



<u>Decision Ref:</u>	2020-0311
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to four mortgage loan accounts (ending **16/1**, **17/1**, **18/1** and **19/1**) held by the Complainants with the Provider. The mortgage loan accounts that are the subject of this complaint were secured on the Complainants' investment properties.

- The loan amount for mortgage account ending **16/1** was €1,297,818.56 and the term of the loan was 12 years. The particulars of the loan offer signed on **13 March 2008** detailed that the interest rate applicable was a Buy to Let (BTL) tracker interest rate of 4.85% (ECB + 0.85%).
- The loan amount for mortgage account ending **17/1** was €875,358.75 and the term of the loan was 12 years. The particulars of the loan offer signed on **13 March 2008** detailed that the interest rate applicable was a BTL tracker interest rate of 4.85% (ECB + 0.85%).
- The loan amount for mortgage account ending **18/1** was €492,069.70 and the term of the loan was 12 years. The particulars of the loan offer signed on **13 March 2008** detailed that the interest rate applicable was a BTL tracker interest rate of 4.85% (ECB + 0.85%).

- The loan amount for mortgage account ending **19/1** was €725,608.57 and the term of the loan was 12 years. The particulars of the loan offer signed on **13 March 2008** detailed that the interest rate applicable was a BTL tracker interest rate of 4.85% (ECB + 0.85%).

The Provider considered the Complainants' mortgage loan accounts under the Central Bank directed Tracker Mortgage Examination ("the Examination"). The Provider identified that a failure had occurred on the mortgage loan accounts and the accounts were deemed to be "impacted" as part of the Examination.

The Provider wrote to the Complainants on **10 February 2017** and detailed "*the circumstances that caused this failure to happen*" on each mortgage loan account as follows;

"When we agreed an alternative repayment arrangement with you we didn't give you the option to keep your tracker interest rate as we should have."

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

"Now that we have completed the detailed review of your mortgage account and reduced your interest rate, we have been able to calculate the redress and compensation that is due from 03/09/2012, which was when your account was first impacted."

The Complainants' mortgage loan accounts were restored to the tracker interest rate of ECB + 0.85% in **August 2016**.

The Provider made an offer of redress and compensation to the Complainants in relation to each mortgage loan account as follows;

	Account ending 16/1	Account ending 17/1	Account ending 18/1	Account ending 19/1
Redress covering; (a) Total Interest Overpaid.	€96,924.02	€65,373.87	€36,749.04	€54,190.51

(b) Interest to reflect time value of money.				
Compensation	€11,257.21	€7,592.83	€4,268.20	€6,293.90
Independent Professional Advice Payment	€615.00	€615.00	€615.00	€615.00
Total	€108,796.23	€73,581.70	€41,632.24	€61,099.41

The Provider also adjusted the mortgage balance of each account as follows;

	Account ending 16/1	Account ending 17/1	Account ending 18/1	Account ending 19/1
Mortgage balance adjustment	€53,172.08	€35,863.82	€20,160.28	€29,728.16

On **28 March 2017**, the Complainants submitted an appeal to the Independent Appeals Panel. The Appeals Panel decided on **25 July 2017** that the appeal was unsuccessful for the following reasons;

“The Panel agreed that based on the information provided, there was no causal link between the losses claimed in respect of the sale of the property and the actions of the Bank”.

The Complainants signed the **Rejection Form** on **1 August 2017** rejecting the decision of the Appeals Panel.

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

The conduct complained of that is being adjudicated on by this office is that the Provider has not offered the Complainants adequate redress or compensation for its failure on their mortgage loan accounts.

The Complainants’ Case

The Complainants submit that the offers made by the Provider do not adequately take account of the financial losses they have incurred.

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The Complainants' four mortgage loans were drawn down in **April 2008** on the tracker interest rate of 4.85% (ECB + 0.85%). There was an initial three year interest only period on the four mortgage loans to be followed by a 9 year capital repayment period.

The Complainants wrote to the Provider in **May 2011** to request to extend the term of the capital repayment period to 35 years and to retain the tracker interest rate of ECB + 0.85% for the duration of the loans.

The Complainants submit that in **November 2011** the Provider proposed a restructuring of the four mortgage loans which stipulated the removal of the tracker interest rate of ECB + 0.85%. The Complainants detail that they *"requested verbally and in writing on a number [of] times in 2011 and 2012 if the bank would continue the tracker rate which was agreed on the 15th of April 2008. We expressly deny we "gave up" the tracker rate. We were informed by [the Provider] on each occasion that we could not continue to avail of the Tracker rate under any circumstances."* They outline that ultimately *"We reluctantly accepted the withdrawal of the Tracker Rate as the Bank informed us that we had no other option but to accept the withdrawal or else the Receiver would be appointed to sell the properties. We obviously did not wish to sell the properties during the recession when property values were significantly low during the years 2011/2012."*

The Complainants further detail that *"When the Bank informed [the Complainants] that we would not be entitled to the Tracker Rate we sought an extension of the repayment term to 30 years. This 30 year term would have provided time to achieve an orderly disposal of assets and a possible recovery in the rental income and asset values in the property market. The Bank said the maximum repayment period that they were prepared to offer was 22 years which we had no choice but to accept."*

The Complainants signed revised Loan Offers in respect of the four mortgage loans on **13 December 2011**, which provided that the term of each loan was extended to 22 years and the interest rate was amended from the tracker interest rate of ECB + 0.85% to an interest rate of EURIBOR + 4.3%. However the terms of the revised Loan Offers were not implemented on the mortgage loan accounts until **7 September 2012**.

The Complainants submit that as a result of the overcharging on the four mortgage loan accounts since **2012** *"We were forced to pursue a programme of asset disposal in order to generate additional cash flow to meet the additional repayments to [the Provider] arising from the refusal of [the Provider] to restore the Tracker rate."*

The Complainants submit that *“The reference by the Bank to our net assets of €4.7 million in December 2013 is misleading and not relevant ... The material issue was the cash flow requirement of €770,000 gross pre-tax income required to discharge the overcharged interest of €385,425.87 over the 4 year period (based on average 50% marginal income tax rate over the period).”*

The Complainants detail that in **July 2014** they sold their property located in Dublin which had been *“intended to be held indefinitely for our pension in retirement”*. The sale resulted in *“net proceeds of c. €105,000 (selling price €435,000, loan outstanding on that property at date of sale c. €300,000)”*. The Complainants state that this property increased in value by €57,850 between the date of sale in **2014** and the date they received the redress and compensation offer from the Provider in **2017**.

The Complainants further submit that in **August 2015** they were forced to sell a second property they owned in Spain which was intended to be their *“future retirement apartment home”*. They say that the sale of this property realised a loss of €92,481.

The Complainants state that the sale of both properties in **2014** and **2015**, resulted in *“total losses of at least €150,301”*.

The Complainants further submit that *“The Bank highlights that no sales proceeds were lodged with the bank in order to reduce the loan balance outstanding. We would like to reiterate that we were forced to sell our properties in order to assist cash flow. It would not have been an appropriate decision at that time to reduce the capital amounts of these loans when we were struggling to afford the cash flow required to cover the overcharged repayments in the first instance. The Bank also mentions there was no correspondence or consultation with them on the sale of the properties and the decision was made unilaterally by ourselves. We would comment that we were not obliged to consult or obtain permission from [the Provider] to sell properties which were not mortgaged with [the Provider].”*

The Complainants outline that *“the overcharged amount of €385,425.87 was a significant sum by any standard for a self-employed couple trying to support their children through third level education over that same 4 year period.”* They detail that, in addition to the sale of their two properties they have been *“forced to carry out extreme cost cutting measures, in both business and personal expenditure”* and they have endured *“the physical and psychological effects of anxiety, stress and financial pressure which was levied on us as a result [of] trying to fund excessive interest on our repayments.”*

The Complainants submit that the compensation offered by the Provider totals €29,412.14, *“being approximately 7.6% of the total interest overcharged of €385,425.87.”*

We understand the maximum compensation payable is 15% of the sum overcharged i.e. 15% of €285,425.87, which amounts to €57,813.88.” In order to resolve the complaint the Complainants are seeking to be paid the shortfall of €28,401.74 that they have identified. They submit that this sum, in addition to the sum of €29,412.14 already received, would “somewhat” compensate them for the financial hardship that they have suffered.

The Complainants submit in relation to the Provider’s “goodwill gesture” of €4,500, that the compensation they are therefore seeking is €23,907.86 i.e. €28,407.86 less €4,500.

The Provider’s Case

The Provider submits that the purpose of the Complainants’ four mortgage loan accounts was to “re-finance” four pre-existing loans with the Provider which were originally approved to purchase and develop the impacted properties, and also to provide €875,000 to fund the purchase of a property in Spain. The Provider submits that the pre-existing loans had been drawn down for €4,466,658 combined, which was reduced to circa €3,390,854 when re-financed onto the loan accounts that are the subject of this complaint in **April 2008**.

The Provider details that the four new mortgage loans were drawn down on **15 April 2008**, as follows;

- (i) Mortgage account ending **16/1** was drawn down on the BTL tracker rate of 4.85% (ECB + 0.85%) for a term of 12 years / 144 months. The loan was interest only for 3 years, reverting to annuity principal and interest thereafter. The **Special Conditions** of the Loan Offer dated **4 March 2008** detailed that the Complainants’ mortgage account ending **14/1** was to be cleared on drawdown of this facility.
- (ii) Mortgage account ending **17/1** was drawn down on the BTL tracker rate of 4.85% (ECB + 0.85%) for a term of 12 years. The loan was interest only for 3 years, reverting to annuity principal and interest thereafter. The **Special Conditions** of the Loan Offer dated **4 March 2008** detailed that the Complainants’ mortgage account ending **15/1** was to be cleared on drawdown of this facility.
- (iii) Mortgage account ending **18/1** was drawn down on the BTL tracker rate of 4.85% (ECB + 0.85%) for a term of 12 years. The loan was interest only for 3 years, reverting to annuity principal and interest thereafter. The **Special Conditions** of the Loan Offer dated **4 March 2008** detailed that the Complainants’ mortgage account ending **13/1** was to be cleared on drawdown of this facility.

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(iv) Mortgage account ending **19/1** was drawn down on the BTL tracker rate of 4.85% (ECB + 0.85%) for a term of 12 years. The loan was interest only for 3 years, reverting to annuity principal and interest thereafter. The **Special Conditions** of the Loan Offer dated **4 March 2008** detailed that the Complainants' mortgage account ending **12/1** was to be cleared on drawdown of this facility.

The Provider outlines as follows in relation to the four mortgage loan accounts;

- The three year interest only period on the four accounts expired in **May 2011** and switched to full capital and interest repayments for the remaining 9 years.
- On **3 May 2011** the Complainants requested a term extension of 35 years and to retain the tracker interest rate of ECB + 0.85% on all four accounts.
- On **12 May 2011** the Provider requested further information in order to assess the Complainant's requests.
- On **16 May 2011** the first capital and interest repayments on the mortgage loans, totalling €34,499.83, were returned unpaid by direct debit, and arrears began to accrue from this date.
- On **18 May 2011** the Complainants lodged unscheduled payments of €16,055.82 in order to reduce the arrears position. Unscheduled payments of €16,055.82 were received monthly until the first month following implementation of the term extension agreement in **2012**.
- On **1 June 2011** the Complainants provided the information requested by the Provider and requested a revised term of 22 years to **2023** and also requested to retain the tracker rate of ECB + 0.85% on all four accounts.
- In **November 2011** following an affordability assessment, the Provider approved term extensions until **November 2023**, with arrears to be capitalised across the four loans, subject to a renegotiated rate structure of "*1 Month EURIBOR + 4.3%*".
- **Revised Loan Offers** dated **25 November 2011** issued in respect of each mortgage loan detailed that the term was extended to 22 years and the applicable interest rate was to be "*calculated on a day to day basis at 4.3% over the EURO Inter Bank Offered Rate (EURIBOR), fluctuating, compounded, charged and payable monthly in arrears until the principal and interest have been repaid in full*".

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- The Complainants signed and accepted the revised Loan Offers on **13 December 2011**.
- On **1 September 2012** the accrued arrears of €294,295.80 were capitalised following the implementation of the term extension agreement, and no further arrears have accrued on the impacted accounts from this date.

The Provider details that following the restructuring of the Complainants' mortgage loans in **2012**, the capital and interest repayments on the loans reduced by €180,728.88 per annum. It submits that the Complainants did not have the capacity to meet the capital and interest repayments over the remaining 9 year term of the loans when the initial 3 year interest only period expired in **April 2011**. It points out that the arrears on the mortgage loan accounts commenced in **May 2011** while the mortgage loan accounts were still operating on tracker rates, and had reached approximately €294,000 by the time the mortgage loan accounts were "*impacted*" by the tracker rate issue in **September 2012**.

The Provider denies that it threatened to appoint a receiver to the properties mortgaged to the Provider if the Complainants refused to give up their tracker rates. It also rejects the Complainants' submission that they sought a term extension after the Provider refused to allow them to retain the tracker rate on the mortgage loan. It submits that the re-pricing and the term extension of the loans were negotiated at the same time and was a commercial transaction freely entered into by the Complainants. It states that in view of the length of the term extension sought, it was not willing to agree to the extension at the existing interest rate due to the increased risk involved. It details that the Provider took a commercial decision to reprice the loans because of the increased risk represented by the longer loan terms.

The Provider states that although the Complainants had a contractual agreement signed on a different rate, it decided as part of the Examination that the Complainants had lost their tracker interest rate when applying for a restructure of their loans as they were not given the option to keep their tracker interest rate. It states that in assessing the Complainants' case, the criteria considered by the Provider align to the principles of redress outlined under the Examination guidelines, in particular that redress will result in impacted customers being returned to the position they should have been in if the issue had not occurred, and that compensation is to be reasonable and reflect the detriment involved. It details that the total combined redress and compensation paid to the Complainants was €285,109.58, which included a payment of €29,412.12 as compensation to the Complainants for potential inconvenience, harm, personal suffering or hardship.

The Provider states that the Complainants' loans relate to Buy to Let (BTL) properties that are still in the Complainants' possession and not in a legal process. It details that under the Provider's Compensation Model, compensation in relation to accounts relating to primary dwelling homes (PDHs) is calculated at a higher percentage than compensation in relation to accounts relating to BTL properties. In this particular case compensation is calculated at 7.5% of the interest overcharged plus 7.5% of the Time Value of Money ("TVM") payment. It states that the TVM payment compensates the Complainants for not having the benefit of the money they overpaid and it is calculated by selecting the best annual deposit rates it offered during the period and applying these monthly to the amounts that were overpaid during the period.

The Provider submits that an **Asset/Liability statement** was furnished by the Complainants to the Provider in **February 2014**, which detailed that the Complainants held property assets valued at approximately €17.7 million securing debt of approximately €13 million across 5 financial service providers. It states that this document also outlined that the Complainants' Dublin property sold in **July 2014** had an estimated market value of approximately €450,000 and was mortgaged to another provider to secure debt of €351,000. The property was generating a monthly rent of €2,000 which was insufficient to meet the capital and interest repayments of €3,245 per month to that provider.

The Provider submits that the Dublin property sold in **July 2014** was not mortgaged to the Provider and no funds from the sale proceeds were lodged in reduction of the impacted loans. It states that it has no records indicating that the Provider ever asked the Complainants to sell this or any other property. It further states *"The decision to sell this asset in July 2014 was taken unilaterally by the Complainants without reference to the bank. There is no evidence that the sale of assets not mortgaged to the Provider was directly caused by the Tracker rate issue. In addition, the Bank would point out that the Complainants are experienced, professional property investors and developers, with a complex multi banked property portfolio, and the decision to sell a particular asset may have been taken for a number of commercial reasons."*

The Provider states that it accepts that there was no obligation to consult or inform the Provider prior to the sale of assets which are not mortgaged to the Provider, however it was *"surprised that [the Complainants] decided not to reduce the capital due on the impacted loans at a time when they believed the interest rates on these loans were so high as to be causing them to struggle to meet repayments"*.

The Provider details that it was not aware of the sale of the Complainants' property in Spain in **August 2015** and the sale proceeds of circa €834,000 were not used to reduce the capital on the impacted loans, despite the fact that this property, although not mortgaged to the Provider, was originally financed by mortgage loan account ending **17/1**. It states that it has no information regarding how the net sale proceeds were utilised by the Complainants.

The Provider submits that *"there is nothing in the Bank's records to indicate that [the Complainants] ever encountered further financial difficulty which could have resulted in physical or psychological effects."*

The Provider details that following a review of the additional evidence requested by this Office *"the Bank has identified customer service failures that did not form part of our initial investigation"* as follows;

- *"The Bank has noted delays in implementing the Complainants' term extension agreement. Following acceptance of each of the four term extension agreements in December 2011, the Bank's internal requirements resulted in a delay, preventing the implementation of the term extensions until 07 September 2012."*
- *"In addition, the Bank has found that during the period of September 2011 to July 2012, while each of the four impacted accounts were in arrears, it has no record of arrears correspondence being issued to the Complainants and as such cannot confirm adherence to the Consumer Protection Code ("CPC") requirements in this regard."*

The Provider states that it believes that the Complainants have not suffered financial detriment due to this particular delay and subsequent CPC error. It apologises for the customer service failings and in acknowledgement of these failings it has offered the Complainants a *"goodwill gesture"* of €4,500.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has not offered adequate compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan accounts.

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.

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

- Email from the Complainants to this Office dated **27 August 2020**
- Email from the Provider to this Office dated **28 August 2020**
- Email from the Complainants to this Office dated **28 August 2020**.

Copies of these additional submissions were exchanged between the parties.

Following the consideration of these additional submissions, and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

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At the outset, it is important to point out the jurisdiction of this Office in complaints regarding arrears handling. This Office can investigate the procedures undertaken by the Provider regarding the arrears, in this matter under the **Consumer Protection Code 2012**, but will not investigate the details of any re-negotiation of the commercial terms of a mortgage which is a matter between the Provider and the Complainant, and does not involve this Office, as an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60 (2) of the Financial Services and Pensions Ombudsman Act 2017**.

The Provider has detailed that the redress payment of €253,237.55 reflects the amount of interest overpaid (€246,501.53) on the mortgage loan accounts and includes a payment to reflect the time value of money (€6,735.91). The Provider also paid the Complainants compensation of €29,412.14 and €2,460.00 for the purposes of seeking legal advice. The Provider submits that the redress and compensation paid is fair and reasonable and the Provider also established an independent appeal process in which the Complainants appealed their case.

The Provider has also offered a “goodwill gesture” of €4,500 to the Complainants in relation to its delay in implementing the term extensions on the mortgage loan accounts until **September 2012** and in relation to its failure to issue arrears correspondence in accordance with the Consumer Protection Code during the period between **September 2011** and **July 2012**.

The Complainants submit that as a result of the Provider’s failure on the mortgage loan accounts they were forced to sell two properties in **2014** and **2015** in order to generate cash flow.

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

This complaint concerns four of the Complainants’ mortgage loan accounts, details as follows;

The **Letter of Offer** dated **4 March 2008** for mortgage account ending **16/1** detailed as follows;

- | | |
|--------------------------------------|---|
| 1. <i>“Amount of Credit Advanced</i> | <i>€1,297,818.56</i> |
| 2. <i>Type of Loan</i> | <i>Interest Only reverting to Annuity</i> |

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3. *Period of Agreement* *12 years/ 144 months”*

The **Letter of Offer** dated **4 March 2008** for mortgage account ending **17/1** detailed as follows;

1. *“Amount of Credit Advanced* *€875,358.75*
2. *Type of Loan* *Interest Only reverting to Annuity*
3. *Period of Agreement* *12 years/ 144 months”*

The **Letter of Offer** dated **4 March 2008** for mortgage account ending **18/1** detailed as follows;

1. *“Amount of Credit Advanced* *€492,069.70*
2. *Type of Loan* *Interest Only reverting to Annuity*
3. *Period of Agreement* *12 years/ 144 months”*

The **Letter of Offer** dated **4 March 2008** for mortgage account ending **19/1** detailed as follows;

1. *“Amount of Credit Advanced* *€725,608.57*
2. *Type of Loan* *Interest Only reverting to Annuity*
3. *Period of Agreement* *12 years/ 144 months”*

The **Particulars of Offer of Mortgage Loan** for each Loan Offer detailed;

	<i>Term in years</i>	<i>Loan Type</i>	<i>Interest Rate Description</i>	<i>Rate</i>	<i>Margi n</i>	<i>Net Rate</i>	...
1	3 Year s	<i>Interest Only</i>	<i>BTL Tracker</i>	4.00% *	0.85%	4.85%* *	...
2	9 Year s	<i>Annuity</i>	<i>BTL Tracker</i>	4.00% *	0.85%	4.85%* *	...

The **Special Conditions** to each Letter of Offer detailed as follows;

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“The repayments quoted in this Letter of Offer are interest only for 36 months after which they will revert to principal and interest repayments.”

The Complainants signed the **Acceptance and Consent** in respect of each of the above **Letters of Offer** on **13 March 2008** on the following terms;

“I/We accept the conditions of this Offer and agree to mortgage the property to the Lenders as Security for the Mortgage Loan.”

I note that the four mortgage loan accounts were drawn down on **15 April 2008** on the tracker interest rate of 4.85% (ECB + 0.85%).

The Complainants wrote to the Provider by letter dated **3 May 2011**, detailing as follows;

“We refer to the notice from the bank dated 26/04/2011 received today, which stated that the capital repayment on the above loans commence on the 15/05/2011 and are repayable over a period of 9 years.

In view of the economic downturn etc, we hereby formally request the bank

- (1) To change the capital repayment period from 9 years to 35 years with capital repayment commencing on the 15/05/2011.*
- (2) We would also request the present tracker interest rate of .85% over ECB be retained for the duration of the loan.*

We have been a customer of [the Provider] for the last 35 years and we have had an excellent credit history of loan repayments. We are reluctantly requesting this extension of the capital repayment period, but the request for this extension is based on the fact the net income after tax from the properties, which are mortgaged to the [Provider], will repay the capital and interest over a 35 year period.”

The Provider replied to the Complainants by letter dated **12 May 2011** which detailed;

“In order for the Lending Department to assess your request the following information is required:

- *Application form for reduced repayments (Enclosed)*

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- *Statement of Means (Enclosed)*
- *Certified Asset & Liability Profile (Enclosed)*
- *Revenue Balancing Certificates for the last 3 years*

- *6 months Non [Provider] Bank Statements (Business/Rental/Personal)*
- *Certified Income for the last 3 years*
- *Proposals re: debt reduction”*

I note from the **mortgage loan statements** that the first capital and interest repayments direct debits presented for payment on each of the mortgage loan accounts were returned unpaid on **16 May 2011** and the Complainants made the following unscheduled repayments on **18 May 2011**;

Mortgage loan account	Capital and interest repayments returned unpaid on 16 May 2011	Unscheduled repayments made on 18 May 2011
Account ending 16/1	€13,204.49	€6,145.21
Account ending 17/1	€8,906.23	€4,144.86
Account ending 18/1	€5,006.50	€2,329.97
Account ending 19/1	€7,382.61	€3,435.78
Total	€34,499.83	€16,055.82

The Complainants wrote to the Provider by letter dated **31 May 2011** enclosing the requested documentation. The letter detailed as follows;

“We request the bank to accept monthly repayments of capital & interest totalling €16,055 per month, which represents a repayment of the loans over 22 years at a rate of 0.85% over the ECB rate. We have made the first payment on this basis by way of standing order on the 15th of May 2011 pending a response from the bank to our proposal ... We will continue this basis of repayment by standing order until we receive a response from the bank.”

In the enclosed **Application Form for Reduced Repayments** completed and signed by the Complainants on **27 May 2011**, in response to the question *“We are requesting”* the Complainants have written *“the extension of the repayment period for capital & interest from 9 yrs to 22 years.”* In response to the question *“Reason for request”* the Complainants have ticked the option *“No Tenant/Reduced Rent”*.

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In the "Statement of Means" section the Complainants have written as follows;

<i>"Net Income Calculation</i>	<i>Euro</i>
<i>Income</i>	<i>4000</i>
<i>Expenditure</i>	<i>4000</i>
<i>Available Income for All Debts</i>	<i>Nil"</i>

The **Asset/Liability Profile** prepared by the Complainants dated **27 May 2011** detailed that the Complainants had 17 properties secured across 5 different lenders, including 5 properties mortgaged to the Provider. This document detailed that the total market value of the Complainants' properties was €21,665,000, and the secured debt totalled €13,937,000.

I note that the Complainants had a number of residential investment properties. The Complaint Form and other information submitted as part of the complaint indicates that the Complainants also had an income from an occupation other than from the investments they had in the residential property market.

A document titled **Application for Advance** dated **20 June 2011** has been furnished in evidence. The **Report and Recommendation** section completed by the Provider details as follows;

"Clients are seeking a term extension of 22 years, on all [Provider] facilities as they are unable to service full 'Capital & Interest' repayments over the remaining term of 8years and 9 months. Clients have previously availed of 3 years 'Capital Moratorium' on all [Provider] facilities which has expired in April 2011. All clients accounts are in arrears, however client is making repayments of 'Capital & Interest' repayments on the extended term of 22 years, pending our decision.

...

Client plans to begin asset disposal in 12 months time, in hope that market conditions will have improved at that time.

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*Clients have a negative NDI of (€24,511), however clients have funds, in excess of €1million on deposit, which can supplement increase payments. **Clients plan to commence asset disposal in 12 months time, which will improve clients cashflow.***

...

Risk Assessment:

Pros:

- Clients have circa €1million on deposit which can fund repayments until asset disposal commences. (sighted)

- Clients have equity of circa €5million in their portfolio

...

Recommendation:

We would recommend term extension of 22 years on all clients borrowings, however all loans will need to re-priced at Dibor (sic) + a margin of 2.80%, plus funding premium of 1.50% = Total rate of 5.80%, noting facilities were originally priced at ECB + 0.85%

[My emphasis]"

From the contemporaneous evidence on the file, it appears to me that it was already the Complainants' stated intention in **May 2011** "to pursue a programme of asset disposal in order to generate additional cash flow". This was some 17 months prior to the removal of the tracker interest rate from the four mortgage loan accounts in **September 2012**.

I note that letters issued to the Complainants from the Provider with respect to the arrears between **May 2011** and **August 2011**.

The Provider issued revised Loan Offers dated **25 November 2011** in respect of each of the four mortgage loan accounts under cover of letter dated **2 December 2011**, as follows.

The Loan Offer for mortgage loan account ending **16/1** detailed as follows;

"Amount: €1,278,601.94

Purpose: To restructure existing account number [ending] 16/01 over 22 years."

/Cont'd...

The Loan Offer for mortgage loan account ending **17/01** detailed as follows;

“Amount: €862,397.74

Purpose: To restructure existing account number [ending] 17/01 over 22 years.”

The Loan Offer for mortgage loan account ending **18/01** detailed as follows;

“Amount: €484,755.70

Purpose: To restructure existing account number [ending] 18/01 over 22 years.”

The Loan Offer for mortgage loan account ending **19/01** detailed as follows;

“Amount: €484,755.70

Purpose: To restructure existing account number [ending] 19/01 over 22 years.”

Each of the revised Loan Offers provided as follows;

“Interest: Interest will be calculated on a day to day basis at 4.3% over the EURO Inter Bank Offered Rate (EURIBOR), fluctuating, compounded, charged and payable monthly in arrears until the principal and interest have been repaid in full.

EURIBOR (Euro Interbank Offered Rate) shall be the rate at which one month EURO Interbank term deposits within the Euro zone are offered by one Prime Bank to another Prime Bank at 10am on the last business day of each month, adjusted from the 360 day convention to 365 day convention. The resulting rate will apply to facilities under this agreement from the first calendar day of the following month.

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The Bank shall be entitled to charge an additional 0.75% per month interest on amounts due but unpaid, such amounts to be charged and compounded and payable on the basis set out above

Repayment: The Loan is repayable on demand. However, without affecting the Banks right to demand repayment at any time, the Loan is repayable in full over 22 years with repayments on the following basis:

*At the pleasure of the bank, **it being noted that capital and Interest will be discharged over 22 years** by way of consecutive monthly instalments, to commence within one month of drawdown."*

[Emphasis original]

The Complainant signed and accepted each of the Loan Offers on **13 December 2011** on the following terms;

"The terms and conditions applicable to the Loan as set out above are accepted by me/us. The Bank is authorised to register the Loan with the Irish Credit Bureau."

The Complainants signed and accepted the **Loan Offers** having confirmed that they agreed to be bound by the terms and conditions of the agreements.

It is important for the Complainants to be aware that up to **December 2011** the Complainants remained obliged to comply with the terms and conditions of the original **Loan Offer Letters**, which were signed and accepted by them, that is, to make the repayments on the mortgage loan. At that time the revised agreements were entered into with the Complainants in **December 2011**, the Complainants had not been meeting the capital and interest repayments on the mortgage loans in accordance with the terms and conditions since **May 2011**. The Complainants were seeking to vary the length of the terms applicable to the loans by seeking an extension of 22 years on each of the four loans. It was within the Provider's discretion to decide whether to accede to that request and in doing so, whether the Provider wished to introduce any different terms to the agreement. I accept that the Complainants did not want to give up the entitlement to the tracker interest rate of ECB + 0.85%, however the Complainants were seeking to agree an alternative arrangement and it was a matter for them to decide whether to accept that arrangement on offer by the Provider.

The evidence, as outlined above, shows that the Complainants had found themselves in the position where they had entered into arrears on the mortgage loans in **May 2011** when the interest only repayment period ended and the capital and interest repayment

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period commenced. The Complainants thereafter had to agree a restructure with the Provider in order to clear those arrears and to extend the term of the mortgages.

There is no evidence that the Complainants from **May 2011**, could have met the full capital and interest monthly repayments required on the four mortgage loan accounts of circa €34,498, over the original 9 year term and on the original tracker interest rates. The evidence shows that it was for this reason that the Complainants sought the term extensions to each of the mortgage loan agreements at the time.

I note that the Provider wrote to the Complainants by letters dated **20 August 2012** (accounts ending **16/01, 17/01** and **18/01**) and **27 August 2012** (account ending **19/01**). These letters detailed as follows;

"I have written previously to inform you that there is an excess balance on the above account and that the account is in arrears to this amount.

...

Not taking action can have significant consequences:

...

We may consider appointing a debt recovery agent or taking legal proceedings for recovery of the loan and/or repossession of the property mortgaged to secure the loan. This could mean that you will lose the mortgaged property"

I note that the Provider wrote to the Complainants again by letter dated **23 August 2012**, as follows;

"We issued letters of offer to you in December 2011 relating to the restructure of the above accounts over a 22 year term. We received these letters in December 2011 signed with an attached direct debit mandate. Unfortunately due to a break down in an internal process (That has now been rectified), this restructure has not been activated.

Please be advised that the agreed restructure in December 2011 will now take place from September 2012".

The Provider wrote to the Complainants in relation to each of the mortgage loan accounts on **7 September 2012** as follows;

/Cont'd...

"I confirm that the EURIBOR (Euro Inter Bank Offered Rate) with 4.3% margin was applied to your account from 01/09/2012 and your loan is now repayable over 22 years term.

...

Your loan is due to expire on 26/08/2034"

The letters further detailed as follows in relation to each account;

Account ending 16/01	<i>"The arrears outstanding of €112,639.07 on your mortgage loan have been absorbed into the account and are included in the above balance. Your revised repayment, based on the EURIBOR rate of 4.423% (including a margin of 4.3%), is €7,314.16."</i>
Account ending 17/01	<i>"The arrears outstanding of €75,973.29 on your mortgage loan have been absorbed into the account and are included in the above balance. Your revised repayment, based on the EURIBOR rate of 4.423% (including a margin of 4.3%), is €4,933.29."</i>
Account ending 18/01	<i>"The arrears outstanding of €42,707.15 on your mortgage loan have been absorbed into the account and are included in the above balance. Your revised repayment, based on the EURIBOR rate of 4.423% (including a margin of 4.3%), is €2,773.18."</i>
Account ending 19/01	<i>"The arrears outstanding of €62,976.29 on your mortgage loan have been absorbed into the account and are included in the above balance. Your revised repayment, based on the EURIBOR rate of 4.423% (including a margin of 4.3%), is €4,089.34."</i>

It was at this time in **September 2012** that the failures that were subsequently identified in **February 2017** as part of the Examination occurred on the Complainants' mortgage loan accounts, in that, the Provider did not give the Complainants the option to keep their tracker interest rate.

I will first consider the mortgage loan accounts in the period between **September 2012** and **July 2014**.

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The difference in the interest rate actually charged to the mortgage loans and the interest rate that should have been charged is demonstrated in column 4 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 + 0.85%) had been applied to the mortgage account between **September 2012** and **July 2014**, is also represented in the below table;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month				
				A/C 19/1	A/C 17/1	A/C 18/1	A/C 16/1	Total
Sept 2012	4.42%	1.60%	2.82 %	€985.06	€1,188.10	€667.88	€1,761.49	€4,602.53
Oct 2012	4.42%	1.60%	2.82 %	€987.56	€1,191.37	€669.71	€1,766.34	€4,614.98
Nov 2012	4.41%	1.60%	2.81 %	€983.33	€1,186.27	€666.84	€1,758.77	€4,595.21
Dec 2012	4.42%	1.60%	2.82 %	€984.12	€1,187.23	€667.38	€1,760.19	€4,598.92
Jan 2013	4.41%	1.60%	2.82 %	€984.43	€1,187.60	€667.59	€1,760.74	€4,600.36
Feb 2013	4.42%	1.60%	2.82 %	€988.22	€1,192.17	€670.16	€1,767.51	€4,618.06
Mar 2013	4.42%	1.60%	2.82 %	€987.03	€1,190.73	€669.35	€1,765.39	€4,612.50
Apr 2013	4.42%	1.60%	2.82 %	€988.31	€1,192.27	€670.22	€1,767.67	€4,618.47

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May 2013	4.42%	1.35%	3.07 %	€1,065.78	€1,285.73	€722.76	€1,906.25	€4,980.52
Jun 2013	4.42%	1.35%	3.07 %	€1,063.62	€1,283.13	€721.29	€1,902.38	€4,970.42
Jul 2013	4.42%	1.35%	3.07 %	€1,065.85	€1,285.82	€722.81	€1,906.38	€4,980.86
Aug 2013	4.43%	1.35%	3.08 %	€1,070.55	€1,291.49	€725.99	€1,914.78	€5,002.81
Sept 2013	4.43%	1.35%	3.08 %	€1,071.33	€1,292.44	€726.53	€1,916.19	€5,006.49
Oct 2013	4.43%	1.35%	3.08 %	€1,070.62	€1,291.58	€726.04	€1,914.91	€5,003.15
Nov 2013	4.43%	1.10%	3.33 %	€1,146.24	€1,382.79	€777.32	€2,050.15	€5,356.50
Dec 2013	4.47%	1.10%	3.37 %	€1,159.56	€1,398.86	€786.35	€2,073.97	€5,418.74
Jan 2014	4.52%	1.10%	3.42 %	€1,177.21	€1,420.16	€798.32	€2,105.54	€5,501.23
Feb 2014	4.53%	1.10%	3.43 %	€1,182.36	€1,426.37	€801.81	€2,114.75	€5,525.29
Mar 2014	4.52%	1.10%	3.42 %	€1,177.32	€1,420.29	€798.40	€2,105.74	€5,501.75
Apr 2014	4.54%	1.10%	3.44 %	€1,184.69	€1,429.18	€803.40	€2,118.93	€5,536.20
May 2014	4.56%	1.10%	3.46 %	€1,193.06	€1,439.28	€809.07	€2,133.90	€5,575.31
Jun 2014	4.55%	1.00%	3.55 %	€1,217.85	€1,469.18	€825.88	€2,178.23	€5,691.14
Jul 2014	4.40%	1.00%	3.40 %	€1,161.40	€1,401.08	€787.60	€2,077.27	€5,427.35

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I note that the Complainants were making significant overpayments because of the removal of the tracker interest rates from the Complainant's mortgage loan accounts. As is evidenced in the table above, these overpayments were approximately €4,600 per month from September 2012. The overpayments per month continued to grow to between €5,002.81 and €5,418.75 in 2013, rising to €5,691.31 in June 2014.

The Complainants' **Income & Expenditure Account for Year End 31/12/2013** which was stamped received by the Provider on **14 February 2014**, details as follows;

1. "Gross Fees Receivable from [Complainants' business]"	€164,205
<i>Less Overheads & Wages</i>	<u>€107,442</u>
<i>Net Surplus</i>	€57,763
2. Rental Income from Irish Properties	€489,210
<i>Less Interest on Borrowings</i>	€161,121
<i>Less Expenses & Overheads</i>	<u>€150,222</u>
<i>Net Surplus</i>	€177,867
3. Rental Income from Foreign Properties	€249,540
<i>Less Interest on Borrowings</i>	€68,823
<i>Less Expenses & Overheads</i>	<u>€98,875</u>
<i>Net Surplus</i>	€81,842
<i>Total Net Surplus</i>	€316,471"

The Complainants' **Balance Sheet as at 31/12/2013** which was stamped received by the Provider on **14 February 2014**, detailed that the Complainants held a portfolio of 17 properties mortgaged to 5 different lenders with a total "*Estimated Market Value*" of €17,735,000 and total "*Debt Outstanding*" of €13,083,176, leaving "*Net Equity*" of €4,651,824.

I understand that the following entries are with respect to the properties that the Complainants later sold in **July 2014** and **August 2015**. I understand that the property in Spain is comprised with 2 other properties in the first entry of properties with an EMV of €3.2 million. Both properties were mortgaged to other third party providers.

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<i>“Estimated Market Value</i>	<i>Debt Outstanding</i>	<i>Net Equity</i>	<i>... Net Equity</i>	<i>Monthly Repayments</i>	<i>Repayment Basis</i>	<i>Net</i>
	<i>Monthly Income</i>					
...						
3,200,000	693,000		2,507,000	7,009		<i>Capital & Interest</i>
	20,000					
450,000	351,000		99,000	3,245		<i>Capital & Interest</i>
<i>Interest</i>	<i>2,000”</i>					

The Complainants have detailed that the “pressure” of the overpayments on the four mortgage loan accounts led the sale of their Dublin property in **July 2014**.

They have submitted in evidence a letter from their solicitor dated **27 March 2017** which details as follows;

“We confirm that we acted for the owners & vendors [the Complainants] of [Address redacted] in the sale of the premises known as [Redacted]. The sale was completed on the 24th day of July 2014 and the sale price was €435,000.00.

We also confirm that our clients purchased the property in 1998 for the sum of IEP£156,000.”

The Complainants have also submitted an undated document which details as follows;

“Source: Central Statistics Office – www.cso.ie

...

Confirmation of 13.3% rise in Property Prices in Dublin over the period July 2014 to January 2017 calculated as follows

- *Residential Property Price Index July 2014- 80.5*
- *Residential Property Price Index January 2017 – 91.2*
- *Percentage increase over the period - $\rightarrow [(91.2/80.5) - 1] \times 100 = 13.3\%$ increase*

Sales Price of [Redacted] in July 2014 was €435,000.

The above would suggest this property would have been worth circa €492,820 (€435,000 x 1.133%) in January 2017.

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This would equate to an increase of €57,820 (€492,820 - €435,000) over the period July 2014 to January 2017.”

The Complainants further submit that they were forced to sell their “retirement home” in Spain in **August 2015**.

The difference in the interest rate actually charged to the mortgage loans and the interest rate that should have been charged is demonstrated in column 4 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 + 0.85%) had been applied to the mortgage accounts between **August 2014** and **August 2015**, is also represented in the below table;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month				
				A/C 16/1	A/C 17/1	A/C 18/1	A/C 19/1	Total
Aug 2014	4.40%	1.00%	3.40 %	€2,077.81	€1,401.45	€787.80	€1,161.70	€5,428.76
Sept 2014	4.37%	0.90%	3.47 %	€2,111.90	€1,424.45	€800.73	€1,180.77	€5,517.85
Oct 2014	4.31%	0.90%	3.41 %	€2,066.71	€1,393.96	€783.60	€1,155.50	€5,399.77
Nov 2014	4.31%	0.90%	3.41 %	€2,076.39	€1,400.50	€787.27	€1,160.92	€5,425.08
Dec 2014	4.32%	0.90%	3.42 %	€2,081.71	€1,404.08	€789.29	€1,163.89	€5,438.97
Jan 2015	4.32%	0.90%	3.42 %	€2,075.67	€1,400.01	€787.00	€1,160.51	€5,423.19

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Feb 2015	4.30%	0.90%	3.40 %	€2,068.84	€1,395.41	€784.41	€1,156.69	€5,405.35
Mar 2015	4.30%	0.90%	3.40 %	€2,059.45	€1,389.07	€780.85	€1,151.44	€5,380.81
Apr 2015	4.28%	0.90%	3.38 %	€2,059.13	€1,388.86	€780.73	€1,151.26	€5,379.98
May 2015	4.26%	0.90%	3.36 %	€2,036.98	€1,373.92	€772.33	€1,138.88	€5,322.11
Jun 2015	4.24%	0.90%	3.34 %	€2,031.12	€1,369.96	€770.11	€1,135.60	€5,306.79
Jul 2015	4.24%	0.90%	3.34 %	€2,022.73	€1,364.30	€766.92	€1,130.91	€5,284.86
Aug 2015	4.22%	0.90%	3.32 %	€2,025.76	€1,366.34	€768.07	1,132.60	€5,292.77

The Complainants have submitted in evidence a document stated to be their “Spanish Tax Return”. This document is in Spanish, however it appears to state that the sale price of the Spanish property was €834,221.16 and the purchase price was €926,702.48, leading to a deficit of €92,481.33, as submitted by the Complainants.

Whilst I accept that the overpayments were significant on the mortgage accounts leading up to the periods when the Complainants sold the properties in **2014** and **2015** respectively. I am of the view that the evidence does not support the Complainants’ submission that the interest rate applying to the four mortgage accounts was the primary factor in the sale of the properties. As outlined above the evidence shows that the Complainants had indicated in **May 2011** that it was their intention to engage in “asset disposal” when market conditions improved. I further note that the evidence shows that the properties that the Complainants sold were mortgaged to another provider, such that the Complainants were not required to engage with the Provider with respect to the sales. The sale proceeds were not applied in reduction of the four mortgage loans which were the subject of the overcharge. The Complainants refer to cash flow difficulties arising as a result of the overcharge however the **Income & Expenditure Account for Year End 31/12/2013** details that overall the Complainants had a total net surplus of €316,471 in **2013**. The Complainants’ Rental Income from Irish

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Properties shows a surplus of €177,867 and the Complainants' Rental Income from Foreign Properties shows a surplus of €81,842. Further I note that the records from **mid-2011** show that the Complainants had €1 million on deposit.

In these circumstances, I do not accept that the Provider can reasonably be said to be responsible for "total losses of at least €150,301" in respect of the sale of the two properties, which the Complainants have claimed the Provider is responsible for. The fact that house prices may have subsequently increased is not a matter that the Complainants would have known at the time of making the decisions to sell in **2014** and **2015**. Any fluctuation in the value of property is not something that can be accurately predicted.

The difference in the interest rate actually charged to the mortgage loans and the interest rate that should have been charged between **September 2015 and January 2017** is demonstrated in column 4 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 + 0.85%) had been applied to the mortgage accounts between **September 2015 and January 2017**, is also represented in the below table;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month				
				A/C 16/1	A/C 17/1	A/C 18/1	A/C 19/1	Total
Sept 2015	4.20%	0.90%	3.30%	€2,009.42	€1,355.33	€780.85	€1,123.47	€5,269.07
Oct 2015	4.18%	0.90%	3.28%	€1,994.86	€1,345.51	€780.73	€1,115.33	€5,236.43
Nov 2015	4.18%	0.90%	3.28%	€1,996.19	€1,346.41	€772.33	€1,116.08	€5,231.01

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Dec 2015	4.14%	0.90%	3.24 %	€1,966.87	€1,326.62	€770.11	€1,099.68	€5,163.28
Jan 2016	4.09%	0.90%	3.19 %	€1,948.78	€1,314.43	€766.92	€1,089.57	€5,119.70
Feb 2016	4.07%	0.90%	3.17 %	€1,932.89	€1,303.71	€768.07	€1,080.68	€5,085.35
Mar 2016	4.03%	0.85%	3.18 %	€1,931.04	€1,302.46	€761.88	€1,079.64	€5,075.02
Apr 2016	3.96%	0.85%	3.11 %	€1,897.16	€1,279.60	€756.36	€1,060.70	€4,993.82
May 2016	3.95%	0.85%	3.10 %	€1,891.50	€1,275.79	€756.86	€1,057.53	€4,981.68
Jun 2016	3.95%	0.85%	3.10 %	€1,883.60	€1,270.46	€714.17	€1,053.11	€4,921.34
Jul 2016	3.93%	0.85%	3.08 %	€1,786.54	€1,265.69	€711.49	€1,049.17	€4,812.89
Aug 2016	0.85%	0.85%	-	€282.57	€190.59	€107.14	€157.99	€738.29
Sept 2016	0.85%	0.85%	-	€282.57	€190.59	€107.14	€157.99	€738.29
Oct 2016	0.85%	0.85%	-	€282.57	€190.59	€107.14	€157.99	€738.29
Nov 2016	0.85%	0.85%	-	€282.57	€190.59	€107.14	€157.99	€738.29
Dec 2016	0.85%	0.85%	-	€282.57	€190.59	€107.14	€157.99	€738.29
Jan 2017	0.85%	0.85%	-	€282.57	€190.59	€107.14	€157.99	€738.29

Having considered the documentary evidence furnished, it does not appear to me that the Complainants have submitted any evidence to support their position that in addition to the sale of their two properties they have been *“forced to carry out extreme cost cutting measures, in both business and personal expenditure”* and that these have arisen by consequence of the overcharging on the Complainants’ mortgage loan accounts.

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I am of the view that the interest overcharge of €246,501.53 between **September 2012** and **January 2017** is a very significant sum and the conduct of the Provider in overcharging the Complainant during this period is most unsatisfactory. The evidence shows that the overcharging in the period from **September 2012** to **July 2014** was between €4,600.36 and €5,691.31 monthly, rising between **August 2014** and **August 2015** to between €5,517.85 and €5,284.86 monthly, decreasing slightly between **September 2015** and **July 2016** to between €4,812.89 and €5,269.07 monthly and then decreasing to €738.29 monthly between **August 2016** and **January 2017**. These are significant sums on a monthly basis. I have no doubt that the Complainants suffered inconvenience as a result of the Provider's overcharging. I note that the Complainants have received compensation of €29,412.14. This compensation was paid together with redress of €253,237.55, (interest overpaid €246,501.53 and time value of money payment of €6,735.91). I also note that during the investigation of the complaint by this Office, the Complainants have also been offered a "goodwill gesture" of a further €4,500 by the Provider in relation to certain customer service failings. The Provider, in its post Preliminary Decision submission dated **28 August 2020**, details that "On receipt of the Legally Binding decision from the FSPO, provided there is no change from the Preliminary decision, the Bank will issue the payment to the Complainants within 14 days." The Complainants, in their post Preliminary Decision submission dated **28 August 2020**, outline that they "are grateful that the matter has been concluded" on these terms.

In these circumstances, I accept that the amount of compensation which has been paid to the Complainants is reasonable in the circumstances of this particular matter.

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

Conclusion

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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.