



<u>Decision Ref:</u>	2020-0309
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to apply the correct tracker rate as part of the Examination Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to one of three mortgage loan accounts held by the Complainants with the Provider and an overcharge of interest in the amount of €27,668.96 on that mortgage loan account. The mortgage loan account which is the subject of the complaint was secured on the Complainants' private principal residence.

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

The Provider contacted the Complainants on **12 December 2017** advising them of the error that had occurred on their mortgage loan account. The Provider detailed how it "got things wrong" as follows;

"In our review, we found that when you moved from a tracker rate to the staff non-standard variable rate and then a fixed rate, we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate and the language used by us in communications to you may have been confusing and/or misleading."

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 19 Jan 2009 and 28 Nov 2017”*

The Complainants' mortgage loan account was restored to a tracker interest rate of ECB + 0.85% on **29 November 2017**.

The Provider made an offer of redress and compensation to the Complainants in a letter dated **12 December 2017**. The offer of €32,957.65 made by the Provider to the Complainants comprised the following;

1. Redress of €29,052.41 covering;
 - Total interest overpaid
 - Interest to reflect the time value of money
2. Compensation of €2,905.24 for the Provider's failure
3. Independent Professional Advice payment of €1,000.

The Complainants appealed the redress and compensation offering to the Independent Appeals Process in **January 2018**. On **22 February 2018** the Appeals Panel upheld the appeal because of *“the impact of the overpayment on the Customers in their particular circumstances”* and awarded additional compensation of €6,000 to the Complainants.

As the Complainants have been through 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 is:

- (a) That the Provider applied an incorrect tracker interest rate margin of ECB + 0.85% rather than ECB + 0.75% to the Complainants' mortgage loan account ending **879**.

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- (b) The Provider has not offered adequate redress and compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account.

The Complainants' Case

The Complainants hold the following mortgage loan accounts with the Provider;

- Mortgage loan account ending **879**, which is the subject of this complaint and is secured on the Complainants' primary residence;
- Mortgage loan account ending **920** which is secured on the Complainants' Buy-to-Let ("BTL") property; and
- Mortgage loan account ending **859** which is secured on the Complainants' Holiday Home.

The Complainants state that in **December 2005** they opted to switch the mortgage loan account ending **879** from the tracker interest rate of ECB + 0.95% to the staff tracker interest rate of ECB + 0.85%. The Second Complainant was an employee of the Provider at that time.

The Complainants submit that on **22 December 2006**, the Provider issued an internal intranet **Notice** to its staff outlining interest rate options. They state that it was detailed in the **Notice** that *"all accounts on Staff Tracker Rate (ECB+.85%) would now be moved to ECB + .75% - no action was required from any staff mortgage customers currently on tracker rate as ALL accounts would be amended automatically to new Staff tracker rate. They also offered other options to staff, one of which being 2 yr fixed rate".* They detail that the **Notice** outlined the two-year fixed interest rate option as *"good value and only available for a limited time on both PDH and BTL staff accounts"*.

The Complainants outline that *"As [the Second Complainant] worked in the same building as the mortgage team at this time she sought advice from them and was assured that if any account moved to Fixed rate they would revert to tracker on expiry of fixed term."* They submit that, based on this assurance they decided to move the mortgage account ending **879** to the two-year fixed interest rate offered in the **Notice**. They further outline that *"After selecting rate [the Second Complainant] again sought confirmation that PDH would revert to Staff tracker and was given a print out of the mortgage account rollover system ... this clearly confirmed that account was on 2 year Staff Fixed Rate rolling to Staff Tracker ECB + .75% with notice date of December 2008."*

The Complainants submit in relation to the printout that the Provider *"appears to insinuate/accuse the second named complainant of improperly requesting an internal*

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system print out from a colleague whom they worked with and had access to Mortgage systems – the second named complainant has worked with [the Provider] since [date redacted] in various Branches and Departments with a totally unblemished record and finds the banks response insulting and personal in nature”.

The Complainants say that based on the assurances they received from the Provider it was reasonable for them to expect the mortgage account ending **879** to roll over to the tracker interest rate of ECB + 0.75% at the end of the two-year fixed interest rate period. They submit that *“Had we not received assurances of Tracker roll to rate of ECB + .75% we could have had the option to break out of our fixed rate and go onto the Staff Tracker ECB + .75% and avoided this ongoing saga”.*

The Complainants submit that in **October 2008** the Provider issued another intranet staff **Notice** relating to staff mortgages. They outline that *“This document clearly outlines all Staff on current Staff 2 yr Fixed Rate would roll to ECB + .75% ... This was the only staff tracker rate available as the previous ECB + .85% had been done away with as per communication of December 2006.”*

They state that *“Based on the above communication again we made 2 payments to reduce Holiday Home mortgage [account ending **859**] in **Nov/Dec 2008** due to [the Provider’s] reassurance of PDH converting to tracker at end of December 2008. We would **never** have made these 2 payments off an interest only tracker investment mortgage and would have held onto these funds to reduce PDH had we know[n] that bank were to renege on previous assurances and convert our PDH to Standard Variable Rates thereby significantly increasing the interest charged on the account.”* The Complainants made lump sum payments totalling €47,136.76 to their mortgage loan account ending **859** in **2008**.

The Complainants’ mortgage loan account ending **879** was switched to the staff variable rate on the expiry of the two-year fixed interest rate period in **January 2009**.

The Complainants outline that since **2009** *“we made significant changes to our expenditure in order to overpay our PDH mortgage from 2009 to mitigate against the higher rates [the Provider] applied on our account. Payments were amended to fortnightly and on occasions we made twice the required payment when feasible ... We used all savings, surplus monthly income, my inheritance from my father, to reduce PDH rather than build savings.”* The Complainants state that the Provider *“has failed to acknowledge that the overpayments made during the period of incorrect interest being charged by them was significantly higher than previously made (at times twice the normal monthly payment due), as we did not wish to pay [the Provider] what we knew was an incorrect interest charge.”*

The Complainants further submit that the overcharging on the mortgage loan account ending **879** “impacted on [their] ability to retain” their Buy-to-Let property (mortgage account ending **920**).

They detail “when we had no tenant in our BTL and it was incurring additional cost for us, we sought interest only for 3 months until property was redecorated and let – [the Provider] agreed to same on the provision that our Tracker rate would increase by 1% for the remaining term of the mortgage, rather than agree to this we decided to again prioritise our PDH and sell BTL”. The Complainants submit that they sold the Buy-to-Let property in **2014** at a net loss of €21,104.00. They detail that “yes there were other factors to selling the BTL – annual tax bill, vacant months, etc all of which reduced our ability to focus on PDH debt with the highest interest rate but our ultimate decision was we needed to prioritise our PDH”.

The Complainants state that the internal staff **Notices** issued by the Provider to its staff regarding staff mortgages in **2006** and again in **2008** were “confusing and misleading”. They further submit that the First Complainant “is not nor has he ever been a staff member of [the Provider] and has no access to any Bank system – he is a customer of [the Provider] and a consumer and therefore he is entitled to direct communication from [the Provider] as a joint account holder and [the Provider] should issue communications to all parties which they can easily access and understand, without reliance on third party information or use of internal classified documents.”

They state that “we remain adamant that the correct rate which should be applied to our account is ECB + .75%, redress should be on this basis and [the Provider] have failed to adequately compensate us for the overpayments we made during the last 10 yrs as a direct consequence of their overcharging actions”.

The Complainants are seeking the following:

- i. Restoration of the tracker interest rate of ECB + 0.75% to the mortgage loan account ending **879** from **January 2009**
- ii. Recalculation of the redress based on a tracker interest rate of ECB + 0.75% being applied from **January 2009**.
- iii. Compensation for the failures of the Provider which resulted in the consequences outlined above.

The Provider’s Case

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The Provider submits that the Complainants' mortgage loan account ending **879** was drawn down on **20 July 2004** under a **Loan Offer** dated **16 March 2004** signed and accepted by the Complainants on **1 July 2004**.

It details that the Loan Offer provided for a tracker interest rate and **Special Condition A** confirmed that the applicable margin would be no more than 0.95% above the European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the loan.

The Provider states that only the Complainants' mortgage loan account ending **879** has been deemed impacted under the Tracker Mortgage Examination, however, there are two other accounts: a holiday home mortgage loan account ending **859** and a Buy-to-Let mortgage loan account ending **920**, which the Complainants regard as relevant to their complaint.

The Provider has outlined that the following rate changes took place on the mortgage loan account ending **879**;

- The Complainants signed a **Mortgage Form Authorisation** ("MFA") on **22 December 2005** which reduced the tracker interest rate margin to 0.85%. The Provider states that it had no contractual obligation to offer a reduced staff tracker margin of 0.85% to the Complainants in **December 2005**. It states that it is satisfied that the lower margin of 0.85% is the margin that is now relevant to the mortgage account because that was the margin provided for in the MFA signed by the Complainants in **December 2005**.
- The Complainants signed an **MFA** on **21 August 2006** to change to a staff non-standard variable rate. It details that this rate was a "*non-tracker variable rate*" and was "*without temporal limit*" i.e. capable of lasting until the end of the mortgage. The Provider states that this MFA "*definitively ended the former tracker rate and means that the Complainants have no claim in contract to a tracker rate.*"
- The Complainants signed an MFA on **14 January 2007** to change to a staff two-year fixed rate mortgage of 3.95%.
- The Provider states that on **18 December 2008** it issued the Complainants with the available rate options open to them which did not include the tracker rate. It states that this was because the Complainants' mortgage account was on a non-tracker variable rate when they fixed the rate in **2006**, and also because the Provider had withdrawn tracker rates generally in **2008**. The Complainants did not exercise a

choice to avail of one of the rates offered and on **19 January 2009** the account rolled to the staff variable rate of 3.75%.

The Provider outlines that it included the Complainants' mortgage loan account in the Examination because it was formerly on a tracker interest rate. The Provider submits that when the mortgage loan account moved from a tracker rate to the staff non-standard variable rate and then to a fixed rate, the Provider failed to provide "*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 has "*not breached any contract*" with the Complainants and that there was no positive representation made by the Provider before the Complainants entered the two-year fixed rate that they could move to a new 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 this "*is significantly less serious as a shortcoming in terms of conduct than (say) a breach of contract or miss-selling a fixed rate through positive misrepresentation that a new tracker rate would be provided when it ended.*"

The Provider details that it has "*restored*" the Complainants' mortgage loan account to the tracker interest rate of ECB + 0.85%. The Provider asserts that the redress payment was calculated to compensate the Complainants for the overpayments in the relevant period when they were paying higher rates than the tracker rates and that payment adequately compensates the Complainants for the absence of their tracker interest rate during the relevant period. The Provider states that they have 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 €6,000 in compensation and this "*strengthens the argument that compensation paid was at least adequate.*"

The Provider states that the Complainants' mortgage loan documentation demonstrates that their mortgage loan account ending **879** has never had any provision for a margin of 0.75% above the ECB Repo Rate.

The Provider details that on **22 December 2006** it published a communication on its Intranet which outlined the following interest rate options for staff;

- (1) "*Remain on Staff Non-Standard Variable Rate at 4.5% with no BIK applicable;*
- (2) "*New Special Staff 2 Year Fixed Rate at 3.95%, subject to BIK; or*

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(3) Staff Tracker Mortgage at ECB + 0.75% (4.25%) with no BIK applicable.”

The Provider states that the Complainants signed an **MFA** in **January 2007** to change to the staff two-year fixed interest rate. It submits that as the Complainants did not choose the third option above, a margin of 0.75% was never applicable to the mortgage loan account ending **879**, and in effect the Complainants rejected the Provider's offer of a tracker rate of ECB + 0.75%. The Provider states it is therefore of the view that the account never had a contractual entitlement to a tracker rate of ECB + 0.75% and that the margin of 0.85% derived from the **MFA** signed in **2005** is the relevant margin.

The Provider states that it is *“abundantly clear”* from the notice of **22 December 2006** that the Complainants would have to take steps to take up the offer of a tracker rate at ECB + 0.75%. It states that *“Not only did the Complainants not take those steps, they actually followed an alternative option offered in the same notice of 22 December 2006 to take up a two year fixed rate in preference”*. It outlines that the details on **page 1** of the **MFA** signed by the Complainants on **14 January 2007** were completed in handwriting, apparently that of the Second Complainant. The Provider states that this *“strongly indicates [the Second Complainant] accessed that fixed rate MFA form through the [Intranet] Notice of 22 December. It had a link for customers interested in taking up the 2 year fixed rate option.”*

The Provider submits that taking up the offer of the tracker rate of ECB + 0.75% would have necessitated printing the appropriate **MFA** from the Intranet **Notice**, completing and returning it, and the Complainants never did this. The Provider points out that that is *“precisely”* what the Complainants chose to do on their other mortgage account ending **859**, as they used the same **Notice** to print off the **MFA** for a tracker rate of ECB + 0.75% which they signed on **14 January 2007**.

The Provider further states that the **Notice** said that only staff customers then on a tracker rate of ECB + 0.85% would move automatically to a margin of 0.75%. It states that the Complainants were then not on a tracker rate of ECB + 0.85%, having moved to the staff non-standard variable rate in **August 2006**. It further states that the Complainants cannot rightly claim that the effect of the Intranet notice was that the margin of 0.85% *“had been done away with”*.

The Provider details that it has not found any note or record to indicate that the Second Complainant sought or was given advice by the Provider's employees *“that if any account moved to Fixed Rate they would revert to tracker on expiry of fixed term”*. It submits that there is no evidence that the Second Complainant sent an email query to the mortgage business team in **2006**. It states that the Second Complainant *“may well have had informal discussions with her colleagues working in the mortgage business”*.

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However the Provider does not believe *“those sort of interactions can now ... be fairly presented as occasions in which the Provider (as mortgage lender) made representations or gave assurances on the tracker rate to either Complainant.”* The Provider states that the Intranet **Notice** published on **22 December 2006** is the *“formal representation”* to the Complainants on the question of what would happen at the end of the fixed rate period and it stated that *“Staff will be advised of their rollover options a number of weeks prior to the expiry of the fixed rate term”*. The Provider further states that the Notice makes no promise of a tracker rate of ECB + 0.75% at the end of the 2 year fixed rate.

The Provider states that the *“mortgage account rollover” printout* referred to by the Complainants is an internal record from the computer system used by the Provider to administer its mortgage loans, and is not a form of communication to any customer or to any staff customer in particular. The Provider details that if a fixed rate is put in place, the Provider *“must set up a roll to variable rate on the system but that is to meet a purely administrative need. It does not form part of any contractual agreement to make a rate available at a future point in time. The rate and margin applicable to a roll off is determined only immediately prior of the expiry of any fixed rate period”*. The Provider states that some staff can access these printouts as part of their duties, *“including many who work with the second named Complainant; and it seems the second-named Complainant asked for a print out from one such colleague”*. The Provider submits that it would like to clarify that there was *“no intention to insinuate or accuse the Second Named Complainant of any impropriety”*.

The Provider outlines that it *“does not seem fair or reasonable”* that the **printout** could now be posited as a representation from the Provider to the Complainants that they would be offered a new tracker rate of ECB + 0.75% at the end of the fixed rate period. The Provider further states that it is clear the printout was generated after the Complainants had already fixed their interest rate for 2 years, and so it cannot possibly be evidence of a representation that induced them to enter that fixed rate.

The Provider submits that, while it may not have been clear to the Complainants what rate would apply at the end of the fixed rate period, there was no reason for them to suppose a tracker rate would apply, and the evidence shows that *“a more natural expectation”* would be to return to the non-tracker variable rate in force immediately prior to the Complainants fixing the interest rate.

The Provider states that it was clear from the Intranet staff communication dated **9 October 2008** that tracker rates would not be made available for new or existing staff customers, with the exception of those on a tracker rate or those rolling to a tracker rate under their mortgage loan agreement.

It states that clearly neither of these exceptions could have applied to the Complainants, as they were not on the staff tracker mortgage rate of ECB + 0.75% on **9 October 2008**, and they had no entitlement to “roll” to a tracker rate of ECB + 0.75% under their mortgage agreement. The Provider submits that in **October 2008** some customers were on fixed rates but had mortgage loan offer letters which contained an express agreement to allow them to roll to a tracker rate at the end of the fixed period. It states that the passages from the Intranet notice quoted above are directed to staff customers in that category *“and cannot be correctly read to refer to all customers who were on the 2 year fixed rate”*.

Regarding the appropriateness of the use of internal communications in relation to interest rate options in circumstances where the First Complainant was not a staff member and did not have access to the Provider’s internal system, the Provider states that it *“could not see how this could be a matter of complaint to the Complainants”* as both Complainants signed MFAs *“demonstrably in response”* to its Intranet notices because the MFAs could only be accessed through those notices. It submits that the **2006 MFA** for the staff non-standard variable rate was accessed through the Intranet notice of **18 August 2006**, and the **2007 MFA** was accessed through the Intranet notice of **22 December 2006**.

The Provider further submits that on the Complainants’ Holiday Home account ending **859** and the Buy-To-Let account ending **920**, both Complainants signed an **MFA on 18 August 2006** in reaction to the Intranet Notice of **18 August 2006**. It states that in its view this is *“ample evidence”* that the First Complainant participated fully in accepting the offers outlined in the Intranet notices, and neither Complainant has offered any evidence that the First Complainant was not informed before he signed the MFAs.

The Provider asserts that it *“strongly believes that it would be unfair and unreasonable”* for it to compensate the Complainants for the lump sum repayments they made on the Holiday Home mortgage account ending **859** in **November** and **December** of **2008**. It states that there are *“any number of reasons”* why the Complainants would use funds available to them to clear their holiday home mortgage first, and the possible connection between the tracker issue and that decision is too remote for it to be justly linked to this complaint. It states that the Complainants have adduced no evidence to link the lump sum payments to the question of the tracker rate and have relied on a simple assertion of linkage nearly 10 years after the event. It further outlines that not only is there an absence of contemporaneous evidence to support the Complainants’ view, the Provider’s view is that the evidence is against such linkage. The Provider states that the terms of the Complainants’ mortgages allow for them to make prepayments or partial redemptions whilst on a variable rate and the Provider is required to use these payments and apply them in accordance with the borrowers’ instructions.

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It says that the Complainants got full value *pro tanto* for the capital they prepaid in lump sums against the account ending **859** and have not shown any loss.

The Provider further submits that the evidence demonstrates that the Complainants had a long history of making partial redemptions against the account ending **859** from **2005** and the pattern of partial redemptions does not seem to have any connection to the question of a tracker rate. It states that the lump sum repayments on account ending **859** continued after the expiry of the 2 year fixed rate on the account ending **879** in **January 2009**, when it would have been clear to the Complainants that the Provider did not allow them to roll to a tracker rate. The Provider states that "*strikingly*" the Complainants made a lump sum payment to account ending **859** later in the very same month, on **27 January 2009**. It states that the total lump sum payments on account ending **859** since the end of the fixed rate in **January 2009** was €44,447.82, which it states is "*highly significant*" as it means the Complainants made these lump sum payments during the period when the Provider was charging the higher standard variable rate.

The Provider further submits that in making the lump sum reductions, the Complainants reduced the overall amount of interest accruing on the holiday home account ending **859**, because interest accrues on the daily balance outstanding in accordance with **General Condition 4(a)**. It submits that because the account ending **859** was interest only for 10 years, the balance outstanding would not reduce and thus the daily interest cost accrual would be higher than it would be for an amortising loan like account ending **879** if the PDH loan was at a similar rate. The Provider states that this explains the Complainants' decision to prepay the account ending **859** in preference to account ending **879** in **November and December 2008**. It states that this seems "*even more likely*" given that the Complainants then believed the interest rate on the PDH loan was soon to be identical to the interest rate on the Holiday Home loan, that is, the tracker rate of ECB + 0.75%.

The Provider refers to a note submitted with the Complainants' application for account ending **859** on **20 April 2005**, which it says confirms their intention for borrowings to be reduced by "*SAYE/SSIA Summit Funds*". It submits that this is evidence that the Complainant always envisaged using available additional funds to reduce the capital outstanding on the holiday home mortgage loan account ending **859**, and the lump sum payments in **November and December 2008** were therefore in line with the Complainants' stated initial intention as recorded in the application.

The Provider submits that the Complainants elected of their own volition to make additional payments on mortgage loan account ending **879** as they are entitled to do under the terms of the mortgage loan offer. It submits that the Complainants have suffered no loss as the prepayments reduced the capital they owed *pro tanto*.

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It asserts that there is no loss within the meaning of Section 69(4)(d) of the FSPO Act 2017. The Provider further states that it cannot be fairly and reasonably said that the choice of the Complainants to make additional payments results from the conduct complained of, when the pattern demonstrates the Complainants made overpayments in respect of both account ending **879** which was subject to a variable rate, and account ending **859** which was subject to a tracker rate. It submits that such consequences are too remote from the question of tracker and dependent on any number of factors someone may consider when making the financial decision to overpay the mortgage.

The Provider submits that the Complainants' request for a calculation of compensation based upon the standard contractual repayments that would have been due "*is completely hypothetical and artificial*". It states that since **2005** there was a history of overpayments at a point in time when the tracker rate was not in issue and therefore the Complainants cannot assert that the only reason they engaged in overpayments was to mitigate the higher interest rate being charged after the tracker rate issue arose.

The Provider states that the Complainants have offered no evidence to support the contention that the tracker issue was in any way the proximate or even an indirect cause of the Complainants' personal decision to sell their investment property. It states that it cannot be fairly and reasonably said that the choice the Complainants made to sell their investment property and the consequent loss against the initial purchase price in any way results from the conduct complained of. It submits that such consequences are too remote from the question of tracker and dependent on any number of factors someone may consider when considering the future of their private residential investment. The Provider further submits that if capital appreciation in the property was certain, then the Complainants should have sought to retain the property in order to avail of that capital growth. It states that the Complainants could have maintained the mortgage or sought appropriate forbearance to retain ownership if they were so inclined.

The Complaints for Adjudication

The complaints for adjudication are;

- (a) That the Provider has applied the incorrect tracker interest rate margin of ECB + 0.85% rather than ECB + 0.75% to the Complainants' mortgage loan account ending **879** from **19 January 2009**.
- (b) That the Provider has failed to offer adequate redress and compensation to the Complainants for the failures identified on their mortgage loan account ending **879**.

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Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **26 August 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 where the Provider has accepted its failings. The issue for decision is whether the Provider has applied the correct tracker margin and whether it has offered adequate compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainants in **December 2017**. I therefore do not see the relevance of the Provider's arguments in relation to breach of contract.

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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 €27,668.96 reflects the amount of interest overpaid on the mortgage loan account and a further payment of €1,383.45 to reflect the time value of money. The Provider also paid the Complainants compensation of €2,905.24 and €1,000 for the purposes of seeking legal advice. The Provider submits that the Complainants have not made out a reasonable claim for additional redress and compensation beyond what the Provider and the Appeals Panel (€6,000) has already provided for and was paid by the Provider to the Complainants.

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

The Complainants held three mortgage loan accounts with the Provider. Details with respect to the two mortgage loan accounts which are not the direct subject of this complaint are as follows:

- **Mortgage loan account ending 920 (the Buy-to-Let account)**

This mortgage loan was subject to the **Loan Offer** dated **30 May 2003** which issued to the Complainants and was accepted by them on **12 June 2003**. The loan amount was €290,000 and the term was 25 years. The Loan Offer detailed that the loan was for a fixed rate of 2.95% for 12 months and thereafter a variable interest rate.

- **Mortgage loan account ending 859 (the Holiday Home account)**

This mortgage loan was subject to the **Loan Offer** dated **12 May 2005** which issued to the Complainants and was accepted by them on **23 August 2005**. The loan amount was €270,000 and the term was 25 years. The Loan Offer detailed that the loan was for a tracker rate of ECB + 1.10% for the term of the loan and that repayments on the mortgage loan for the first 10 years were Interest Only.

The mortgage loan account which is the subject of the complaint to this office is mortgage loan account ending **879** (the Primary Dwelling Home account). A **Loan Offer** dated **16 March 2004** issued to the Complainants in respect of the mortgage account ending **879** which detailed as follows;

1. *Amount of Credit Advanced* €330,000
2. *Period of Agreement* 25 Years

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3. Number of	
Repayment	Instalment
<u>Instalments</u>	<u>Type</u>
300	Variable at 2.950%”

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

“The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 0.95% above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the Loan. Variation in interest rates shall be implemented by the lender not later than close of business on the 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 in accordance with General Condition 6(b) of this Offer letter. In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.”

The Complainants signed the Acceptance and Consent on **1 July 2004** on the following terms;

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

The tracker interest rate of ECB + 0.95% applied to the mortgage loan account ending **879** until **22 December 2005**, when the Complainants requested to apply the staff tracker rate of 3.10% (ECB + 0.85%) to the mortgage loan by way of **Mortgage Form Authorisation** (“MFA”) accepted and signed by them on **22 December 2005**.

The tracker interest rate of 3.10% (ECB + 0.85%) applied to the mortgage loan account ending **879** until **21 August 2006**, when the Complainants signed a **Mortgage Form Authorisation** to apply the staff non-standard variable rate to the mortgage loan.

The **Mortgage Form of Authorisation** detailed, as follows:

The Staff Mortgage Rate is a variable interest rate and shall be the higher of the following two key indicators: (1) The prevailing Revenue Commissioners BIK (Benefit in kind) reference rate:

/Cont’d...

(2) The prevailing one month Cost of Funds reference rate (which is equivalent to the one month EURIBOR rate issued by [the Provider] on a daily basis)

APPLICATION FOR CHANGE OF INTEREST RATE:

I/We wish to apply for the Staff Mortgage Rate as detailed above for my/our mortgage loan (the "Loan")

Please select when you wish to change your interest rate:

I/We wish to change to the rate selected above immediately

....."

The reverse side of the **Mortgage Form Authorisation** outlined as follows:

"ACKNOWLEDGEMENT AND AGREEMENT

...

I acknowledge that following the acceptance by the Bank 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.

I acknowledge and agree that:-

.....

(3.) In converting the Loan to the Staff Mortgage loan, I agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The rate shall be the higher of the following two key indicators: (1) the prevailing Revenue Commissioners BIK (Benefit in kind) reference rate: (2) the one month Cost of Funds reference rate (which is equivalent to the one month EURBOR rate issued by [the Provider] Global markets on a daily basis). In the event that the Staff Mortgage Rate is certified by the Bank to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate. Notification of any change in the interest rate shall be given in accordance with Condition 6 (b) of the General Conditions of my original Offer Letter.

...

/Cont'd...

(5.) Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged.”

The Staff Mortgage Rate was applied to the Complainants’ mortgage loan on **21 August 2006**.

I have considered the Provider’s intranet **staff notice** dated **22 December 2006** which details as follows;

“First published December 22 2006

...

Staff Non-Standard Variable Rate Mortgage (RoI)

An update on the Staff Non-Standard Variable Rate Mortgage currently at 3.5%

...

In the budget on 6 December 2006, the Revenue Commissioners Benefit-in-kind (BIK) Reference Rate was changed from 3.5% to 4.5% with effect from 1 January 2007 in Ireland.

As a result the rate on the staff non-standard variable rate mortgage will have to increase to 4.5% with effect from 1 January 2007 to avoid staff having to pay BIK.

A notice to this effect will issue to all staff on this product in due course in line with the terms and conditions but staff should note that the new repayment amount will be effective from 1 January 2007.

Staff Mortgage Options

...

As a result of these changes, staff can now avail of the following options:

<i>Option</i>	<i>Rate</i>	<i>Note</i>
<i>Remain on Staff Non-Standard Variable Rate</i>	<i>4.5%</i>	<i>No BIK applicable</i>
<i>New Special Staff 2 Year Fixed Rate</i>	<i>3.95%</i>	<i>Subject to BIK</i>
<i>Staff Tracker Mortgage</i>	<i>ECB + 0.75% (4.25%)</i>	<i>No BIK applicable</i>

/Cont’d...

- a) *Remain on the staff non-standard variable rate mortgage for all your PDH (Private Dwelling House) and RIL (Residential Investment Lending) mortgage business. The rate will increase to 4.5% with effect from 1 January and you will receive written notification in due course about your new repayment amount. No further action is required.*
- b) *You can avail of our new special staff 2 Year Fixed Rate which will be priced at 3.95%. This special fixed rate is available for all new and existing mortgage business and includes both PDH (Private Dwelling House) and RIL (Residential Investment Lending).*

Staff will be advised of their rollover options a number of weeks prior to the expiry of the fixed rate term.

The staff 2 year fixed rate represents excellent value for both RIL's and PDH loans in a volatile interest rate environment. All the latest indications are that the ECB rate will increase a number of times throughout 2007.

This product and rate is subject to BIK at the appropriate rates, i.e. difference between the rate, 3.95% and the Revenue Commissioners Reference Rate (4.5% with effect from 1 January 2007) at your marginal tax rate.

Please note that this product option is only available for a limited period of time i.e. until 19 January 2007. All applications, MFA's (Mortgage Form of Authorisation) must have been received by this date to qualify for this fixed rate.

...

- c) *You will also have the option to convert to the staff tracker mortgage. This was priced at ECB + 0.85%, currently 4.35% and was only available for PDH mortgages. We are now delighted to be able to tell you that we have secured agreement to offer this tracker product to staff at ECB + 0.75%, i.e. currently 4.25%. This mortgage rate is available for all new and existing mortgage business and includes both PDH (Private Dwelling House) and RIL (Residential Investment Lending).*

...

N.B. For those staff currently on a staff tracker rate of ECB + 0.85% there is no need to take any action – your accounts will automatically be switched to the new rate of ECB + 0.75%”

/Cont'd...

The staff non-standard variable rate applied to the mortgage loan until **14 January 2007**, when the Complainants signed a **Mortgage Form Authorisation** to apply the staff 2 year fixed rate of 3.95% to the mortgage loan. The Mortgage Form of Authorisation detailed as follows:

“APPLICATION FOR CHANGE OF INTEREST RATE:

I/We wish to apply for the Staff 2 Year Fixed Rate 3.95% Mortgage Rate as detailed above from my/our mortgage loan (the “Loan”)

**Note: If you change from a fixed rate during the fixed rate period, you may be liable to pay a funding sum to the Bank. See conditions overleaf.*

The reverse side of the **Mortgage Form Authorisation** outlined as follows:

“ACKNOWLEDGEMENT AND AGREEMENT

...

I acknowledge that following the acceptance by the Bank 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.

I acknowledge and agree that:-

(3) Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged.”

The staff 2 year fixed rate of 3.95% was applied to the Complainants’ mortgage loan on **14 January 2007**.

It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainants’ mortgage loan account, in that, the Provider failed to furnish the Complainants with sufficient clarity when they moved to the staff non-standard variable rate and then a fixed rate, as to what would happen at the end of the fixed rate. The Provider found that the language used may have been confusing as to whether the tracker interest rate or a variable interest rate would apply at the end of the fixed interest rate period.

/Cont’d...

The **Account Rollover Enquiry printout** provided in evidence by the Complainants details as follows;

<i>“Account Number</i>	<i>XXXXX879</i>	<i>Current Rate</i>	<i>3.950%</i>
<i>...</i>			
<i>Current Product</i>	<i>STF STAFF 2 YEAR FIXED RATE</i>		
<i>Roll To Product</i>	<i>TRS Staff Tracker ECB Repo + 0.75%</i>		
<i>...</i>			
<i>Review Date</i>	<i>Review Type</i>	<i>Rollover Date</i>	<i>Notice Date</i>
<i>17/01/2009</i>	<i>Product Rollover</i>	<i>0/00/0000</i>	<i>18/12/2008”</i>

The Complainants submit that the printout of the mortgage account rollover system “clearly confirmed that account was on 2 year Staff Fixed Rate rolling to Staff Tracker ECB + .75% with notice date of December 2008.”

Having considered the evidence before me, including the mortgage loan documentation, it is my view that that the Complainants do not have a contractual or other entitlement to the tracker interest rate of ECB + 0.75%.

The Provider offered the Complainants the option of making an application for the tracker interest rate of ECB + 0.75% in the staff Notice dated **22 December 2006**. However the Complainants appear to be taking parts of this notice out of context. It is clear from the Notice that customers whose mortgage loans were already on the tracker interest rate of ECB + 0.85% did not need to take any action in order to be switched to the tracker interest rate of ECB + 0.75%. The Complainants’ mortgage loan account ending **879** at that time was not on the tracker interest rate of ECB + 0.85% as they had signed a Mortgage Form of Authorisation on **21 August 2006** to convert the mortgage loan to the staff non-standard variable rate. The Complainants did not opt to complete a Mortgage Form of Authorisation seeking the application of the tracker interest rate of ECB + 0.75%. The evidence shows that the Complainants elected to complete the Mortgage Form of Authorisation seeking the application of the staff 2 year fixed interest rate of 3.95% to the mortgage loan. This instruction to apply the fixed interest rate was actioned by the Provider on receipt of the MFA signed by the Complainants in **January 2007**.

The staff Notice dated **22 December 2006** and the MFA which the Complainants signed in **January 2007**, contained detail about the tracker interest rate offering, such that the Complainants could have made an informed decision as to which interest rate to choose at the time.

/Cont’d...

The Complainants of their own volition decided not to choose the option of a tracker interest rate of ECB + 0.75% and instead selected the 2 year fixed interest rate offered. The staff Notice stated that *“Staff will be advised of their rollover options a number of weeks prior to the expiry of the fixed rate term.”*

It is not entirely clear to me from the evidence, the circumstances in which the **mortgage account rollover printout** was generated and furnished to the Second Complainant. Whilst I accept that it is likely that the content of the printout may have created an expectation on the Complainants' part that the mortgage loan account would roll to the tracker interest rate of ECB + 0.75% at the end of the fixed interest rate period in **2009**, this document in and of itself is not sufficient to create a contractual entitlement to the tracker interest rate of ECB + 0.75%. I further note that by the Complainants' own admission, they were not given the printout until after they had signed the MFA in **January 2007** opting to apply the staff 2 year fixed interest rate to the mortgage loan account.

The Provider's intranet staff notice dated **9 October 2008** details as follows;

“Removal of Staff Tracker Rate Mortgages

[The Provider] no longer offers customer or staff tracker mortgages with effect from start of business [date redacted] 2008. Therefore staff trackers are not available for any new or existing staff mortgages, with the exception of those that are currently either on the staff tracker mortgage of ECB +0.75% or those rolling to ECB + 0.75% as per their original signed mortgage agreement (See Existing Staff Mortgage section below)

...

2. Existing Staff Mortgage Accounts

Staff 2 Year Fixed Rate – Rate currently 3.95%

Staff who are currently on Staff 2-Year Fixed Rate – currently 3.95% - will roll to ECB + 0.75% with no BIK implications as per their original signed mortgage agreement at the end of their 2-year fixed period. Staff will receive notification 30 days prior to the end of their fixed rate term. This notification will also offer a range of fixed and variable rate products. If you do not respond to this notification, your account will automatically default to the Staff Tracker ECB + 0.75%.”

/Cont'd...

It is not disputed that the Provider failed to offer the Complainants a tracker interest rate of ECB + 0.85% on the expiry of the fixed interest rate period in **January 2009**. However, as outlined above I do not accept that the Complainants had a contractual or other entitlement to a tracker interest rate of ECB + 0.75% on their mortgage loan account ending **879** and accordingly there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate of ECB + 0.75% on the mortgage loan account at the end of the 2 year fixed interest rate period in **January 2009**. The Complainants were previously given the option of the tracker interest rate of ECB + 0.75% in **December 2006** and chose not to pursue this option. The mortgage loan account ending **879** was never on the tracker interest rate of ECB + 0.75% at any stage.

The Complainants have submitted that they made two redemption payments to their Holiday Home mortgage loan account ending **859** in **November** and **December** of **2008** based on the Provider's "reassurance" that the mortgage loan account ending **879** would roll to the tracker interest rate of ECB + 0.75% on the expiry of the fixed interest rate period in **December 2008**. They detailed that they "*would never have made these 2 payments off an interest only tracker investment mortgage and would have held onto these funds to reduce PDH had we know[n] that bank were to renege on previous assurances and convert our PDH to Standard Variable Rates thereby significantly increasing the interest charged on the account.*"

An undated document has been furnished in evidence titled "*Information note Extracted from Application XXXXX859*" which details as follows in relation to the mortgage loan account ending **859**;

"Finance sought on interest only basis initially, borrowings will be reduced by SAYE /SSIA/Summit funds are [sic] maturity.

Also existing boat to be sold as a smaller boat would be more suitable this should release 35K approx. to reduce debt.

Recommendation

Low LTV

Existing PDH & RIL with [the Provider]"

It appears from the above document that it was the Complainants' intention when they applied for the mortgage loan account ending **859** to reduce the balance on the mortgage loan when funds were available to them to do so. It is of note that this mortgage loan was taken out in **August 2005** for a term of 25 years, with the first 10 years of that term interest only repayments.

/Cont'd...

Having considered the **mortgage loan statements** furnished in evidence, I note that the following redemption payments were made to the Complainants' Holiday Home mortgage loan account ending **859** between **2005** and **2012**;

Date	Payment
17 October 2005	€12,000
21 November 2005	€10,440
25 January 2006	€13,504
10 May 2006	€3,000
17 May 2006	€16,262.93
28 July 2006	€2,300
27 February 2007	€5,000
5 March 2007	€20,108.68
14 March 2007	€2,450
12 June 2008	€10,000
28 July 2008	€9,547.00
11 August 2008	€5,000
11 November 2008	€20,000
4 December 2008	€2,589.76
27 January 2009	€6,000
7 April 2009	€4,447.82
7 May 2009	€13,000
9 September 2009	€8,000
23 November 2009	€5,000
26 January 2010	€5,000
5 July 2012	€3,000

The Complainants have submitted *"if we had known other a/c would not get tracker applied we would have held these savings to reduce mtg moved to variable rate."* The evidence does not support the Complainants' submissions in this regard. The evidence shows that the Complainants had a history of making redemption payments to the mortgage account ending **859** since **2005**. Furthermore I note that after the mortgage account ending **879** was switched to the standard variable rate in **January 2009**, the Complainants went on to make a further 7 redemption payments to the mortgage account ending **859** during the period between **January 2009** and **July 2012** totalling €44,447.82. At that time the Complainants were aware or ought to have been aware, that the mortgage account ending **879** was not on a tracker interest rate.

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The Complainants have submitted that they have overpaid the mortgage loan account ending **879** since **2009** “to mitigate against the higher rates [the Provider] applied on our account.”

I note that the Provider’s internal email dated **14 January 2005** details as follows;

“Account: XXXXXXXX879

...

Please apply E900 in reduction of a/c balance and amend monthly payments to E900 p.w. as per customer instruction.”

It appears therefore that the Complainants were overpaying the mortgage loan account ending **879** since **January 2005**, when they increased the standard monthly mortgage payment from €612.16 to €900 per week.

The Provider’s internal email dated **3 January 2006** details as follows;

“Account: XXXXXXXX879

...

Please adjust monthly d/d to E1700 p.m. as per customer request.”

The **mortgage loan statements** show that in **2009** the monthly repayments being made by the Complainants were €1,700 per month. This was as per the Complainants’ request to make overpayments. The difference in interest charged on the variable rate and interest that would have been charged on the tracker interest rate of ECB + 0.85% between **January 2009** and **May 2009**, is represented in the below table;

Date Range (inclusive)	Rate charged	Rate that would have been charged	Difference in Interest rate charged vs the tracker interest rate	Amount of overcharged interest per month
25 Jan 2009	3.75%	2.85%	0.90%	€35.13
25 Feb 2009	3.25%	2.85%	0.40%	€110.33
20 Mar 2009 – 25 Mar 2009	2.75%	2.35%	0.40%	€120.08
25 Apr 2009	2.50%	2.10%	0.40%	€100.11

/Cont’d...

I note that the variable interest rate applying to the account dropped three times during this four month period. The tracker interest rate that would have applied also dropped during this period by a total of 0.75%.

The Complainants wrote to the Provider by way of undated letter as follows;

"I wish to increase my monthly repayments effective immediately to €1718pm. Please keep this additional overpayment in place until further notice."

The Complainants sent a further letter to the Provider on **26 May 2009**, as follows;

"In reference to my last letter which I asked for my monthly repayments to be increased. I put the wrong figure on that letter. Can you please increase my payments to €1780 from €1718."

I further note from the **mortgage loan statements** that on **16 June 2010** the Complainants made a redemption payment of €10,000 to the mortgage account which reduced the mortgage loan balance from €270,575.80 to €260,575.80.

The Complainants wrote to the Provider on **26 January 2011** as follows;

"I am enclosing cheque in the amount of E2,400 (two thousand four hundred euro) for credit to the above mortgage account number.

Monthly Direct Debit should continue at current repayment."

The **mortgage loan statements** show that a redemption payment of €2,400 was made on **2 February 2011** which reduced the mortgage loan balance from €251,939.98 to €249,539.98.

The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged between **May 2009** and **March 2011** is demonstrated in the table below.

Date Range (inclusive)	Rate charged	Rate that would have been charged	Different in interest rate	Amount of overcharged interest per month
May 2009 – Mar 2010	2.25%	1.85%	0.40%	Between €84.30 and €97.09

/Cont'd...

Apr 2010 –Jul 2010	2.75%	1.85%	0.90%	Between €126.93 and €204.78
Aug 2010 – Mar 2011	3.00%	1.85%	1.15%	Between €196.55 and €295.43

I note from the above that the tracker interest rate of 1.85% (ECB + 0.85%) remained static during the period between **May 2009** and **March 2011**. By contrast the variable rate increased twice during this period.

The Complainants wrote to the Provider on **13 April 2011**, as follows;

"I would like to amend my repayment schedule on the above mentioned mortgage account.

Current:

Requested

*Monthly DD
€1780 p.m.*

*Fortnightly DD
€1,040 per fortnight*

...

Can you also please confirm what the remaining term would be on the mortgage if the new repayments were in place and interest rates were to remain the same."

The Complainants increased the monthly repayment by €300.00, from €1,780 to €2,080, in **April 2011**.

In addition I note from the **mortgage loan statements** that redemption payments were made on the following dates;

- €6,000 on **29 April 2011** which reduced the balance from €246,796.91 to €240,796.91.
- €6,500 to the mortgage account on **19 August 2011** which reduced the mortgage loan balance from €234,313.14 to €227,813.19
- €5,000 on **22 September 2011** which reduced the mortgage loan balance from €227,496.33 to €222,496.33.

/Cont'd...

The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged between **April 2011** and **January 2012** is demonstrated in the table below.

Date Range (inclusive)	Rate charged	Rate that would have been charged	Different in interest rate charged vs the tracker interest rate	Amount of overcharged interest per month
April 2011 – July 2011	3.00%	2.10%	0.90%	Between €142.14 and €246.03
Aug 2011 – Nov 2011	3.00%	2.35%	1.15%	Between €124.80 and €211.02
Dec 2011	3.50%	2.10%	1.40%	€259.67
Jan 2012	3.40%	1.85%	1.55%	€386.52

The Complainants wrote to the Provider by way of letter dated **7 February 2012**, as follows;

“Account [ending] 879 & [ending] 859

...

We are currently overpaying on both the above mortgages and also changed to fortnightly payments, resulting in both mortgages being substantially ahead of original repayment term.

We wish to make the following amendments to the repayment schedule. Both Accounts are to remain on Fortnightly payments, with overpayment to be applied to capital balance, until further notice.

<i>Account</i>	<i>Standard Payment</i>	<i>Current Payment</i>	<i>New Payment Amount</i>
<i>[ending] 879</i>	<i>€631.95</i>	<i>€1,040 p/f</i>	<i>€1,200 p/f</i>
<i>[ending] 859</i>	<i>€ 48.92</i>	<i>€375 p/f</i>	<i>€ 150 p/f</i>

The Complainants again opted to increase the monthly repayment by €320, from €2,080 to €2,400. This was approximately double the standard monthly repayment required.

/Cont'd...

I note from the **mortgage loan statements** that the Complainants made a further redemption payment of €3,000 on **11 July 2012** which reduced the mortgage loan balance from €204,422.01 to €201,422.01.

The Complainants wrote to the Provider by way of letter dated **28 August 2012**, as follows;

"I would be obliged if you could amend our Direct Debit payments as detailed below. Both accounts are being overpa[i]ed.

1. Account [ending] 879 [Property address redacted]

*Reduced DD on 10th & 24th September to normal fortnightly payments of E597.20
Increase DD from 8th October to E1300 per fortnight until further notice.*

2. Account [ending] 859 [Property address redacted]

Reduce fortnightly overpay from E150 to E100 until further notice."

The Complainants wrote to the Provider again by letter dated **3 December 2012**, as follows;

"Account [ending] 879

...

We are currently overpaying on the above mortgage on a fortnightly basis.

<u>Account</u>	<u>Standard Payment</u>	<u>Current Payment</u>
<i>[ending] 879</i>	<i>E612.77</i>	<i>E1,200 per fortnight"</i>

Please process DD due on 18th December and the 1st and 15th January at the Standard payment amount with DD reverting to E1,200 per fortnight after these amendments."

The Provider's internal note dated **6 December 2012** details as follows;

"I have changed your payments to the standard repayment of 601.07 starting 18th December and the next 2 payments will be 14 days later (1st and 14th Jan)..Please advise again in January for the payments to revert back to original payments"

/Cont'd...

The mortgage loan statements shows that the Complainants made two further redemption payments on the following dates;

- €2,000 on **13 February 2013** and
- €3,000 on **1 March 2013** which reduced the mortgage loan balance from €185,032.27 to €182,032.27.

The difference in the interest rate actually charged to the mortgage loan account ending **879** and the interest rate that would have been charged between **February 2012** and **March 2013** is outlined below.

Date Range (inclusive)	Rate charged	Rate that would have been charged	Different in interest rate charged vs the tracker interest rate	Amount of overcharged interest per month
Feb 2012 – Jul 2012	3.40%	1.85%	1.55%	Between €247.36 and €362.07
Aug 2012 – Oct 2012	3.40%	1.60%	1.8%	Between €271.32 and €273.99
Nov 2012 – Mar 2013	3.90%	1.60%	2.3%	Between €297.75 and €469.84
Apr 2013 – May 2013	3.90%	1.60%	2.3%	Between €319.07 and €329.45
Jun 2013 – Nov 2013	3.90%	1.35%	2.55%	Between €329.94 and €476
Dec 2013 – Jun 2014	3.90%	1.10%	2.8%	Between €330.45 and €527.41
Jul 2014 – Sep 2014	3.90%	1.00%	2.9%	Between €326.89 and €464.32
Oct 2014	3.90%	0.90%	3.00%	Between €327.14 and €330.41

I note that the Complainants paid the standard repayment of €597.20 on **10 September 2012** and **24 September 2012**. They then paid the increased repayments of €1,300 per fortnight between **8 October 2012** and **3 December 2012**.

/Cont'd...

The Complainants reverted to the standard repayment of €601.07 on **18 December 2012, 2 January 2013** and **15 January 2013**. They were then making increased repayments of €1,200.00 per fortnight from **29 January 2013** onwards. This is approximately double the required payment.

I further note that during the above period the Complainants made 3 redemption payments totalling €8,000 to the mortgage account in the nine month period between **July 2012** and **March 2013**.

The Complainants signed a **Mortgage Modification Request Form** in respect of their Buy to Let mortgage loan account ending **920** on **21 November 2014**, which detailed as follows;

“Section 4: Property Details

Please provide full details of any properties owned.

PRINCIPAL PRIVATE RESIDENCE (PPR)

<i>Property Address</i>	<i>Estimated Value (€)</i>	<i>Mortgage Balance (€)</i>	<i>Repayments (€ monthly)</i>
<i>[Redacted]</i>	<i>420000</i>	<i>140,000</i>	<i>Overpaying @ 1200 per fortnight</i>

BUY TO LETS (BTLS)

<i>Property Address</i>	<i>Estimated Value (€)</i>	<i>Mortgage Balance (€)</i>	<i>Repayments (€ monthly)</i>	<i>Gross Rent (€ monthly)</i>	<i>Lender</i>
<i>Holiday home [Location redacted]</i>	<i>300000</i>	<i>59000</i>	<i>Overpaying €150 per fortnight</i>	<i>-</i>	<i>[Provider]</i>

...

Section 6

Please specify the change you require:

No mortgage payment Nov 2014. Property sold contracts signed closing date 5/12/14. Mtg will be cleared in full”

/Cont’d...

An undated internal document furnished in evidence by the Provider details as follows;

“Approver’s rationale:

This is a non distressed case – borrowing selling property and seeking 1 month moratorium while sale progresses. Sale agreed to 5/12/14 – no risk to bank – accounts all performing. Approved as presented. No provision amendment required.”

The Complainants signed a **Mortgage Form Authorisation** on **26 November 2014** to defer the payments on mortgage loan account ending **920** for a period of 1 month while it was being sold. I note from the **mortgage loan statements** that the sum of €181,603.98 was lodged to the mortgage loan account ending **920** in full redemption of the mortgage loan on **13 December 2014**.

The difference in the interest rate actually charged to the mortgage loan account ending **879** and the interest rate that would have been charged between **November 2014** and **April 2015** is demonstrated in the table below.

Date Range (inclusive)	Rate charged	Rate that would have been charged	Different in interest rate charged vs the tracker interest rate	Amount of overcharged interest per month
Nov 2014 – April 2015	3.90%	0.90%	3.00%	Between €303.63 and €478.24

The Complainants wrote to the Provider by way of letter dated **29 April 2015**, as follows;

“Account [ending] 879

...

We are currently overpaying on the above mortgage on a fortnightly basis. An overpay has been in place since 2009 and account is significantly ahead of agreed repayment schedule.

Account

[ending] 879

Standard Payment

€580.13

Current Payment

€1,200 per fortnight”

Please amend DD to monthly DD from 24th April in the amount of €2,000.”

/Cont’d...

The Provider's internal email dated **20 September 2016** details as follows;

*"Pricing have agreed variable rate of 3.50%
... please apply rate"*

The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged between **May 2015** and **November 2017** is demonstrated in the table below.

Date Range (inclusive)	Rate charged	Rate that would have been charged	Different in interest rate charged vs the tracker interest rate	Amount of interest overcharged per month
May 2015 – Oct 2015	3.90%	0.90%	3%	Between €95.48 and €496.05
Nov 2015 – Feb 2016	3.70%	0.90%	2.8%	Between €273.67 and €295.21
Mar 2016 – Aug 2016	3.70%	0.85%	2.85%	Between €262.11 and €283.88
Sep 2016 – Nov 2017	3.50%	0.85%	2.65%	Between €223.18 and €272.89

In the circumstances of this particular matter, the evidence does not support the Complainants' assertion that they sold their BTL property in **December 2014** solely because of the higher interest repayments being charged on mortgage account ending **879**. I am of the view that the evidence shows there were other factors outside of the interest rate applying to mortgage account ending **879** that influenced the sale of the Complainants' BTL property. The Complainants themselves have submitted *"yes there were other factors to selling the BTL – annual tax bill, vacant months, etc"*. In these circumstances, I do not accept that the Provider can reasonably be said to be responsible for the net loss of €21,104.00 on the sale of the property, which the Complainants have claimed the Provider is responsible for. There is no evidence to suggest that had the mortgage loan account ending **879** been on a tracker rate of interest at this time the Complainants would not have proceeded in **2014** to sell the property which was secured by mortgage loan account ending **879**. The future value of a property is not something that can be accurately predicted when a decision is made to sell a property.

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Over the course of the four year period between **January 2009** and **March 2013**, the Complainants had made redemption payments to the mortgage loan account ending **879** totalling €37,900. The interest overcharged during this period was €10,398.84. It does not appear that the Complainants made any further redemption payments to the account after this, however they continued to make accelerated payments to the account.

It does not appear to me from the documentation that has been furnished in evidence, that the Complainants ever raised any concerns with the Provider in respect of any cash flow difficulties or concerns they may have had in meeting the mortgage repayments on the mortgage loan account ending **879** during the period of the overcharge. The evidence in fact discloses that the Complainants were in a position to make accelerated payments on both mortgage loan account ending **879** and mortgage loan account ending **859** between **2005** and **2012**.

The Provider's failure has been accepted by it, and redress of €29,052.41 (to include a payment for the time value of money of €1,383.45) and compensation of €2,905.24 has been paid to the Complainants. The Complainants have also been paid a sum of €1,000 for legal advice. I note that the Appeals Panel also awarded additional compensation of €6,000 to the Complainants.

Having regard to all of the evidence before me I do not accept that the Complainants have any contractual or other entitlement to a tracker interest rate of ECB + 0.75% (rather than ECB + 0.85%) for the reasons set out above. Throughout the impacted period which lasted almost 7 years, between **19 January 2009** and **28 November 2017**, the Complainants were overcharged in interest on their mortgage loan account ending **879** by sums of between €35.13 and €527.41 per month. I accept that these are significant sums to be overcharged in interest on the mortgage loan. However the evidence shows that the Complainants had a history of making out of course capital repayments and accelerated repayments both mortgage loan accounts ending **859** (Holiday Home) and **879** (Private Dwelling Home). There is no evidence to link the sale of the Buy-to-Let property (mortgage account ending **920**) to the overcharge in interest on the mortgage account ending **879**. 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.

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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

22 September 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.