



<u>Decision Ref:</u>	2020-0288
<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

The complaint relates to a mortgage loan account (account ending **1122**) held by the Complainant with the Provider and an overcharge of interest in the amount of €9,564.79 on that mortgage loan account.

The Complainant has three mortgage loan accounts with the Provider as follows:

- Mortgage loan account ending **1049** was drawn down in **September 2008** in the amount of €190,460;
- Mortgage loan account ending **1122** was drawn down in **September 2008** in the amount of €80,346; and
- Mortgage loan account ending **1205** was drawn down in **April 2009** in the amount of €28,000.

All three mortgage loans are secured on the Complainant's private dwelling house.

The Provider considered the Complainant's mortgage loan accounts under the Central Bank directed Tracker Mortgage Examination (the "Examination"). The Provider identified that a failure had occurred on mortgage loan account ending **1122** and that account was deemed to be impacted as part of the Examination. The Complainant's mortgage loan

accounts ending **1049** and **1205** were not deemed to be impacted as part of the Examination.

This complaint relates to the mortgage loan which was impacted, mortgage account ending **1122**.

The Provider wrote to the Complainant in **August 2016** and **December 2016** to inform her of the failure that had occurred on mortgage loan account ending **1122**, as follows:

“When you switched from your tracker rate we didn’t tell you then that we had withdrawn trackers and that you could not convert to a tracker rate in the future.”

The Provider returned the Complainant’s mortgage loan account ending **1122** to a tracker interest rate of ECB + 1.15%. The letter dated **17 August 2016**;

“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 your current interest rate, 3.40% to the tracker interest rate that your account should be on, which is the European Central Bank (ECB) rate (currently 0.00%) plus a margin of 1.15%. Your new rate is 1.15%.”

A redress and compensation offer was made to the Complainant by the Provider in **December 2016** as follows;

1. Redress of €5,328.57 covering;

*“The amount overpaid while on the incorrect rate.....
Interest to compensate you for not having access to the money you overpaid on your mortgage account (Time Value of Money).
We have also corrected the balance on your account”*

2. Compensation of €1,476.07;

“Compensation for our failure....”

3. Independent Professional Advice Payment of €615.00

“A payment towards the cost of obtaining independent professional advice that you may wish to seek on this matter.”

As part of the redress and compensation offer the balance on the Complainant’s mortgage loan account ending **1122** was also reduced by €4,511.91.

In **April 2017**, the Complainant appealed the redress and compensation offering to the Independent Appeals Panel.

On **03 July 2017** the Appeals Panel decided as follows:

“Panel Decision in respect of Financial Losses Claimed: Unsuccessful

Details as to how the Panel reached its Decision:

The Panel noted that the customer was already in significant financial difficulties prior to the account first being impacted by the Tracker Rate issue and that it is evident from the information provide that the financial issues raised in the appeal were due to the customer’s outgoings being greater than her income.

Panel Decision in respect of Non - Financial Losses Claimed: Successful

Details as to how the Panel reached its Decision:

The Panel recognised that this was a difficult period for [the Complainant] and acknowledged that the interaction from the Bank during the impacted period was very distressing.

Form of additional redress and/or compensation:

The Panel agreed that additional compensation of €750 be awarded to [the Complainant]. Such payment to be made by the Bank in addition to the redress and compensation payment previously issued and subject to acceptance of the decision by the customer.”

The Complainant rejected the decision of the Independent Appeals Panel. As the Complainant has completed the Provider’s internal appeals programme, this office is now 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 her mortgage loan account ending **1122**.

The Complainant’s Case

The Complainant submits that she fixed her mortgage in **2010** for 3 years and that when she was entitled to get the tracker interest rate back the Provider would not put her back on the tracker interest rate. The Complainant outlines that it came to light in **2016** that the Provider had “*wronged*” her by not giving her a tracker interest rate on her mortgage loan and she got the tracker interest rate back and compensation. She details that she appealed the compensation offer, but her appeal was “*turned down*”. She submits that she has been

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left *“financially short”* and that her solicitor has advised her that the Provider has a *“contractual right”* to *“put right what they have done wrong”*.

The Complainant details that *“credit assessment”* should not form part of her appeal as *“the issue here is”* that the Provider *“robbed”* the Complainant on a monthly basis. The Complainant outlines that the Provider sent an ex-staff member to try *“bully”* her and that the Provider’s representative’s personal assistant *“harassed”* her into a meeting in **August 2012**. The Complainant submits that the Provider’s representative wanted this meeting to take place at her place of work, which was a branch of the Provider. The Complainant details as follows:

“I’m from [location] four miles from [branch], there are 3 local girls working in [branch] & he wanted to come to the branch with all these local girls working & try & sort out my mortgage. I got a panic attack & if it wasn’t for my staff officer at the time [name], I think I wouldn’t be here today.”

The Complainant details that she *“managed”* to get the meeting moved to a pub on her lunch break. The Complainant outlines that she requested a moratorium on her mortgage for 8 months to clear personal debt, but the Provider did everything except what she requested. She details that she was *“subject to”* 6 monthly reviews. The Complainant submits that the Provider also suggested *“downsizing to her”*. She outlines that she *“will never get over this”* and it has caused *“serious health problems”* for her.

The Complainant outlines that she wants to be *“compensated correctly”* as:

“[The Provider] forced me to move out of my house & move back in with my parents. I was made to rent it out as [the Provider] said that I couldn’t afford the repayments.”

In this regard the Complainant outlines that she had to spend €750 in **2013** to prepare the property to rent and that she had to spend a further €17,740.0 in **2016** to restore the property to a condition suitable for her to move back into the property after it had been rented for 3 years. The Complainant also submits that she had to pay €360 (€120 per annum) in additional insurance premiums during the period in which her house was rented.

The Complainant submits *“the worry & sleepless night (sic) that I have gone through. I couldn’t afford to go out at times. I was left with nothing in my account”*. The Complainant details that *“some month (sic) I could have had €118 excess – that would have meant a night out, saving for a holiday.”* She further outlines that she has not had a holiday since 2013, which her mother paid for *“to help her health”*. The Complainant details that over the years her doctors have prescribed medication to *“help/stop”* her illness which she fully

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blames on the Provider's staff business department. She outlines that she "*will never get over the way*" she was "*treated*" by the Provider's staff business department.

The Complainant submits that she had to cancel her health insurance and when she had to repurchase it in **June 2013** she had a waiting period of 26 weeks.

The Complainant is seeking compensation for the following losses she submits that she suffered:

1. The cost of restoring her property after renting it for three years €17,740.80.
2. The costs of preparing the property for rent in 2013 of €705.
3. The cost of additional house insurance premiums paid because the property was rented of €360.
4. The costs of a holiday abroad for 3 years (2014 – 2016) of €2,250 which the Complainant submits she was unable to afford as a result of the Provider's overcharging.
5. €80 for the cost of a visit to a Clinical Psychologist as a result of illness due to a medical condition.
6. The cost of cancelled health insurance, which was subject to a 26 week waiting period when it was repurchased in June 2013 of €648.
7. Compensation for damage to health, stress and anxiety due to alleged harassment and bullying by a member of the Provider's staff and other engagements with the Provider in seeking to agree restructuring options with the Complainant.

The Provider's Case

The Provider submits that it considered the Complainant's mortgage loan account ending **1122** as part of the Central Bank directed Tracker Mortgage Examination. It details that it reduced the balance on the Complainant's mortgage loan account by €4,511.91 in respect of interest overcharged and refunded the Complainant €5,052.88 which was the amount that she overpaid. The Provider details that the level of redress put the Complainant's mortgage loan account back to the way it should have been had the failure identified not happened.

The Provider submits that it calculated the Complainant's compensation based on 15% of the interest overcharged plus 15% of the time value of money payment. The Provider details that the time value of money payment compensates the Complainant for not having the benefit of the money she overpaid to the account and it is calculated by selecting the best annual deposit rates that the Provider offered during the impacted period and applying these monthly to the amounts that were overpaid during the impacted period. The Provider outlines that the compensation payment of €1,476.07 was

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to compensate the Complainant for potential inconvenience, harm, personal suffering and hardship.

The Provider outlines that the Independent Appeal Panel recognised that this was a difficult period for the Complainant and acknowledged the interaction from the Provider during the impacted period was very distressing and agreed that additional compensation of €750 be awarded. The Provider outlines that it is of the opinion that adequate compensation has been awarded to the Complainant and accepts the Appeal Panel's award for the payment of €750. The Provider details that it is *"agreeable to pay this amount to the Complainant should she chose to accept it."*

The Provider submits that the meeting with the Complainant was arranged to review the Complainant's overall financial position. It details that following a series of communications between the Staff Business Unit and the Complainant, the meeting time and place was arranged. The Provider outlines that meetings with customers to discuss their mortgage accounts are *"typically held in a Bank branch, the customer's home or at the customer's place of business. The location is a matter for discussion and agreement between the customer and the Bank as to what is convenient and appropriate for all."* The Provider outlines that the Staff Business Unit is primarily based in Dublin but the Provider retained a number of experienced staff to engage directly with staff customers which involved travelling to or near the staff member's place of work or another agreed location. The Provider outlines that the location of the meeting was agreed by way of internal mails and it was confirmed at the time to the Complainant that there was no problem meeting at a time or venue of the Complainant's choosing. The Provider submits that the member of staff who met with the Complainant has since retired, however the Provider details that its internal records show that the Complainant mailed the Staff Business Unit to advise that she had met him and the *"meeting was very beneficial to me and [name of representative] was a gentleman and extremely understanding."*

The Provider submits that it disagrees with the allegation that the Provider forced the Complainant to rent her property. It outlines that after the meeting in **August 2012**, forbearance was agreed in the form of a six month fixed rate of €1,000, backdated to **July 2012**. The Provider outlines that this was reviewed and extended for 6 months. The Provider details that its representative discussed the possibility of the Complainant renting one or two rooms in the property or renting the property to help with the repayments, however the Provider did not insist on this. The Provider details that it was also suggested that the Complainant consider downsizing in **August 2012**. The Provider submits that by virtue of the Code of Conduct of Mortgage Arrears, specifically under the Mortgage Arrears Resolution Process ("MARP"), all lenders are required to discuss with customers in financial difficulty options such as renting or downsizing. The Provider details that, in its view, the options mentioned were *"required and appropriate"* for discussion with the

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Complainant. The Provider details that the decision to rent the property from **July 2014** was the Complainant's own decision and that renovating and renting was not required by the Provider.

The Provider rejects the allegation that the Staff Business representative tried to "*bully*" the Complainant and submits that there is no evidence of this. The Provider details that in accordance with the MARP, there was regular communication and engagement with the Complainant during the impacted period. The Provider details that a file note from a telephone call with the Complainant on **11 November 2014** notes the Complainant's dissatisfaction with the Staff Business Unit as she took offence to the suggestion of trading down her property. The Provider outlines that the Complainant was asked if she wanted to make a complaint but the Complainant confirmed that she felt it unnecessary to do so. The Provider acknowledges that it ought to have maintained another formal record of the Complainant's dissatisfaction at the time.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has not offered adequate redress and 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.

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A Preliminary Decision was issued to the parties on **22 July 2020** outlining my preliminary determination 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.

Following the issue of my Preliminary Decision, the following submissions were received from the parties:

1. Email from the Complainant on **06 August 2020**;
2. Letter form the Provider on **18 August 2020**; and
3. Email from the Complainant on **20 August 2020**.

Copies of these additional submissions were exchanged between the parties.

Having considered these additional submissions and all of the submissions and evidence furnished to this Office, I set out below my final determination.

The Provider has detailed that the total amount of interest overcharged to the Complainant of €9,564.79 has been repaid in full (Refund of €5,052.88 interest overpaid + mortgage adjustment of €4,511.91) and that the purpose of the compensation payment of €1,476.07 is to compensate for pain, harm, personal suffering, inconvenience or hardship. The Provider has also made a payment of €275.69 for the time value of money and €615 for the purposes of obtaining independent professional advice.

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

The Complainant's mortgage loan account ending **1122** was drawn down in **September 2008** in the amount of €80,346 for a term of 35 years, commencing on a tracker interest rate of ECB + 1.15% (5.4%) for one year interest only and then for the remaining term of the loan the mortgage would move to capital and interest repayments. At the same time, the Complainant drew down a second mortgage loan in the amount of €190,460 on a staff preferential rate of 3% under mortgage loan account ending **1049**.

The Complainant applied for a further advance of €28,000 in **April 2009**, this was drawn down under mortgage loan account ending **1205** in **April 2009**. The purpose of this mortgage loan was noted in the application to "*build wall and fence on property 12k, tarmac 8k, she received 8 acre from father's will (4k to lawn)*"

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The Complainant engaged with the Provider by internal mail in **August and September 2009** as follows:

- Mail from the Complainant to the Provider to request a moratorium across all of her loans for six months. She detailed that her partner was currently working in Dublin and was due for a transfer in **January 2010**.
- The Provider responded requesting that the Complainant elaborate as to why her partner getting a transfer would have an impact on her mortgage when the loan was in her sole name.
- The Complainant responded and detailed that her partner was due to be transferred, but had stayed on for another five months. She further outlined *“[h]e will be paying half the mortgage when he moves in with me in February.....I opted for Int Only as he had to pay rent in Dublin and couldn’t also pay me. The Mortgage was taken out in my name as I built the house on my parents lands and the Title is still in my name and I wish it to remain so.”*
- The Provider responded approving an extension of the interest only period for a further six months. The Provider outlined *“the reason you gave is not qualifying for the moratorium.”*
- The Complainant agreed to the six month interest only extension with respect to all mortgage loan accounts.

The Complainant engaged with the Provider by internal mail in **March 2010** as follows:

- The Complainant wrote to the Provider *“can I please fix my mortgage to a fixed rate of 3.1% for 3 years from today.”*
- The Provider responded *“The 3yr fixed rate is 3.19% - please confirm that you are happy to proceed with this rate.”*
- The Complainant responded *“Yes I am happy to proceed.”*

The Complainant in her post Preliminary Decision submission dated **06 August 2020** outlines as follows:

“Error of fact:

My fixed rate expiry date should be March 2010 and not March 2013.”

The evidence does not support this statement. The evidence shows that the tracker interest rate of ECB + 1.15% applied to the mortgage loan from **15 September 2008** to **08 April 2010**. At that point in time the three year fixed interest rate that was requested by

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the Complainant was applied to the mortgage loan. This fixed interest rate period expired in **2013**.

It was at this time that the failure that was subsequently identified in **August 2016** as part of the Examination occurred on the Complainant's mortgage loan account ending **1122**. In order to redress the failure, the Provider has retrospectively applied the tracker interest rate of ECB + 1.15% to the Complainant's mortgage loan account ending **1122** from **April 2010**. The Provider states that this has restored the Complainant to the position that she would have been in if she had been told by the Provider that, by applying a fixed interest rate to her mortgage loan, she could not convert to a tracker rate in the future and in light of this information, decided at the time not to apply the fixed interest rate to mortgage loan ending **1122**.

In the period between **April 2010** and **January 2012**, the mortgage account remained on the Provider's fixed interest rate of 3.19%. The difference in the interest rate actually charged to the mortgage loan on the fixed interest rate and the interest rate that would have been charged, if the mortgage loan remained on the tracker interest rate of ECB + 1.15% 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 + 1.15%) had been applied to the mortgage account ending **1122** between **April 2010** and **January 2012**, is also represented in the table below:

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
April 2010 – March 2011	1.04%	€327.54	€282.20	€45.34
April 2011	0.79%	€327.54	€282.20	€45.34
May 2011 – June 2011	0.79%	€327.54	€292.42	€35.12
July 2011 – Oct 2011	0.54%	€327.54	€302.73	€24.81
Nov 2011	0.79%	€327.54	€292.50	€35.04

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Dec 2011 – Jan 2012	1.04%	€327.54	€282.50	€45.04
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The Complainant submitted an **Application for Reduced Repayments and Standard Financial Statement** to the Provider dated **16 January 2012**. The reason for the request was noted in the application by the Complainant as *“to clear personal debt. I have 2 credit cards totalling €3,800 & owe my sister €1000-00 for personal expenses.”*

In the Standard Financial Statement in response to the question *“Please provide details of any steps you have already taken to reduce your monthly expenditure and the savings you have achieved”*, the Complainant detailed *“I have cancelled my health insurance & critical illness saving €70.00 monthly.”*

Section G: Financial Statement Summary detailed as follows:

<i>“Total Monthly Income</i>	<i>€2,470.06</i>
<i>Less Total Monthly Expenditure</i>	<i>€749.34</i>
<i>Subtotal</i>	<i>€1,720.72</i>
<i>Less Mortgage Repayments Due</i>	<i>€1,212.84</i>
<i>Less Other Monthly Debt Due</i>	<i>€423.00</i>
<i>Total Surplus/Deficit</i>	<i>€84.88”</i>

The Provider offered the Complainant interest only repayments on all three of her mortgage loan accounts for 6 months by letters dated **28 February 2012** which the Complainant accepted.

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 + 1.15%) had been applied to the mortgage account ending **1122** between **February 2012** and **July 2012**, is also represented in the table below:

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

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February 2012 – July 2012	1.04%	€208.58	€139.90	€65.68
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The Complainant submits that she had to cancel her health insurance because of the Provider's overcharging on mortgage account ending **1122**. The evidence shows that the Complainant sought forbearance from the Provider in **January 2012** with respect to her mortgage loans as she wanted to clear other personal debts held by her of €4,800. Between **April 2010** and **July 2012**, the Complainant had been overpaying between €24.00 and €65.00 monthly on her mortgage loan account ending **1122**. While this overcharging is unsatisfactory, the evidence shows that in **January 2012** the Complainant's monthly income was only marginally in excess of her monthly expenditure and mortgage and other debt repayments. It is unclear when the Complainant cancelled her health insurance but the evidence shows that the Complainant cancelled her health insurance and critical illness insurance of her own volition, in advance of seeking forbearance from the Provider with respect to her three mortgage loans in **January 2012**. In these circumstances, I do not accept that the Complainant cancelled her health insurance at the request or on the instructions of the Provider.

The evidence shows that the Complainant wrote to the Provider by letter dated **26 July 2012** as follows:

"I wish to extend my interest only on my mortgage until Nov 2012. I will be applying for a split mortgage then."

The Complainant also completed a Standard Financial Statement dated **26 July 2012** containing details of her income and expenditure. The Complainant outlined as follows:

"I have tried everything but at present cannot afford to pay what I owe. When [the Provider] lifts the ban on overtime, salary increase & promotion hopefully I will have more monthly money."

Section G: Financial Statement Summary detailed as follows:

<i>Total Monthly Income</i>	<i>€2,200.00</i>
<i>Less Total Monthly Expenditure</i>	<i>€984.34</i>
<i>Subtotal</i>	<i>€1,215.66</i>
<i>Less Mortgage Repayments Due</i>	<i>€1,212.84</i>
<i>Less Other Monthly Debt Due</i>	<i>€304.00</i>
<i>Total Surplus/Deficit</i>	<i>(€301.18)"</i>

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The Provider acknowledged receipt of the Standard Financial Statement by letter dated **30 July 2012** and indicated in that letter that the Provider would be in contact with the Complainant.

The evidence shows that the parties engaged by internal mail in **August 2012**. I have extracted the following relevant engagements:

- **14 August 2012** – Internal email from the Staff Business Unit to the Complainant at **15:47**

"[Redacted] asked me to contact you by [internal mail]. If you have a couple of missed calls on your mobile over the last few days they were from myself but I couldn't leave a message.

Can you give me a quick call either on my direct line which is [number] or my ext [number] as I organise the diary for the staff representatives. As this is the holiday season, I was wondering if you are available to meet this Thursday (16th) at a venue of your choice.

If you give me a quick call we will arrange something suitable for you."

- **14 August 2012** – Internal email from the Staff Business Unit to the Complainant at **15:51**

"Spoke with [Redacted]. No problem at all about venue or time [illegible] on Thurs. I'll give him your mobile no in order that he can call you when he arrives.

Give me a call later today or tomorrow if you get a chance on [number] & I'll get directions.

PS thanks for confirming [internal mail] as alternative contact."

- **14 August 2012** – Internal email from the Complainant to the Staff Business Unit at **15:56**

"Oh perfect. Would you find out what I need to bring with me to meeting?"

- **14 August 2012** – Internal email from the Staff Business Unit to the Complainant at **17:15**

"Hiya – just the items listed on the letter from ourselves ie. payslips, credit card statements and any other [provider/non provider] documentation."

- **16 August 2012** - Internal email from the Complainant to the Staff Business Unit

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"I met with [redacted] today we have agreed a fixed repayment of €1000.00 monthly for 12 months. The meeting was very beneficial to me and [redacted] was a gentleman and extremely understanding."

The note of the meeting on **16 August 2012** prepared by the Provider's representative details as follows:

"Following request from [the Complainant] for an extension of the I/O facility on PDH borrowings I met with her in [location] to review her overall financial position.

[The Complainant] outlined the background to her decision to build her PDH. She was in a relationship at the time with the intention that property would be used as a family home. The relationship is no longer in existence and [the Complainant] resides in the property. The property and debt are in her sole name.

During the past six months while on I/O, she cleared C/C borrowings of 2K and reduced some family debts of €400. She is hoping to apply for a split mortgage when the product becomes available later in the year.

We reviewed her Income/Expenditure and after some discussion she agreed that a fixed payment of €1000 pm would be the best option for the next twelve months. I discussed the possibility of her renting out one or two rooms to help with repayments. She agreed to."

The Complainant takes issue with the way that the Staff Business Unit treated her in the lead up to the meeting with the Provider's representative on **16 August 2012**. In particular the Complainant alleges that she was "harassed" and "bullied". The evidence does not support these allegations. The evidence shows that the Provider was in contact with the Complainant to arrange a meeting with her with respect to the Standard Financial Statement that she had submitted in **July 2012**. It appears that a number of calls were placed to the Complainant, which were unanswered and thereafter contact was made on the Provider's internal mail. The Provider's representative outlined in her initial contact to the Complainant that the meeting could be arranged "at a venue of your choice". The venue, which was a location outside of the Complainant's work place, was confirmed by way of a telephone call and a further internal mail within 4 minutes of the initial communication. The Complainant submits that she "had to agree to this as I was afraid of my life he would call to m[y] workplace & embarrass me". There is no evidence that the Provider was seeking to force a meeting on the Complainant at her workplace. The Provider accepts that a meeting in the branch was an available option. However, the evidence shows that the Provider, from the outset, allowed the Complainant to select a venue and the Complainant did so.

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Chapter 3 of the Code of Conduct on Mortgage Arrears 2010 (the “CCMA 2010”), provides as follows:

“A lender must ensure that all meetings with borrowers in relation to arrears or prearrears are conducted with utmost privacy.”

There is no evidence that the Provider sought to meet with the Complainant in **August 2012** other than in a private manner, in compliance with the **CCMA 2010**. The contemporaneous evidence in the form of the Complainant’s internal mail to the Staff Business Unit after the meeting on **16 August 2012** shows that the Complainant was of the view at the time that the *“meeting was very beneficial”* to her and she described the Provider’s representative as a *“gentleman and extremely understanding.”* The evidence does not support the allegations that the Complainant was bullied or harassed by the Provider’s representatives at this time.

The evidence shows the parties engaged by internal mail in **August 2012**. I have extracted the following relevant engagements:

- **31 August 2012** - Internal email from the Staff Business Unit to the Complainant *[redacted] here in Staff Business. I was ringing you earlier in relation to your sanction in relation to your application you have in with us on your PDH mortgage. You have been sanctioned a fixed payment of 1000EUR for 6 months. As full C&I payments came out in August I wanted to check with you whether you wanted to have the sanction backdated.*
- **31 August 2012** - Internal email from the Complainant to the Staff Business Unit *“I spoke with [redacted] and he said he would recommend fixed repayments for 1 year. Can you explain why I’m only getting 6 months. Also I would like it backdated if that ok. I will be applying for a split so maybe that is why I only got it for 6 months do you think?”*
- **03 September 2012** - Internal email from the Staff Business Unit to the Complainant *[redacted] is the Staff Business representative who facilitates the meeting of customers and he does a meeting note of what is discussed with customer, however he does not prepare the lending report or sanction the request, his is merely a recommendation. The sanctioning of all staff forbearance is done by the Credit Unit and they have sanctioned only 6 months. They advised in their recommendation that a review is to take place 6 months’ time and that all options are to be explored in relation to the property. The[y] commented that downsizing may be an option*

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here given the size of the property. You need to be aware that split mortgages are not yet in policy and we do not have a definite date yet as to when they will be. They will also not be a product which a customer can apply for, they will be a tool that the bank can offer a customer if they deem it to be the most suitable option for that customer and if the customer meets the criteria. However you will not be in a position to apply for it. At present advanced forbearance is only in pilot stage and therefore we will have to review your case in 6 months and see what the options are at that point. I will arrange for the backdates to be done today and the amendment to be put in place. Letters will issue to you in the coming days regarding your sanction.”

- **03 September 2012** - Internal email from the Complainant to the Staff Business Unit
“I can’t even phone you as I’m so upset with this [internal mail]. No one mentioned downsizing. Don’t know what to do next”
- **03 September 2012** - Internal email from the Complainant to the Staff Business Unit
“Thank you for your update but this only has added to my stress. No one mention downsizing.....this wasn’t even discussed with [redacted]. I need to revert to [redacted] as this has really shaken me when I thought we had it sorted. Please hold off issuing letters.”
- **03 September 2012** - Internal email from the Staff Business Unit to the Complainant
“There is no need for alarm this is merely a suggestion from the Credit Unit and is in no way something that would be enforced or made as conditional. In no way will you be made to downsize it is merely a comment by the Credit Unit as a possible solution to your financial difficulty. I need to reiterate to you that [redacted] is merely the facilitator as regards meeting customers and has no involvement in the sanctioning or comments by the Credit Unit as the Credit Unit are an independent unit from Staff business. [Name], who is diary coordinator, has advised that she will pass on the [internal mail] but that [redacted] is on the road and does not have access to email or [internal mail]. And again he does not have anything to do with sanctioning. This is why I called you on Friday as it is easier to discuss these comments over the phone rather than cause alarm over [internal mail]. As I said this is merely a comment and by no means will it be enforced. I did not want to cause you alarm in any way and apologise if I did so.

- **03 September 2012** - Internal email from the Complainant to the Staff Business Unit

"I know you probably didn't mean to cause alarm but this has shaken me. If [redacted] has no involvement why did I have to meet him. Can you advise me on the appeals process as my circumstances will not have changed in the next 6 months and I want to put the arrangement in place for 12 months as I feel I cannot deal with the stress of this again in 6 months."

- **03 September 2012** - Internal email from the Staff Business Unit to the Complainant

"Regulation would state that we must meet with all customers who are looking for forbearance and so we have a SB representative that meets with customers in the west of Ireland and one that covers the east. However such is the volume of applications and the work involved assessing and sanctioning a case that there is a team of lenders here in [Location] who look after this side of the work once the customer has been met. As I'm sure your (sic) aware all lending decisions are made by a sanctioning unit and not by the staff member who meets with the customer. The appeals process under MARP will be detailed in your sanction letter which we will issue in the coming days and again the Appeals Board are an independent unit from Staff Business."

- **03 September 2012** - Internal email from the Complainant to the Staff Business Unit

"That's fine. I will advise the appeal board that my application is with staff business since 26th July 2012, was advised by [internal mail] that the credit unit recommend downsizing and that anything I discussed with [redacted] was not even on the table. Once again I am advising that I may not be able to meet my home mortgage repayments and I have asked staff business for help and their answer is review again in 6 month[s]. [redacted] as this is causing me huge stress today I do not want to be contacted again by [internal mail], I'm just not able anymore. I will go down the appeals road."

The Provider offered the Complainant a fixed repayment totalling €1,000 across her three mortgage loan accounts for six months by letters dated **05 September 2012**. The fixed repayment breakdown across the three accounts was as follows:

- repayment of €640 on mortgage loan account ending **1049**
- repayment of €270 on mortgage loan account ending **1122**
- repayment of €90 on mortgage loan account ending **1205**

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As the Complainant was on a fixed repayment amount on mortgage loan account ending **1122** during the period from **August 2012** to **January 2013**, the monthly repayment amount due to be paid by the Complainant has not been altered by the retrospective application of the tracker interest rate of ECB + 1.15% to that account. However the overcharge of interest of 1.29% per month has affected the apportionment of the €270 repayment between interest portion and the capital portion. During this six month period the Complainant overpaid interest of €510.44, which should have been taken off the capital balance of the mortgage loan during this time. The capital balance of the Complainant's mortgage loan account has since been reduced to reflect this interest overpayment.

The Complainant takes issue with the conduct of the Provider in dealing with her request for forbearance in **July 2012**, in that, she submits the forbearance requested and "*agreed*" was for 12 months and she was only offered 6 months by the Provider. The contemporaneous evidence in the form of the meeting notes and internal mails are clear, that the outcome of the meeting with the Provider's representative was a recommendation for 12 month fixed repayments. The Complainant herself acknowledges this in her internal mail when she submits that the staff representative was to "*recommend*" a 12 month arrangement. The evidence in the form of the Provider's **Credit Assessment Form** shows that the Staff Business Unit did make the recommendation for 12 months fixed payments on the Complainant's mortgage loans, however it was a matter for the Credit Unit to ultimately make the decision. Their Recommendation/Decision was for a 6 month arrangement.

It is important for the Complainant to be aware that the Provider was not obliged to give the Complainant any particular forbearance arrangement type or an arrangement for the period of time that the Complainant wanted. Under the **CCMA 2010** the Complainant's Standard Financial Statement was required to be assessed by the Provider's Arrears Support Unit, which is required to "*examine each case on its own merits*". The evidence shows that in compliance with the **CCMA 2010**, the Provider's Credit Unit considered all options, including interest only, moratorium and term extension and offered the Complainant the option that it states it considered to be suitable.

The Credit Unit's notes also record:

"Substantial sized property for sole occupant. Sale of PDH with downsizing to smaller property should be given serious consideration here as remaining as sole occupant may not be realistic"

The Complainant takes issues with the Provider's suggestion of downsizing which the evidence shows was communicated to her by internal mail on **03 September 2012**. The

/Cont'd...

Complainant submits she was “shaken” by this suggestion and that she “will never get over this” and it has caused “serious health problems” for her. The evidence shows that the Complainant expressed dissatisfaction with the suggestion of downsizing at the time, however, the Provider was very clear in the conversation that ensued on that same date, that downsizing would not be “enforced or made as conditional” and “apologised” for causing any alarm. The evidence shows that the Provider did not, at this time seek to enforce this measure with the Complainant. The Provider was exploring options with the Complainant in circumstances where the Complainant herself had indicated to the Provider that she could not “afford to pay” what was owed on her three mortgage loans and the assessment of the Standard Financial Statement was showing a deficit of €300 per month in income when compared against expenditure and debts. I have not been provided with any evidence that the Provider acted in an unreasonable manner towards the Complainant at this time in **September 2012**.

The Provider wrote to the Complainant by letters dated **30 January 2013** which outlined that the last fixed repayment on her mortgage loan accounts was on **25 January 2013**.

The Complainant wrote to the Provider outlining as follows:

“I’m due to come off a 3 year fix mortgage of 3.19% in April 2013. Current rate is 4% - This will increase my repayments by [illegible]. I’m looking for a bit of [illegible] for a further 6 months. I have applied for 3 promotions but haven’t received any news yet on shortlisting. I will [earn] more if I get promoted & rent my house to get out of this mess I got myself into.”

The letter included a completed **Standard Financial Statement. Section G: Financial Statement Summary** which detailed as follows:

<i>“Total Monthly Income</i>	<i>€2,188.00</i>
<i>Less Total Monthly Expenditure</i>	<i>€986</i>
<i>Subtotal</i>	<i>€1,202</i>
<i>Less Mortgage Repayments Due</i>	<i>€1,230</i>
<i>Less Other Monthly Debt Due</i>	<i>€290</i>
<i>Total Surplus/Deficit</i>	<i>(€318)”</i>

The Provider offered the Complainant a fixed repayment totalling €1,000 across her three mortgage loan accounts for six months by letters dated **02 April 2013**. The fixed repayment breakdown across the three accounts was as follows:

- repayment of €640 on mortgage loan account ending **1049**
- repayment of €270 on mortgage loan account ending **1122**

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- repayment of €90 on mortgage loan account ending **1205**

As the Complainant was on a fixed repayment amount with respect to mortgage loan account ending **1122** during the period from **February 2013** to **July 2013**, the monthly repayment amount due to be paid by the Complainant has not been altered by the retrospective application of the tracker interest rate of ECB + 1.15% to that account. However the overcharge of interest of between 1.29% and 2.75% per month has affected the apportionment of the €270 repayment between the interest portion and the capital portion. During this six month period the Complainant overpaid interest of €729.16, which should have been taken off the capital balance of the mortgage loan during this time. The capital balance of the Complainant's mortgage loan account has since been reduced to reflect this interest overpayment.

The Provider wrote to the Complainant by letters dated **29 July 2013** which outlined that the last fixed repayment on her mortgage loan accounts was on **25 July 2013**.

The Complainant wrote to the Provider outlining as follows:

"Could I [illegible] apply for a split mortgage or fixed repayments of €1,000 until May 14. I'm currently looking at renting weekly & am completing website. [My] health hasn't been the best & I've missed a bit of time off work due to General Anxiety. I'm currently awaiting a referral from the Bank Doctor. I'm not able to apply for any [illegible] @ present until I get myself sorted. I've had to take out health insurance @ 75.00 to cover medical expenses. My holiday fund is gone on an accident I had with my car. I now find my monthly outgoings increased instead of decreasing."

The letter included a completed **Standard Financial Statement. Section G: Financial Statement Summary** detailed as follows:

<i>"Total Monthly Income</i>	<i>€2,200.00</i>
<i>Less Total Monthly Expenditure</i>	<i>€1071.00</i>
<i>Subtotal</i>	<i>€1,129.00</i>
<i>Less Mortgage Repayments Due</i>	<i>€1,426.00</i>
<i>Less Other Monthly Debt Due</i>	<i>€269</i>
<i>Total Surplus/Deficit</i>	<i>-512"</i>

The evidence shows the parties engaged in telephone calls with respect to the request for forbearance between **August 2013** and **October 2013**. I have extracted the following relevant engagements from the file notes:

- **File Note** dated **30 August 2013**

/Cont'd...

"[The Complainant] called my phone and sought status report on her application.

...

I advised her that the paper is not completed and that I cannot provide her with a more definite response only that the most prominent solution that is presenting at the moment is the Negative Equity Trade Down.

I asked [the Complainant] how she felt about this and she responded by saying that it was not an option.

When in conversation [the Complainant] proceeded to mention the Right of Way issue that exists and she also advised that her family members also live on the land where her PDH is built. She is under the impression that because of the right of way issue the house is worth nothing to the bank. She advised that her solicitor is looking into the matter and she will forward me any correspondence in relation to this.

[The Complainant] proceeded to outline that if she was to get a moratorium on her car loan (F&L) and stopped paying her pension she would have sufficient funds to satisfy full capital & interest repayments on her PDH.

...

I advised [the Complainant] to consider the option that may present (ie the Negative Equity Trade Down) and I will contact her as soon as her application is complete."

- **File Note dated 02 October 2013**

"I advised [the Complainant] of Credit Sanction and it was agreed that the FP of €1,250pm is to commence in September until February 2014 (6 months)

[The Complainant] decided that she would like 6 months full C&I moratorium F&L loan to commence at this time also"

Again the evidence shows that the downsizing measure was mentioned as an option by the Provider. The Provider did not at any time seek to enforce the measure of downsizing the property with the Complainant. The Provider offered the Complainant a fixed repayment totalling €1,250 across her three mortgage loan accounts for six months by letters dated **04 October 2013**, backdated to **September 2013**. The fixed repayment breakdown across the three accounts was as follows:

- repayment of €800 on mortgage loan account ending **1049**
- repayment of €338 on mortgage loan account ending **1122**
- repayment of €112 on mortgage loan account ending **1205**

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As the Complainant was on a fixed repayment amount with respect to mortgage loan account ending **1122** during the period from **September 2013** to **February 2014**, the monthly repayment amount due to be paid by the Complainant has not been altered by the retrospective application of the tracker interest rate of ECB + 1.15% to that account. However the overcharge of interest of between 1.29% and 2.75% per month has affected the apportionment of the €338 repayment between the interest portion and the capital portion. During this six month period the Complainant overpaid interest of €1,146.66, which should have been taken off the capital balance of the mortgage loan during this time. The capital balance of the Complainant's mortgage loan account has since been reduced to reflect this interest overpayment.

The Provider wrote to the Complainant by letters dated **16 September 2014** and **14 October 2014** with respect to reviewing and restructuring the Complainant's facilities. The Complainant was asked to complete a **Standard Financial Statement** at the time.

The Standard Financial Statement, which was signed by the Complainant on **23 October 2014**, noted that the Complainant had rented out her PDH and was in receipt of monthly rental income of €700.

Section G: Financial Statement Summary detailed as follows:

<i>"Total Monthly Income</i>	<i>€3,011.49</i>
<i>Less Total Monthly Expenditure</i>	<i>€618.00</i>
<i>Subtotal</i>	<i>€2393.49</i>
<i>Less Mortgage Repayments Due</i>	<i>€1296.46</i>
<i>Less Other Monthly Debt Due</i>	<i>€319.34</i>
<i>Total Surplus/Deficit</i>	<i>€777.69"</i>

The evidence shows the parties engaged in a telephone call on **11 November 2014**. The file note of that call details as follows:

- *"Case manager notified the borrower that he has conducted a full review of the borrowers facilities and mentioned that full C&I will continue as per contract on all facilities and also the Bank will renew her overdraft facility at its existing levels for another year (ie: 2k).*
- *The borrower thanked Case Manager for informing her of this.*
- *Case Manager commenced discussion surrounding the comments made on the borrowers recently submitted SFS (dated: 04/11/2014) where the borrower mentioned dissatisfaction and stated that she will not be dealing with Staff Business ever again.*

- *Case Manager asked the borrower if there was a specific event in that she is referring to and if so, would she like for him to log a complaint on her behalf.*
- *The borrower briefly explained that when she was dealing with Staff Business [s]he spoke with a girl (unnamed) who suggested the possibility of trading down her PDH. The borrower advised that she took offence to that suggestion however she felt that it was unnecessary to log a formal complaint on the matter.”*

Between **March 2014** and **August 2016** a variable interest rate (between 3.40% and 4.40%) was applied to the Complainant’s mortgage loan account ending **1122**. The tracker interest rate that should have been applied was ECB + 1.15%. Between **August 2014** and **July 2016**, the overall tracker (ECB + margin) rate fluctuated between a rate of 1.40% and 1.15%.

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 + 1.15%) had been applied to mortgage account ending **1122** between **March 2014** and **August 2016**, is also represented in the table below:

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
Mar 2014 – May 2014	3.00%	€389.06	€256.09	€132.97
Jun 2014 – Aug 2014	3.10%	€389.06	€252.62	€136.44
Sept 2014 – Nov 2014	3.20%	€389.06	€249.20	€139.86
Dec 2014 – May 2015	2.95%	€378.08	€249.20	€128.88
Jun 2015 – Sept 2015	2.70%	€367.40	€249.20	€118.20
Oct 2015 – Feb 2016	2.45%	€356.98	€249.20	€107.78

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Mar 2016 – Jun 2016	2.50%	€356.98	€249.20	€107.78
Jul 2016	2.25%	€346.89	€249.20	€97.69

The Complainant submits that the “*interest only/forbearance figures & numbers*” are “*nothing to do with her appeal*”. I do not accept that this is the case. In circumstances where the Complainant has complained that the Provider has failed to adequately compensate her for the losses that she submits she incurred as a result of the overcharging that occurred on her mortgage account ending **1122** between **April 2010** and **July 2016**, it is necessary to review and assess all the evidence in relation to the Complainant’s overall financial position during that time. The evidence shows that the Complainant had sought forbearance across her three mortgage loans and the Provider offered the Complainant the following arrangements on all three of her mortgage loan accounts, which she accepted.

1. September 2009: 6 months interest only
2. January 2012: 6 months interest only
3. September 2012: 6 months fixed repayment arrangement of €1,000
4. January 2013: 6 months fixed repayment arrangement of €1,000
5. August 2013: 6 months fixed repayment arrangement of €1,250

The Complainant takes issue with the arrangements offered and the 6 monthly review of those arrangements. However, as outlined above, the Provider was not obliged to give the Complainant any particular forbearance arrangement type or an arrangement for the period of time that the Complainant wanted for her mortgage loan accounts. I accept that this was a difficult time for the Complainant, however I do not accept that the difficulties were caused by the overcharging on mortgage account ending **1122**. The evidence shows that the Complainant was in a financially difficult circumstance in advance of and during the six year period of the Provider’s overcharging with respect to mortgage account ending **1122**. The Standard Financial Statements completed by the Complainant shows that during the period between **January 2012** and **July 2013**, the Complainant was in a position where her income when compared with her expenditure and debts was decreasing from a surplus of approx. €84 in **January 2012**, downwards to showing a deficit of approx. €301 in **July 2012**, a deficit of €318 in **January 2013** and a deficit of €512 in **July 2013**. The financial difficulties arose with respect to servicing not only mortgage loan account ending **1122**, but also mortgage loan accounts ending **1049** and **1205** and the Complainant’s other debts. It is also relevant to note that the portion of the Complainant’s borrowings on mortgage account ending **1122**, represented approximately 27% of the Complainant’s overall mortgage borrowings across the three mortgage loans.

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Having said that being overcharged by sums ranging from €24 to €65 per month at a time when the Complainant was already in financial difficulty would have undoubtedly have caused additional hardship for the Complainant.

The Complainant's financial position had improved by **October 2014** and the Standard Financial Statement which was completed by the Complainant at that time showed a surplus of income, when compared with her expenditure and debts of €777. The evidence shows that by this time the Complainant had rented out her house from **July 2014** and was in receipt of rental income of €700. The Complainant submits that she was "*forced*" to rent out her property by the Provider.

The notes of the Complainant's discussions with the Provider and the Provider's assessments of the Complainant's various requests for forbearance contain a records of the option of renting, as follows;

- Note of meeting with the Provider's representative on **16 August 2012** outlines:
"I discussed the possibility of her renting out one or two rooms to help with repayments. She agreed to."
- Arrears Support Unit Recommendation dated **28 August 2012** outlines:
"This is a five bedroom property & there is obvious scope for some income from rent a room etc."
- The **January 2013** letter from the Complainant to the Provider details:
"I will [earn] more if I get promoted & rent my house to get out of this mess I got myself into."
- Note of telephone contact on **06 March 2013** outlines as follows:
"In order to increase income [the Complainant] has applied for a promotion and she will rent her house either partially or fully to achieve this."
- The **August 2013** letter from the Complainant to the Provider details:
"I'm currently looking at renting weekly"
- Lenders Report from **August 2013**
"she is currently looking at weekly rent options."

The evidence shows that the option of renting the property was an option that was discussed with the Complainant at various stages between **August 2012** and **August 2013**. However there is no evidence that the Complainant was "*forced*" by the Provider to do so.

The Complainant herself indicated to the Provider in **January 2013** and **August 2013** that she was looking at this option. The evidence in the form of the Standard Financial Statement that was completed in **October 2014** shows that the Complainant was in a better financial position overall having rented the property since **July 2014**. Accordingly the Complainant did not require further forbearance at this time. The Complainant rented out the property of her own volition and there is no evidence to link this decision to the overcharging on her mortgage loan account ending **1122**. Rather the evidence shows that this option was pursued by the Complainant to assist with her overall financial position and debts at the time. I do not accept that the Complainant should be compensated by the Provider for the losses that she asserts she suffered from renting the property from **July 2014**, including increased insurance, letting costs and the refurbishment of the property in **2017** when she resumed living there.

The Provider has paid compensation of €1,476.07 to the Complainant, together with redress of €5,328.57 and an independent professional advice payment of €615. The evidence before me shows that the Complainant was in difficult financial circumstances during the impacted period (**April 2010 – July 2016**). Between **April 2010** and **July 2012**, the Complainant had been overpaying between €24.00 and €65.00 monthly on her mortgage loan account ending **1122** and for two years between **March 2014** and **July 2016**, the Complainant was making monthly overpayments of in excess of €100 per month. I have no doubt that the overpayment caused a level of stress and inconvenience on an already stressful situation. It cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused additional hardship and inconvenience to the Complainant who was already in difficult financial circumstances. For the avoidance of any doubt, I do not accept that the overcharge on mortgage loan account ending **1122** caused these financial difficulties. Rather the financial difficulties arose with respect to servicing not only mortgage loan account ending **1122**, but also mortgage loan accounts ending **1049** and **1205** and the Complainant's other debts. That said, it certainly aggravated an already difficult situation.

The Complainant in the post Preliminary Decision submission dated **06 August 2020** details as follows:

"1. Additional Point of Fact

I received a letter from [the Provider] dated 10th of July 2020. [Provider] advise "Following an upheld decision by the FSPO in relation to an individual FSPO complaint, we will reduce your current mortgage balance by 12% and refund the interest charged on the 12% balance reduction amount. [Provider] has alerted me to this further failure in relation to my overall mortgage.

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In page 22 of your preliminary decision "it is necessary to review and assess all the evidence in relation to the complainant's overall financial position during this time. In your option, and in light of this FSPO decision by your office, if this failure did not occur and this money was available to me in 2010, do you think I would.....

Have been in a better financial position?

Have been brought through the MARPs process on numerous occasions?

Would my credit rating have been downgraded and my accounts be placed with the Financial Solution Group within [Provider]

Would I have had to meet with [Staff Member] the Staff Business Representative?

Entered into a repayment plan?

Would I have received a better Time Value Money Award?

Would I have been classified pre- arrears under (CCMA 2010)?

Should downsize have been mentioned?

I stayed out of arrears by making personal sacrifices elsewhere and have never been in arrears."

It appears that the Complainant has now received further redress on one of her other mortgage loan accounts ending **1049**. It appears that this redress is linked to the redress scheme put in place by the Provider on foot of a decision of my Office on a complaint made by a third party complainant. This complaint is in relation to mortgage loan account ending **1112**.

I understand and accept that this was a difficult time for the Complainant, however as set out above, I do not accept that the difficulties were caused by the overcharging on mortgage account ending **1122**. It is impossible for the Complainant or this Office to state with complete accuracy what may or may not have happened had the overcharging not occurred. However, the evidence shows that the Complainant was in a financially difficult circumstance in advance of and during the six year period of the Provider's overcharging with respect to mortgage account ending **1122**.

In response to the Complainant's post Preliminary Decision Submission dated 06 August 2020, the Provider made a Post Preliminary Decision Submission dated **18 August 2020**, which details as follows:

"The Bank refers to the FSPO letter dated 7 August 2020 and the Complainant's email dated 6 August 2020.

In relation to the Complainant's submission, the Bank would like to clarify that the FSPO Complaint reference 17/ [Reference Number] relates to Mortgage Loan Account ending 1122, whereas the Bank's letter dated 10 July 2020 referred to by

/Cont'd...

the Complainant relates to a separate and different account, not the subject of this Complaint reference 17/ [Reference Number] – that is Mortgage Loan Account ending 1049”

The Complainant in a further post Preliminary Decision Submission dated **21 August 2020** details as follows:

“Am I correct in saying that the FSPO believes it necessary to review and assess all the evidence in relation to my overall financial position (per preliminary decision - bottom of page 22)

It seems to me that [Provider] are disputing this when they previously state “ The Bank also notes the impacted account ending 1112 comprises only to a small portion (€65,935.12) of my overall debt €255,843.24.

To date I have received a lodgement of €21,991 to my mortgage account ending 1049.

I now have nothing further to add.”

This Office has taken into account all of the relevant information and evidence when adjudicating on this complaint.

Taking into consideration all of the evidence before me in terms of the particular circumstances of the Complainant, the level of overcharging and the period over which the overcharging occurred, the impact such overcharging had on the Complainant, I accept that the amount of compensation offered by the Provider of €2,226.07 is reasonable in the circumstances of this particular matter. I note that the Provider has already paid the Complainant the sum of €1,476.07 and has agreed to pay a further €750 to the Complainant. I understand that the offer of the further €750 compensation remains open to the Complainant 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.

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**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

31 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.