2018**, during the investigation of the complaint by this office following the issue by this office of a Summary

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of Complainant, Schedule of Questions and Schedule of Evidence Required. I would expect that the Provider would have fully and thoroughly engaged with the Complainants' mortgage loan and the facts and details pertinent to that loan as part of the Examination and the subsequent appeal and prior to issuing its final response to the Complainant. It is most disappointing that the Provider does not appear to have done so.

That being said, in the absence of contemporaneous evidence from either party it is not possible to determine the nature and content of any discussion that took place between **May** and **August 2008**. However even if it is the case that Complainants did request a mortgage loan on a tracker interest rate and the Provider processed and approved the Complainants' entire mortgage loan on a tracker interest rate. The tracker interest rate that the Provider had available at that time was a tracker interest rate of ECB + 1.5%. The Complainants' did not have a contractual entitlement to the application of the tracker interest rate of ECB + 0.95%, which was previously held on mortgage account ending **5220** on the new mortgage loan. It is important for the Complainants to understand that there was no obligation on the Provider to offer the Complainants a tracker interest rate of ECB + 0.95% on the entire mortgage loan under mortgage account ending **1389**. That being said, quite aside from the timeline involved, it appears the Provider subsequently identified a certain unfairness in not offering the Complainants the option to change the borrowers named on mortgage loan account ending **5220** and keep the tracker interest rate of ECB + 0.95% on that account. Again I emphasise that there was no entitlement to the tracker interest rate of ECB + 0.95% on the additional funds of circa €200,000 being sought at the time by the Complainants.

I note that when redressing the Complainant's mortgage loan account ending **1389** as part of the Examination, the Provider considered two options. These options are set out in the Provider's response to the appeal to the Independent Appeal Panel, as follows:

***Option 1** – Separate out the €99,728.22 amount from the date of failure and have the Customers agree to loan documentation for two separate mortgages, one for €99,728.22 (impacted) and one for €200,271.78 (non-impacted). However, this approach would place a burden of effort on the Customers in terms of the legal documentation required to turn one new mortgage account into two separate accounts.*

***Option 2 (chosen Option)** – Don't separate out the €99,728.22 amount, given the inconvenience this would place on the Customers. While the Customers are entitled to only have the impacted portion of the loan continue on a tracker rate going forward (and noting that a weighted average rate is both technically challenging and does not work into the future, as variable within the loan change), the Bank exercised commercial discretion to go beyond the redress requirements and placed the full loan*

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balance on a tracker rate going forward. The Bank chose option 2, as this places the Customer in a better position going forward than they would have been in if the failure had not occurred, and removes any inconvenience for the Customers to separate out the loan between two accounts.

....

Accordingly, for the impacted period (looking backwards), the Redress payment was calculated by using a blended rate on the full loan balance of €300,000. The blended rate was arrived at by combining the Tracker Rate on the balance originally from the account ending 5220 (€99,728.22) and the actual Standard Variable Rate on the balance of the impacted loan (ie. €200,271.78).

....

In summary the Bank has applied a blended rate, ranging from 2.14% - 4.31% up to the rectification date (August 2016), and applied a Tracker Rate of ECB + 0.95% to the full loan balance thereafter for the remaining term of the loan until it matures in 2028.”

It is most disappointing that the Provider did not set out these options to the Complainants or explain the reason that it took the approach that it did in applying redress to the Complainants' mortgage loan account. If the Provider had done so, perhaps it would have been more apparent to the Complainants that there was a significant benefit to them in the approach taken by the Provider, in that, the Complainants have been given the benefit of the application of the tracker interest rate of ECB + 0.95% applying to the new lending of circa €200,000 from **August 2016**.

I note that the Provider has offered to pay the Complainants additional compensation in the sum of €5,000. This €5,000 is comprised of the €2,500 awarded by the Independent Appeals Panel and rejected by the Complainants at that time, and an additional payment of €2,500 for the confusion and inconvenience caused to the Complainants.

Taking into account all of the evidence before me, I am of the view that redress and compensation that has been given by the Provider to date, being the application of the tracker interest rate of ECB + 0.95% to the entire mortgage loan account from August 2016, the redress of €13,300.71 and the balance adjustment of €4,656.78, is more than reasonable to compensate the Complainants for a failure to apply the tracker interest rate of ECB + 0.95% to the €99,728.22 portion of the mortgage loan that was previously held under mortgage account ending **5220**. Further I am of the view that the Provider's offer of compensation in the sum of €5,000 is a reasonable compensation offering for the matters

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that have arisen since August 2016. I understand that this offer of compensation remains open to the Complainants to accept.

In these circumstances and for the reasons set out above, I do not uphold the 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**

17 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.