



<u>Decision Ref:</u>	2020-0283
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainant with the Provider and an overcharge of interest in the amount of €5,704.04 on that mortgage loan account. The mortgage loan is secured on the Complainant's private dwelling house.

The loan amount was £40,000 and the term of the loan was 25 years. The mortgage loan offer was signed by the Complainant on **05 March 2001**.

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 that account was deemed to be impacted as part of the Examination.

The Provider wrote to the Complainant on **12 December 2017** advising them of the failure on the mortgage loan account. It detailed how it "*got things wrong*" as follows;

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

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

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

*“How this failure affected you
As a result of our failure, we can confirm that you were charged an incorrect interest rate between 11 Aug 2011 and 28 Nov 2017.”*

The Provider made an offer of redress and compensation to the Complainant in its letter dated **12 December 2017**. The offer of €6,889.24 was made by the Provider to the Complainant and comprised of the following;

1. Redress of €5,989.24 covering;
 - Total interest overpaid
 - Interest to reflect the time value of money
2. Compensation of €650 for the Provider’s failure
3. Independent Professional Advice payment of €250.

The Provider restored a tracker interest rate of ECB + 1.30% to the Complainant’s mortgage loan account on **29 November 2017**.

The Independent Professional Advice payment was subsequently increased from €250 to €750 on **31 January 2018**.

In **January 2018** the Complainant appealed the redress and compensation offering to the Independent Appeals Panel. The Appeals Panel decided to uphold the appeal on **08 February 2018** because of *“The impact of the overpayment on the customer”* and awarded additional compensation of €1,000.

The Complainant signed the Appeal Payment Instruction Form on **13 February 2018**.

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

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

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The Complainant's Case

The Complainant submits that the compensation offered is not adequate given the *“years of overpayment and all the implications this had on my family”*.

The Complainant details that prior to **2005** he *“had several conversations with the mortgage advisor in the [Provider branch] requesting that I be put on a tracker rate but this was declined as they told me that they were no longer doing them which if it was not a lie it certainly was wrong information”*. He further states *“While [the Provider] say they have no record of my request for a tracker rate in 2005 I have no proof but I had a couple of meetings with [Provider employee name] which I remember because she is my neighbour and the final outcome was that the bank would not offer me a tracker rate and that is a fact.”*

The Complainant outlines that he has since learned *“that [the Provider] put me on a tracker rate on the 14/12/2005 and I suppose I should have known this but it was always so confusing and misleading dealing with [the Provider] that I did not understand everything I signed or was told. If I had known that I was on a tracker rate I definately [sic] would not have changed to a 5 year fixed rate on the 11/08/2006 as this makes no sence [sic] at all after all the time I had spent trying to get on a tracker”*.

He states *“I am very angry that I was on a tracker for a few months without knowing and then changed ... The Provider failed to provide me with sufficient clarity before I was on the tracker rate and again when I moved from the tracker rate to the 5 year fixed rate”*.

The Complainant submits that the money he was overcharged by the Provider on his mortgage loan account during the impacted period (**August 2011 – November 2017**) *“would have made a big difference to [the Complainant] as [he] had the ceiling collapse in on the kids bedroom in 2007 and as [the Complainant's] insurance wouldn't cover the cost of repairs [he] could have taken out a small loan and had the room repaired but as money was very tight [he] couldn't afford this and the room wasn't repaired until earlier this year with the redress money [he] received which meant that the kids room was out of commission for nearly 10 years”*.

The Complainant further outlines that he could have increased his mortgage repayments during the impacted period and as a result would have reduced the mortgage loan amount owed. He details that *“The provider states that the mortgage loan was relatively small and that the monthly payments from 2011 were circa 300euro per month but this is incorrect as this is only one part of my mortgage split with [account ending] 9391 which meant that my monthly repayments were over 600 euro and I take great pride that I never fell behind with my repayments”*.

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The Complainant states that the overcharging of interest impacted his family in a number of ways. He outlines that his *“daughter needed braces 5 years ago and if [the Complainant] had this extra monthly money [he] could have got a small loan to cover this”* but as a result of a lack of cash flow he was not in a position to cover this expense.

He further details that his *“family could not afford a holiday over this time and again if [the Complainant] had this extra monthly money we could have saved enough to have a family holiday.”*

The Complainant outlines that *“I am not saying that we would have done all these things but the extra monthly money would have enabled us to do some of them but it is to[o] late now.”* The Complainant outlines that during the time that he was overcharged interest on his mortgage loan he could have increased the monthly mortgage repayments in order to reduce the life of the mortgage.

The Provider’s Case

The Provider submits that the Complainant’s mortgage loan account drew down on **24 July 2001** under a mortgage loan offer letter dated **28 February 2001** which provided for a 12 month discounted variable rate from inception, switching to the prevailing variable rate thereafter in accordance with the **General Condition 6(a)** and **Special Condition 11 (a)(viii)**. The Provider states that the offer letter does not provide for a tracker rate of interest at any time in the future.

The Provider outlines the following rate changes on the Complainant’s mortgage loan account;

- At the end of the discounted variable rate period the mortgage account reverted to the prevailing variable rate on **24 July 2002**
- The Complainant selected a tracker rate of interest of ECB + 1.30% by **Mortgage Form Authorisation (“MFA”)** dated **14 December 2005**, which was implemented on **20 December 2005**
- The mortgage account remained on the rate of ECB + 1.30% until **11 August 2006** when the Complainant provided instructions to apply a 5 year fixed rate by MFA dated **9 August 2006**.
- At the end of the 5 year fixed rate period, the Complainant selected a 2 year fixed rate of 4.95% by MFA signed on **9 August 2011**.
- On **12 August 2013**, as the Complainant did not select any of the rates offered to him in the MFA issued at the end of the fixed rate period, the account reverted to a variable rate pursuant to **General Condition 7(b)**.

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- The Complainant chose to avail of a further 3 year fixed rate by MFA dated **29 August 2013**, which was implemented on **3 September 2013**.
- The Complainant availed of a further 3 year fixed rate by MFA signed on **7 September 2016**.

The Provider outlines that it included the Complainant's mortgage loan account in the Examination because it was formerly on a tracker interest rate. It submits that when the Complainant's mortgage loan account moved to a fixed rate from a tracker rate, the Provider failed to *"provide him with sufficient clarity as to what would happen at the end of that fixed rate"* and the language used by the Provider may have been *"confusing or misleading"*.

The Provider submits that it *"had not breached any contract"* with the Complainants and that there was no positive representation made by the Provider before the Complainant entered into the five year fixed rate that he could move to a tracker rate on the mortgage loan at the end of the fixed rate period. The Provider outlines that the failure on its part was to *"identify any type of variable rate that would apply at the end of the fixed rate period"* and the Provider submits that *"there was no breach of contract or miss-selling a fixed rate through positive misrepresentation that a new tracker rate would be provided when it ended."* It rejects the Complainant's submission that he was *"lied to"* and states that he has *"offered nothing to support this assertion or any basis for the allegation"*.

The Provider details that it has *"restored"* the Complainant's mortgage loan account to the tracker interest rate of ECB + 1.30%. The Provider asserts that the redress payment was calculated to compensate the Complainant for the overpayments in the relevant period when he was paying higher rates than the tracker rates and that payment adequately compensates the Complainant for the absence of his 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 are of the view that therefore this is adequate compensation. The Provider submits that the Appeals Panel awarded an additional sum of €1,000 in compensation and this *"strengthens the argument that compensation paid was at least adequate"*.

The Provider submits that it has no record of any request to apply a tracker rate to the mortgage loan account prior to **14 December 2005** and it *"cannot countenance any reason"* for the Complainant to be advised that tracker rates were not available in **2005** or that they had been withdrawn at that time.

In response to the Complainant's submission that he would not have moved to a fixed rate in **August 2006** if he had known that he was on a tracker rate, the Provider states that it

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issued a letter to the Complainant dated **20 December 2005** which brought the presence of the tracker interest rate to the Complainant's attention. The Provider further submits that it issued confirmations of the rate changes in **March 2006, June 2006 and August 2006** where the ECB rate had increased by 0.25% on each of those occasions. It details that this translated into increases on the interest rate for the Complainant from 3.55% in **December 2005** to 4.30% in **August 2006**. It further states that *"The increasing ECB was widely reported in the market and provided many customers with reason to avail of a fixed rate."* It further submits that the ECB rate continued to increase from **2006** until **2008** and therefore the Complainant's tracker rate would have been higher than the fixed rate between **March 2007** and **October 2008** if he had maintained the tracker rate.

The Provider submits that the Complainant has provided no detail as to why essential household repairs were sacrificed owing to the tracker issue and there are no contemporaneous notes which suggest that the tracker issue is in any way linked to a deferral of household repairs.

The Provider states that it has no record of the Complainant contacting the Provider to say he was in financial difficulty or seeking forbearance and the Provider had no reason to suppose the Complainant was in financial difficulty. It outlines that *"the mortgage loan was relatively small and that the monthly repayments from 2011 were circa €300 per month."* It submits therefore that it does not seem likely that such payments could have forced the Complainant into cancelling essential household repairs. The Provider submits that this claim is too remote from the tracker issue.

The Provider submits that the *"amount refunded to the Complainant is the sum of the daily amounts overcharged during the impacted period with fair value interest and compensation applied to the full redress amount. If the Complainant wishes, he can apply the amount refunded to his mortgage account to reduce his capital balance which will have the same effect as if the Complainant had overpaid on his mortgage."*

The Provider further states that in order for the capital reduction to reduce the term of the mortgage it will be necessary for the Complainant to maintain repayment levels at the current level or above the capital and interest payments necessary to reduce the loan within the current term. It states that in order to implement this the Complainant would be required to provide an instruction to this effect.

The Provider submits that the Complainant's submission that he was unable to do *"lots of other things that [the Complainant] and [his] family could have done"* is not in the nature of a *"loss, expense or inconvenience"* mentioned in **Section 60(4) (d)** of the **Financial Services and Pensions Ombudsman Act 2017**. The Provider submits that the *"only viable measure of compensation for the lost use of money is (in the Provider's view) interest"* for

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which the Complainant has already received compensation i.e. for the time value of money.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has failed to offer adequate redress and compensation in respect of its failure on the Complainant's 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 **31 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.

At the outset, I note that the Provider has made submissions about its view that there was no breach of contract and no misrepresentation in the sale of a fixed rate. I will not be making any determination as to the nature of the Provider's failure as I do not think that this is necessary in the circumstances of this matter. The issue for decision is whether the

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Provider has offered adequate compensation to the Complainant by consequence of the Provider's failure in relation to his mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainant in **December 2017**. I therefore do not see the relevance of the Provider's arguments in relation to breach of contract.

The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress. The redress payment of €5,989.24 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €285.20 to reflect the time value of money. The Provider also paid the Complainant compensation of €650 and a sum of €750 for the purposes of seeking legal advice. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel has already provided for.

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

The Complainant's mortgage loan account was drawn down on **24 July 2001** on a discounted variable rate mortgage loan of 4.990% for a 12 month period. A Loan Offer dated **28 February 2001** issued to the Complainant which detailed as follows;

1. "Amount of Credit Advanced £40,000.00
2. Period of Agreement 25 Years
3. Number of
Repayment Instalment
Instalments Type
12 Variable at 4.990%
288 Variable at 6.100%"

Part 3 – THE GENERAL AND SPECIAL CONDITIONS detail as follows;

"6. Variable Interest Rates

(a) Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the [Provider's] discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty

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(b) *The Bank shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisements shall state the varied interest rate and the date from which the varied interest rate will be charged.*

(c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.5% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).*

...

11. Special Conditions

(a) *The following special conditions apply to the Loan:*

...

(viii) *The interest rate applicable to the loan has been discounted by 1.11% per annum on the amount of the loan for a period of 12 months from the date of the draw down of the loan. At the end of the said discounted period the reduction shall cease and the interest rate applicable to the loan shall revert the then prevailing variable rate"*

The evidence shows that on **14 December 2005** the Complainant signed a **MFA** which detailed as follows;

"APPLICATION FOR CHANGE TO TRACKER MORTGAGE

...

The interest rate shall be no more than 1.3% above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan.

APPLICATION FOR CHANGE OF INTEREST RATE:

I/We wish to apply for the tracker mortgage variable interest rate as detailed above for my/our mortgage loan (the "Loan").

...

I acknowledge that following the acceptance by [the Provider] of this Application the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation and I accept the said conditions and agree to be bound by them.

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*In converting the Loan to a Tracker Mortgage Loan, I agree that 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 the percentage stated on page 1 above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan. Variation in interest rate shall be implemented by [the Provider] not later than close of business on the 5th working day following a change in the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rate either by notice in writing served on the Borrower, or first named borrower where there is more than one borrower, or by advertisement published in at least one national daily newspaper. In the event that, or at any time, the Repo rate is certified by [the Provider] to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.
..."*

This office has not been provided with any evidence that the Complainant met with an employee of the Provider throughout **2005** to request a tracker interest rate and that his request was "declined" on the basis that tracker interest rates were no longer available. On the contrary it is clear from the evidence that a tracker interest rate of ECB + 1.30% was offered to the Complainant in **late 2005** and that he accepted this offer by signing the **MFA on 14 December 2005**.

The Complainant's submissions with respect to his interactions with the Provider in **2005** are somewhat difficult to reconcile. On the one hand it appears that the Complainant is submitting that he requested a tracker interest rate on a number of occasions, which would indicate that the Complainant had a certain knowledge of tracker interest rates. However on the other hand the Complainant received and accepted the offer to apply a tracker interest rate to his mortgage loan in **December 2005**, but for some reason he submits that he did not know or understand that a tracker interest rate was being applied.

In any event, the evidence does not support the Complainant's submissions that the tracker interest rate was applied to the mortgage loan account without his knowledge in **2005**. It was clear from the **MFA** signed by the Complainant on **14 December 2005** that the tracker interest rate of ECB + 1.30% would be applied to the mortgage account at that time. If the Complainant required clarification on the content of the **MFA** before he signed same on **14 December 2005**, it was open to him to seek clarification from the Provider or to seek independent advice, if he was of the view that he needed such advice. Based on the evidence available it does not appear that he did so.

The Provider has submitted that it sent correspondence to the Complainant which confirmed the application of the tracker rate to the mortgage account on **20 December**

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2005. It further refers to its letters of **March 2006, June 2006 and August 2006.** However the Provider has not furnished copies of the letters that it has sought to rely on.

On **9 August 2006** the Complainant signed a **MFA** in which he opted to apply a five year fixed interest rate of 4.89% to the mortgage loan account.

The Complainant submits that if he had known that his mortgage loan account was on a tracker interest rate he would not have changed to a five year fixed rate. As detailed above, the **MFA** which was signed by the Complainant on **14 December 2005**, was clear about the application of the tracker interest rate to the mortgage loan. In these circumstances, I am of the view that the Complainant knew or ought reasonably to have known that a tracker interest rate of ECB + 1.30% was applied to the mortgage loan account from **December 2005.**

Further evidence shows that the tracker interest rate applying to the Complainant's mortgage loan from **December 2005** increased on a number of occasions before the fixed interest rate of 4.89% was applied to the mortgage loan by the Complainant in **August 2006** and continued to increase thereafter up to **October 2008.** This is illustrated in the following table:

Date	ECB Base Rate	Margin	Total Tracker Interest Rate
06/12/2005	2.25%	1.3%	3.55%
08/03/2006	2.50%	1.3%	3.80%
15/06/2006	2.75%	1.3%	4.05%
09/08/2006	3.00%	1.3%	4.30%
11/10/2006	3.25%	1.3%	4.55%
13/12/2006	3.50%	1.3%	4.80%
14/03/2007	3.75%	1.3%	5.05%
13/06/2007	4.00%	1.3%	5.30%
09/07/2008	4.20%	1.3%	5.50%
15/10/2008	3.75%	1.3%	5.05%
12/11/2008	3.25%	1.3%	4.55%

I do not accept that the Complainant was overcharged from **August 2006 to September 2011.** The evidence shows that the Provider complied with the Complainant's instructions in **August 2006** and applied the 5 year fixed interest rate to the Complainant's mortgage loan.

The Complainant was issued with an **options letter** on **12 July 2011** and elected to apply the 2 year fixed interest rate of 4.95% to the account. It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainant's mortgage loan account.

In the period between **September 2011** and **August 2013**, the fixed interest rate of 4.95% was applied to the mortgage loan. Between **September 2011** and **August 2013**, the overall tracker rate (ECB + margin) that would have applied to the Complainant's mortgage loan ranged between 2.80% and 1.80%. 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 + 1.30%) had been applied to the mortgage account between **September 2011** and **August 2013**, is also represented in the table below:

Date (Inclusive)	Difference in rate charged vs the tracker interest rate	Actual monthly repayments	Monthly repayments if the mortgage was on the tracker rate	Overpayment per month
8 Sept 2011 – 8 Nov 2011	2.15%	€290.53	€251.25	€39.28
8 Dec 2011	2.40%	€290.53	€246.93	€43.60
21 Dec 2011 – 8 July 2012	2.65%	€290.53	€242.78	€47.75
8 Aug 2012 – 8 May 2013	2.90%	€290.53	€238.71	€51.82
8 June 2013 – 8 Aug 2013	3.15%	€290.53	€234.92	€55.61

The **mortgage loan statements** confirm that the mortgage loan account rolled onto the variable interest rate of 4.35% on **12 August 2013**.

The Provider issued an options letter to the Complainant on **20 August 2013**. The Complainant elected to apply the 3 year fixed interest rate of 4.89% to the account by signing the **MFA** on **28 August 2013**. The **mortgage loan statements** show that this rate was applied on **3 September 2013**.

In the period between **September 2013** and **September 2016**, the fixed interest rate of 4.89% was applied to the mortgage loan. Between **September 2013** and **September 2016**, the overall tracker rate (ECB + margin) that would have applied to the Complainant's mortgage loan ranged between 1.80% and 1.35%. 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 + 1.30%) had been applied to the mortgage account between **September 2013** and **September 2016**, is also represented in the table below:

Date (Inclusive)	Difference in rate charged vs the tracker rate	Actual monthly repayments	Monthly repayments if the mortgage was on the tracker rate	Overpayment per month
8 Sept 2013 – 8 Nov 2013	3.09%	€290.34	€234.92	€55.42
8 Dec 2013 – 8 June 2014	3.34%	€290.34	€231.39	€58.95
20 June 2014 – 8 Sept 2014	3.44%	€290.34	€229.99	€60.35
19 Sept 2014 – 8 Mar 2016	3.54%	€290.34	€228.66	€61.68
21 Mar 2016 – 8 Aug 2016	3.59%	€290.34	€228.11	€62.23
8 Sept 2016	3.20%	€290.34	€228.11	€62.23

The Provider issued an options letter to the Complainant on **4 August 2016**. It does not appear that the Complainant responded to this letter or completed the enclosed **MFA**. I note from the **mortgage loan statements** that a variable interest rate of 4.35% was applied to the mortgage loan on **12 August 2016**.

The Provider issued a further options letter to the Complainant on **1 September 2016**. The Complainant elected to apply the 3 year fixed interest rate of 3.10% to the account by signing the **MFA** on **7 September 2016**. The **mortgage loan statements** show that the fixed interest rate of 3.10% was applied to the account on **9 September 2016**.

In the period between **September 2016** and **November 2017**, the fixed interest rate of 3.10% was applied to the mortgage loan. Between **September 2016** and **November 2017**, the overall tracker rate (ECB + margin) that would have applied to the Complainant's mortgage loan was 1.30%. 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 + 1.30%) had been applied to the mortgage account between **September 2016** and **November 2017**, is also represented in the table below:

Date (Inclusive)	Difference in Rate	Actual monthly repayments	Monthly repayments if the mortgage was on the tracker rate	Overpayment per month
21 Sept 2016 – 28 Nov 2017	1.80%	€316.03	€278.11	€37.92

A tracker rate of ECB + 1.30% was applied to the Complainant's mortgage loan on **28 November 2017**.

I note that the overcharge on the Complainant's mortgage loan account occurred over approximately a six year period (**August 2011 – November 2017**).

The Complainant has submitted that he *"had the ceiling collapse in on the kids bedroom in 2007 and as [the Complainant's] insurance wouldn't cover the cost of repairs [he] could have taken out a small loan and had the room repaired but as money was very tight [he] couldn't afford this"*. I note the *"ceiling collapse"* is stated to have occurred in **2007**, some four years before the overcharging commenced on the Complainant's mortgage loan account in **August 2011**.

The Complainant further submits that he could have increased his mortgage repayments during the impacted period and as a result would have reduced the mortgage loan amount owed. I note that the Complainant wrote to the Provider by letter dated **7 September 2016**, as follows;

"I wish to increase this mortgage account number by an extra €50.00 per month"

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It is not clear to me from the evidence, whether the Provider responded to or actioned the Complainant's request. It does not appear from the mortgage loan statements that the monthly repayments were increased in **September 2016**.

The Complainant further submits that the compensation offered is inadequate on the basis that he had to maintain the mortgage repayments at a significant personal cost, to include the inability to afford a family holiday or pay for braces for his daughter.

It appears to me that the claims that have been made by the Complainant with respect to the loss of the use of money to increase the monthly mortgage repayments and/or fund repairs to the ceiling of his children's bedroom and/or pay for other expenses including holiday or dental care, cannot be capable of being made at the same time. Either it is the case that if the Complainant had the money available to him he would have used it to repair the bedroom ceiling or pay for the other items he mentioned or he would have paid it towards the mortgage.

The evidence shows that the overcharging in the period from **September 2011** to **August 2013** was between €39.28 and €55.61 monthly, rising between **September 2013** and **September 2016** to between €55.42 and €62.23 monthly and then decreasing to €37.92 monthly between **September 2016** and **November 2017**. These are not insignificant sums and I have no doubt that the Complainant suffered a level of inconvenience as a result of not having this money available to him when it should have been.

However the Provider's failure has been accepted by it, and redress of €5,989.24 (to include a payment for the time value of money of €285.20) and compensation of €1,650 has been paid to the Complainant. The Complainant has been paid a sum of €750 for legal advice. In the circumstances of this particular matter, I accept that the compensation paid by the Provider is reasonable.

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

26 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.