



<u>Decision Ref:</u>	2020-0316
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider and an overcharge of interest in the amount of €15,452.56 on that mortgage loan account.

The mortgage loan was drawn down in **December 2002** in the amount of €200,000. The term of the loan was 20 years and the Loan Offer dated **11 October 2002** provided for a “*capital moratorium for the first 60 months*”. The mortgage loan that is the subject of this complaint was secured on the Complainants’ Buy to Let property.

The mortgage loan account was redeemed in full by the Complainants on **15 February 2012**.

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 that mortgage loan account was deemed to be impacted under that Examination.

The Provider contacted the Complainants in **December 2016** advising them of the error that had occurred on their mortgage loan account.

The Provider detailed the circumstances giving rise to the error as follows;

“When you took out your mortgage we gave you the wrong set of terms and conditions due to a manual error.

Despite this error, we have now decided to honour these terms and conditions. These terms and conditions gave you a guarantee that your rate (the ‘Buy to Let’ rate) could not be more than 1.50% over the European Central Bank (ECB) rate. But the actual rate on your account was often higher than this.”

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

“What does this mean for you?

Now that we have completed the detailed review of your mortgage account we have been able to calculate the redress and compensation that is due from 31/12/2002, which was when your account was first impacted.”

The period of overcharging on the mortgage loan account was from **December 2002** until **February 2012**.

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

1. Redress of €18,229.25 covering;

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

2. Compensation of €1,367.19;

“Compensation for our failure.”

3. Independent Professional Advice Payment of €615.00;

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

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In **January 2017**, the Complainants appealed the redress and compensation offering to the Independent Appeals Panel. The basis of the Complainants' appeal was the inadequacy of the redress and compensation offering.

The Appeals Panel decided on **6 June 2017** that the Complainants were unsuccessful in their appeal on the basis that it did not agree with the Complainants that the financial losses being claimed arose as a result of the failure of the Provider to apply the correct interest rate to their mortgage loan account.

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

The conduct complained of that is being adjudicated on by this office is that the Provider has not offered adequate 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 submit that they have not been "*properly compensated*" for the Provider's failure on their mortgage loan account. They assert that the compensation identified by the Provider in **December 2016** is "*frankly derisory and takes no account of the hardship caused.*"

The Complainants outline that they purchased the subject property in **2002** at a cost of €200,000 plus legal and stamp duty costs of €10,000 and fit out costs of €8,000. They say that the object of the investment in the property was to act as a supplementary pension in retirement.

The Complainants detail that they contacted the Provider in **February 2006** asking it to "*review the interest rates*" that their mortgage loan account was operating on "*since it appeared to be extremely high*". The Complainants outline that they received a response from the Provider in **May 2006** which detailed that the "*correct charge had been applied*" to the mortgage account. The Complainants submit that this was an "*early opportunity*" for the Provider to "*address its mistake*", however, it failed to do so, to the detriment of the Complainants.

The Complainants submit that from **December 2008** there was a significant difference between the interest rate that applied to their mortgage loan and the tracker interest rate which should have applied to the account. The Complainants note that while the Provider has rectified this overcharge, it "*takes no account of the financial hardship occasioned by the necessity to meet much higher levels of payment than should have been necessary.*"

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The Complainants outline that because of the high level of repayments they were *“unable to make any inroads into the capital sum that had been borrowed for the duration of the loan, as the continuation of the interest only repayments was forced upon us.”* They detail that this had an impact on them when they sold the property as interest was continuing to be charged on a higher capital sum for a considerable period.

The Complainants state that they put the property up for sale in **May 2010** in order to redeem the mortgage loan. The Complainants detail that they were unable to keep the property *“fully occupied with tenants because of the uncertainty of how long their tenure might be”* between **August 2010** and **August 2011** during the sale process. They are seeking €7,200 as compensation for the loss of rental income during this period.

The Complainants state that they had invested a sum of €100,000 in **November 2010** and €50,000 in **January 2011** which were both guaranteed a return of 10% after a period of three years. They detail that due to the *“huge uncertainty in the marketplace at the time and a genuine fear that [they] might default in [their] repayments”* they prematurely withdrew investments from a State Savings Scheme in **November 2011** and **February 2012**. The Complainants submit that the difference between what a three year investment would have yielded and what was actually received amounts to €11,700.

The Complainants ultimately sold the investment property in **2014**. The Complainants indicate that it was never their intention to sell the property but rather *“to maintain it as a source of income into [their] retirement years”*.

The Complainants contend that they would not have sold the investment property had the correct interest rate been charged on their mortgage loan account and as such, they are seeking compensation in respect of the monies lost. The Complainants submit that they sold this property in **2014** at a price of €206,000, however it would be worth *“considerably more in the present climate”*. The Complainants estimate that the property *“would be worth between €260,000 and €270,000 in today’s market”*.

The Complainants submit that they endured financial hardship occasioned by the necessity to meet such higher levels of payment than should have been necessary. The Complainants outline that they had a genuine fear that they might default on their repayments which led them to withdraw their investments, apply money recovered from rental payments and take out a loan from the credit union.

The Complainants are seeking further compensation for the following;

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- (a) €11,700 for the early withdrawal of investments in **November 2011** and **February 2012**;
- (b) Higher repayments due to their inability to reduce the capital balance of the mortgage loan;
- (c) €7,200 for the loss of rental income when attempting to sell the property between **August 2010** and **August 2011**;
- (d) Loss from the sale of the property during a poor property market in **2014**; and
- (e) Financial hardship occasioned by the necessity to meet such higher levels of payment than should have been necessary.

The Provider's Case

The Provider submits that the original mortgage loan agreement dated **11 October 2002**, which was signed by the Complainants, provided for a variable residential investment rate. The Provider states that it was *"not the intention of the Complainants or the Bank that the mortgage loan would be drawn down on or operate on any rate other than the Variable Residential Investment Rate"*. However, the Provider details that the incorrect General Terms and Conditions were enclosed in error with the original mortgage loan agreement in **October 2002** which included a guarantee that the interest rate would not exceed ECB + 1.5%.

The Provider submits that, notwithstanding this error, it has decided to honour the General Terms and Conditions and has rectified and redressed the impacted account, which it states *"effectively puts the Complainants in the position they would have been in had the Buy To Let Rate been applied to the impacted account at all times."* In this case, the Provider submits that the Buy To Let rate ("BTL") was lower than the residential investment rate at all times. The Provider also notes that the Complainants' account was operating on a two year fixed rate from **September 2009** until **September 2011**, however, as this BTL rate was lower than the fixed rate, it recast to the BTL rate for this period also.

With regard to the Complainants' claim for compensation in relation to the interest paid on a higher capital sum which they submit *"forced"* them to continue on interest only repayments, the Provider reiterates that it was not the intention of the Provider or the Complainants that the mortgage loan in question would be drawn down on a tracker interest rate. The incorrect General Terms and Conditions were enclosed with the mortgage loan agreement dated **11 October 2002** which guaranteed that the rate applicable to the mortgage loan would not exceed ECB + 1.5%.

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The Provider submits that upon approaching the initial expiry of the five year interest only period, it received a written request from the Complainants dated **14 August 2007**, requesting an interest only extension on the investment property. The Provider details that on **20 August 2007**, an *“internal service request”* was made to apply the extension of the interest only on the mortgage loan account for two years, which was agreed and applied by the Provider on **30 November 2007**. The Provider issued a further letter to the Complainants on **17 December 2007**, on the expiry of the initial five year interest only period, reiterating the extension of the interest only repayment agreement for a period of two years.

Prior to the expiry of the two year interest only period, the Provider states that it received a written request from the Complainants dated **6 August 2009**, requesting a further interest only extension on the investment property for two years. The Provider submits that a further written request was received from the Complainants on **25 August 2009** which acknowledged that there may be a shortfall in the life policy and requested the two year interest only extension. On **31 August 2009** a letter was issued to the Complainants confirming the extension of interest only.

On **13 July 2011**, the First Complainant attended the Provider’s branch to request the interest only facility to be renewed. The Provider submits that it was mutually agreed between the First Complainant and the Provider’s representative at the branch to defer the renewal request until **October 2011** as the interest only period was not due to expire until **December 2011**.

The Provider notes that the request for extended periods of interest only were approved at the Complainants’ request. It details that it is not unusual for customers in the normal course of business to request interest only repayments on their investment properties. As set out above, the Provider details that it holds no evidence in its records to indicate that the *“Complainants encountered financial difficulty or that the mortgage was unsustainable throughout the life of the loan.”*

With respect to the Complainants’ contention that they were obliged to prematurely withdraw investments to reduce the mortgage account balance, the Provider submits that it did not request that the Complainants make additional lodgements to the mortgage loan account, nor did it advise the Complainants to use their own funds or resources to reduce the balance on the mortgage loan account. The Provider notes that the decision to withdraw funds early from investments and in turn make lump sum payments to the mortgage loan account was *“independently made by the Complainants”*.

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In this regard, the Provider submits that on **29 May 2010**, the First Complainant telephoned the Provider to *“make enquiries regarding the mortgage loan account and clearing the loan in full.”* The Provider details that the Complainant was advised that the loan was operating on a fixed interest rate and there would be a fixed rate breakage fee if he wanted to clear the loan in full during the fixed interest rate period.

The Provider indicates that two letters were received from the Complainants’ solicitor on **7 January 2011**. The first letter enclosed a letter signed by the Complainants authorising the solicitors to act on their behalf and the second letter requested up-to-date redemption figures. The Provider states that a full redemption quotation letter was issued to the Complainants’ solicitor on **7 January 2011**.

The Provider submits that its records indicate that the Complainants spoke to one of its representatives in the Provider’s branch on **7 October 2011** and enquired about making a partial redemption of €150,000 to their mortgage loan account. The Provider states that the Complainants also enquired about fixing their mortgage repayments at €900 per month. The Provider outlines that the Complainants were informed that the new loan term would be approximately 64 months.

The Provider details that the First Complainant attended the Provider’s branch on **9 November 2011** to discuss *“the impact of making a lump sum payment of €150,000”* and following this discussion, quotes were provided to the Complainants outlining the new repayment amounts if they were to reduce either the repayments or the term of the loan.

The Provider submits that on **11 November 2011**, the First Complainant telephoned the Provider to query if the Complainants could attain a new life cover quote for the lower sum remaining on the loan if a lump sum payment of €130,000 was made on the mortgage loan account. A quote for this was provided to the First Complainant on the same day.

The Provider submits that on **24 November 2011**, a partial redemption payment of €130,000 was lodged to the mortgage loan account and on **30 November 2011**, a letter was issued to the Complainants outlining the capital repayment and term reduction on the mortgage loan.

The Provider explains that on **1 December 2011**, an *“internal service request”* was set up to query the monthly repayment amount as the Complainant thought the repayment amount was too high and on **14 December 2011**, a letter issued to the Complainants stating that following the capital payment of €130,000 the monthly repayment was indeed set too

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high. In its letter, the Provider outlined the new repayment and apologised for any inconvenience caused.

By way of letter dated **22 December 2011**, the Provider states that it furnished the Complainants with a cheque in respect of the overpayment to the mortgage loan account.

The Provider details that on **3 February 2012** a lump sum quote was issued to the Complainants. On the same day, a lodgement of €59,667.89 was made to the mortgage loan account and the Complainants noted on the quotation letter that they wished the term of the loan to be reduced.

The Provider states that on **15 February 2012**, an *"internal service request"* was set up to close the mortgage loan account advising that funds had been transferred from the Complainants' demand account.

The Provider outlines that it had *"no knowledge of any financial difficulty and that there is no evidence on file to indicate that the Complainants were having difficulty meeting their mortgage repayments"*. The Provider outlines that in circumstances where customers request forbearance in cases of financial difficulty, the Provider has a process in place for assessing each particular case and where available, offering a number of different options to the customer with a view to putting in place a solution that is supportive and appropriate. However, it details that this support was *"never sought by the Complainants"*.

With regard to the Complainants' request for compensation of €7,200 for the loss of rental income between **August 2010** and **August 2011** and compensation for the sale of the property, the Provider submits that the purchase of the property was a *"commercial venture"* on behalf of the Complainants. It submits that the *"decision to purchase, the manner in which the property was funded and the decision to sell were all unilateral decisions by the Complainants"*. The Provider states that at no point did it *"inform or advise the Complainants not to rent the property or to sell the property"*.

The Provider notes that the investment property was sold in **2014**, two years after the mortgage loan account was fully redeemed in **February 2012** and the Provider is of the view that its error on the Complainants' mortgage loan account was not the reason why the Complainants decided to sell the property. The Provider maintains that the financial decision to sell the property was made independently by the Complainants.

The Provider submits while the Complainants did not allude to any financial difficulties throughout the life of the loan, the purpose of the compensation payment of €1,367.19 is to compensate for *"potential inconvenience, harm, personal suffering or hardship"*. The Provider details that the amount of compensation was calculated based on the Provider's

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compensation model, which was developed as part of its examination of customers who were impacted by the Provider's Mortgage Review.

It submits that the Compensation Model was designed to meet the Central Bank's principles for redress issued in **December 2015**. In accordance with this compensation model, in the case of the Complainants, the compensation amount was calculated at 7.5% of the interest overcharged of €15,452.56 plus 7.5% of the time value of money payment of €2,766.69, as the impacted property was the Complainants' BTL property.

The Provider details that the process for calculating redress and compensation has been assured by an external independent third party in line with the Central Bank's Framework. The Provider believes that the payments of redress and compensation made to the Complainants are "*fair and reasonable*" and notes that the Independent Appeals Panel agreed with it in this respect.

The Provider submits that the total redress and compensation amount paid to the Complainants was €20,211.44. The Provider asserts that this has put the Complainants back in the position they should have been in had the error not occurred.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has incorrectly failed to offer adequate redress and compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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.

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5. *Repayments:* €825.00 (IR£ 649.74) per month comprising interest only for the first 60 months payments based on the above variable rate.

After expiry of the initial 60 months capital moratorium, payments shall comprise of principal and interest and shall be calculated to amortise the loan and interest thereon over the remaining term by equal instalments.

All Payments shall be made by monthly direct debit on dates as may be determined by [the Provider] and advised to the Borrower in writing. Payments will vary in line with movements in the interest rate.”

I have not been provided with a signed copy of the **Loan Offer** confirming the Complainants' acceptance of the particulars and terms of the **Loan Offer**. However, I do not believe that it is in dispute between the parties that Complainants accepted the **Loan Offer**.

Similarly, I have not been provided with a copy of the terms and conditions attaching to the Loan Offer, however in its letter to the Complainants dated **9 December 2016**, the Provider admitted that it furnished the Complainants with the “*wrong set of terms and conditions due to a manual error*”. It is understood that the terms and conditions that the Complainants were provided with gave the Complainants a guarantee that the Buy to Let interest rate applicable to their mortgage loan account “*would not be more than 1.50% over the European Central Bank (ECB) rate*”, however, the actual rate that applied to the mortgage loan was “*often higher than this*”.

Consequently, it is from the date of drawdown in **December 2002** that the failures that were subsequently identified in **December 2016** as part of the Examination occurred on the Complainants' mortgage loan account. The Complainants' mortgage loan account has been restored to a tracker interest rate of ECB + 1.5% from **January 2003**.

In the period between **January 2003** and **May 2006**, the mortgage account was on the Provider's variable residential investment rate which fluctuated between 3.75% and 4.45%. The tracker interest rate that would have been applied was ECB + 1.5%. Between **January 2003** and **May 2006**, the overall tracker rate (ECB + margin) fluctuated between a rate of 3.50% and 4.25%. The difference in the interest rate actually charged to the

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mortgage loan and the interest rate that would have been charged on the tracker interest rate is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **January 2003** and **May 2006**, is also represented in the table below at column 5:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Jan 2003 – Mar 2003	0.20%	Between €741.66 and €936.72	Between €708.33 and €894.62	Between €33.33 and €42.10
Apr 2003 – Jun 2003	0.20%	€708.33	€666.67	€41.66
July 2003 – Dec 2005	0.25%	€625	€583.33	€41.67
Jan 2006 – Mar 2006	0.25%	€666.67	€624.76	€41.91
Apr 2006 – May 2006	0.25%	€708.33	€666.36	€41.97

The evidence shows that the Complainants wrote to the Provider by letter dated **08 February 2006** requesting that the Provider “*review the interest rate*” that applied to the mortgage loan. The Provider responded by letter dated **08 May 2006** as follows;

“Following an investigation into your Commercial Loan account which is currently on interest only, I have found it is charging correct since all rate changes were applied. Under the current residential investment rate of 4.25% & with a loan capital balance of €200,000.03 the correct repayments are €708.33 + insurance premiums of €104.69 resulting in total repayment of €813.02.”

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The Complainants take issue that the Provider did not “*address its mistake*” at this time. I accept that it was within the Provider’s competence to notice the error with respect to the terms and conditions at that time. I note that during this approximate three year period the difference between the tracker rate and the Variable Residential Investment Rate was between 0.20% and 0.25%.

In the period between **June 2006** and **September 2009** the mortgage account remained on the Provider’s Variable Residential Investment Rate which fluctuated between 3.75% and 5.63%. In **November 2009** a fixed interest rate of 4.80% was applied to the mortgage loan until **September 2011**.

The tracker interest rate that would have been applied was ECB + 1.5%. Between **June 2006** and **September 2011**, the overall tracker rate (ECB + margin) fluctuated between a rate of 2.50% and 5.63%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged on the tracker interest rate is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **June 2006** and **September 2011**, is also represented in the table below at column 5:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Jun 2006 – Oct 2008	0	Between €591.67 and €938.33	Between €591.33 and €937.01	Between €0.34 and €1.32
Nov 2008	0.38%	€938.33	€873.66	€64.67
Dec 2008	0.88%	€938.33	€790.42	€147.91
Jan 2009	0.88%	€813.33	€665.59	€147.74

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Feb 2009 – Mar 2009	1.38%	€813.33	€582.38	€230.95
Apr 2009	1.63%	€771.33	€499.15	€272.18
May 2009	1.63%	€730.00	€457.54	€272.46
Jun 2009 – Sept 2009	1.88%	€730.00	€415.93	€314.07
Oct 2009 – Apr 2011	2.30%	€800.00	€415.93	€384.07
May 2011 – Jul 2011	2.05%	€800.00	€456.73	€343.27
Aug 2011 – Sept 2011	1.80%	€800.00	€498.05	€301.95

The Complainants' **Loan Offer** details that the mortgage loan was a "20 year Repayment Loan (including a capital moratorium for the first 60 months)." Prior to the expiry of the initial five year interest only repayment period, the Complainants wrote to the Provider by letter dated **14 August 2007** seeking a "further 2 years interest only on [their] investment property". The Provider agreed to the Complainants' request and confirmed same by letter dated **10 November 2007**. The letter detailed that the "interest only period will end after the December 2009 repayment."

Prior to the expiry of the two year interest only period, the Complainants wrote to the Provider on **6 August 2009** stating that they wished to apply for a further interest only repayment arrangement for a period of two years from **December 2009**. The Complainants subsequently wrote to the Provider again on **25 August 2009** with the same request and also detailed that there was a form attached "re fixed interest for 2 years at 4.8 %". The Provider responded to the Complainants by letter dated **31 August 2009**. The letter detailed as follows;

"Further to your recent request, we wish to confirm that the interest only period on your loan account has been extended.

The current monthly payment on your loan account is €730.00.

This interest only period will end in 12/2011."

I note from the Provider's internal recording contained in the **Contact Summary** report which has been provided in evidence to this office, that the First Complainant visited the Provider's Branch on **13 July 2011** with regard to extending the interest only facility on their mortgage loan account. The Provider's record states as follows;

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"[The First Complainant] called in to look for interest only facility to be renewed on his loan explained to him it is not up until December of this year however gave him the sfs & marp booklet told him to complete same and return with pension receipt agreed to hold off until [O]ctober. agreed to phone him in [O]ctober."

It appears that there was no further interaction between the parties in relation to extending the interest only repayment period on the mortgage loan account.

The Complainants contend that the extensions to the interest only repayment in **August 2007** and **August 2009** were "*forced*" upon them. The Complainants further submit that if the mortgage loan was on the tracker interest rate, they would not have had to seek further interest only periods and they wouldn't have had to pay more interest on a higher capital sum.

The evidence does not support the Complainants' submission that the Provider "*forced*" them to extend the interest only periods. Rather the evidence shows that the Complainants, of their own volition, contacted the Provider to seek the interest only periods in **August 2007** and **August 2009**. In this regard, I note that the sum that the Complainants were overpaying on a monthly basis on the account in or around the time they sought the extension in **August 2007**, was €0.82, which, although I accept the Complainants should not have been overcharged by any amount, is a nominal figure. With respect to the two year interest only period requested in **August 2009**, I note that the monthly overpayment was significantly higher at €314.07 per month. As outlined above, again the evidence shows that the Complainants initiated contact with the Provider to continue the interest only period. The Complainants were not required to submit any documentation to support the extension and the extension was approved. There is no evidence to suggest that the Complainants wanted to move to capital and interest repayments at this time. When the Complainants contacted the Provider in **July 2011** about extending the interest only facility, the Complainants were requested to complete a Standard Financial Statement before the interest only period expired in **December 2011**. However it appears that they elected not to do so and the mortgage moved to capital and interest repayments at that time.

The Complainants also submit that when the First Complainant retired in **2010** the rental income from the property was only sufficient to cover the interest only repayments on the mortgage loan therefore "*they decided to put the property on the market as they had no surplus pension income to start paying down the capital balance.*" The Complainants detail that, between **August 2010** and **July 2011**, two of the three tenants left because of the uncertainty of how long their tenure might be, which resulted in a loss of rental income of approximately €600 per month or €7,200 for the full period.

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The Complainants have submitted copies of statements from a joint current account from **January 2010 to September 2011** into evidence. The statements show a payment of €1,000 with the reference “Rent [address]” of €1,000 from **January 2010 to July 2010**. There are a number of lodgement and credit entries into the Complainants’ joint account between **August 2010 and July 2011**. It is not clear and the Complainants have not identified the lodgements or credit entries that represent the monthly rent payment from the remaining tenant between **August 2010 and July 2011**. There is then an entry from **27 August 2011** from an auctioneer of €1,205, which the Complainants submit is rental income commencing again. In any event, I do not accept that the loss of any rental income between **August 2010 and July 2011** is attributable to the interest overcharge on the mortgage loan account. The Complainants of their own volition decided to put the property up for sale at the time.

At the time, the monthly rental income was at least €1,000 and the mortgage repayment was €800. By the time the Complainants had recommenced renting out the entire property in **August 2011**, the monthly rental income was at least €1,205 and the mortgage repayment was €800.

Between **October 2011 and February 2012**, a variable interest rate was applied to the mortgage loan which fluctuated between 4.83% and 5.43%. The overall tracker rate (ECB + margin) that would have applied to the mortgage loan fluctuated between a rate of 2.50% and 3.00%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged on the tracker interest rate is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **October 2011 and February 2012**, is also represented in the table below at column 5:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Oct 2011 – Nov 2011	2.43%	€905	€498.05	€406.95

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Dec 2011	2.43%	€747.33	€603.22	€144.11
Jan 2012 – Feb 2012	2.33%	€684.63	€599.39	€85.24

The Complainants have submitted in evidence Statements from the State Savings Scheme which shows the following:

- The lodgement of the €100,000 investment on **12 November 2010**. Interest accrued on the investment of €2,200 as at **24 November 2011**. A repayment of €102,200 was made to the Complainants from the scheme on **24 November 2011**.
- The lodgement of €50,000 investment on **27 January 2011** and on **03 February 2012** interest accrued of €1,100. A repayment of €51,100 was made to the Complainants from the scheme on **03 February 2012**.

The Complainants have submitted into evidence a copy of a leaflet with respect to the savings scheme that details as follows:

***“Savings Bonds
12th Issue***

10% interest after 3 years

No tax, fees or charges

State guaranteed

Easy access to your money at all times

Interest payable

Investors will earn 10% TAX FREE over a 3 year period. This is equivalent to an average interest rate of 3.23% per annum if the investment is held for the full term. Where Savings Bonds are encashed before the elapse of 3 years the average annual rate of interest will be lower.”

The Complainants submit that they decided to withdraw the investments in **November 2011** and **February 2012** in *“an attempt to address the lack of capital repayments on [their] loan and because of a real concern that [they] might default in [their] repayments”*.

It appears from the evidence submitted by the Provider that discussions between the Complainants and the Provider in relation to redeeming the mortgage loan account

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initially began in **May 2010**, prior to the Complainants investing monies into a state savings scheme.

In this regard, I note that the First Complainant visited the Provider's branch on **29 May 2010** to "make enquires" regarding the mortgage loan account and redeeming the loan in full. I have been provided with a copy of the Provider's internal notes on foot of the First Complainant's visit to the Provider's branch on **29 May 2010** contained in the Provider's **Contact Summary** which detail as follows;

"[The First Complainant] called in today enquiring about his mortgage was told recently in [Provider's Branch] that the[re] would be no penalty if he cleared his mortgage. Explained to him that he is on a fixed rate and there would be a penalty as at today's date it is 1082.50 as at [the] 9.11 the fixed rate will be maturing and at that stage there will be no penalty. Member not happy."

The Complainants' solicitor subsequently wrote to the Provider on **6 January 2011** seeking the Title Deeds of the mortgaged property and up to date redemption figures in connection with the loan and any ancillary loans. The Provider responded with the requested information by letter dated **7 January 2011**.

The Provider's internal recordings contained in the Provider's **Contact Summary** indicate that the First Complainant telephoned the Provider on **7 October 2011** as he wanted to make a part redemption payment of €150,000 to the mortgage loan account and then fix the mortgage loan repayments at €900 per month. The Provider's representative informed the Complainant that this would reduce the term of the loan to approximately 64 months.

I note from the Provider's **Contact Summary** records dated **10 November 2011** that the First Complainant visited the Provider's branch to query various options of repayment on his mortgage loan account, including capital and interest repayments on a reduced variable rate or reducing the term and making a part redemption payment of €150,000. The **Contact Summary** record notes as follows;

"[First Complainant] called into the office yesterday to see if he pays off 150k off his mortgage would [Provider] be happy to close off the loan. [E]xplained we are doing no[t] facilities like that. Then went through what capital and interest would cost on the reduced variable rate quoted 1979.66 also if he paid off the 150k and kept the repayments his new term would be approx 27 months. [T]hen looked at keeping the term and reducing the re[payments] confirmed it would be 494.91 [First Complainant] is gone to think about same."

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On **11 November 2011** the First Complainant telephoned the Provider in relation to making a part redemption payment on the mortgage loan of €130,000 and in turn requested a new quote for life cover for €70,000. On **24 November 2011** a partial redemption of €130,000 was lodged into the mortgage loan account and the Provider set up an internal service request to *“amend for the [D]ecember payment”*. On **30 November 2011** the Provider issued a **‘Confirmation of Capital Term Reduction’** letter to the Complainants which set out the *“revised status of [the Complainants’] loan from 01/12/2011.”* The letter noted the current interest rate at the time to be 5.18% and the total monthly repayment to be €916.17 and the term of the loan to be 133 months.

On **1 December 2011**, an internal service request was set up by the Provider to query the monthly repayment amount on the mortgage loan as the First Complainant thought that the interest rate was too high. The Provider responded to the Complainants by letter dated **14 December 2011** acknowledging that the monthly repayment was *“set too high for [their] December 2011 repayment”*. The Provider outlined a new total monthly repayment amount of €737.47 and apologised for the inconvenience caused.

On **22 December 2011** a cheque of the overpayment to the mortgage loan account in the amount of €561.17 was issued to the Complainants.

On **3 February 2012**, a **Lump Sum Repayment Quote** was issued to the Complainants. The Lump Sum Repayment Quote noted the follows as regards the effect of a lump sum payment of €59,667.89:

“You can use this lump sum payment to either:

*(1) Reduce your loan term by 9 Year(s) 8 Month(s)
Your new term would be 1 Year(s) 2 Month(s)*

OR *(2) Reduce your monthly repayments by
Your new monthly repayment would be €147.08
(including insurance premiums of €52.84)”*

On the same day a lodgement of €59,667.89 was lodged to the mortgage loan account and a handwritten request from the Complainants on the above **Lump Sum Repayment Quote** noted that they wished to select option (1) above and *“reduce the term”*. This request was signed by both Complainants.

On **15 February 2012** an internal service request was made by the Provider to *“close off the loan”* advising that the full payment had been transferred from the Complainants’ demand account.

The Complainants submit that they were “*obliged*” to withdraw their investments in order to address the lack of capital payments on their loan account because of a “*real concern*” that they might default in their payments. I understand that the Complainants were making interest only repayments since the mortgage loan was drawn down in **December 2002**. The evidence shows that capital and interest repayments were due on the mortgage loan from **December 2011**. I have not been provided with any evidence that the Complainants were at risk of defaulting on the mortgage loan. In fact, the evidence shows that in **November 2011**, the Complainants had €100,000 available to them from the original investment in the state savings scheme, €2,200 from the interest accrued on that investment and €27,800 in other funds, to make the part redemption repayment of €130,000 on **24 November 2011**. The Complainants submit that the additional funds were from a credit union loan of €9,000 and rental income. The evidence in the form of communications with the Provider suggests that the Complainants were in fact considering part redeeming in the sum of €150,000, if the Provider accepted that sum in full and final settlement of the loan. This evidence indicates that the Complainants had further sums available to them at the time.

The Complainants then redeemed the balance of the loan of €59,667.89 on **3 February 2012**. The evidence shows that the Complainants had available to them €50,000 from the original investment in the state savings scheme, €1,100 from the interest accrued on that investment and €8,567 in other funds, to make the final redemption repayment.

Whilst it may have been the case that the Complainants had intended to hold the savings bonds for the three year term, I do not accept the Complainants’ submission that the “*money divested from the schemes was paid to the [Provider] to reduce the level of mortgage which was directly caused by the exorbitant rates of interest being charged*”. The evidence shows that the Complainants of their own volition elected to withdraw both of the savings bonds after one year. The Complainants had from the inception of the loan in **January 2003** until **December 2011** elected to keep the mortgage loan account on interest only repayments. The evidence shows that once the mortgage loan was moving to capital and interest repayments in **December 2011**, the Complainants decided to make the two lump sum repayments to fully redeem the loan by **February 2012**.

The property was sold in **February 2014**. The Complainants detail that it was not their intention to sell the property but rather to maintain it as a source of income. They outline that they sold the property for €206,000 but it would have been worth between €260,000 and €270,000 in **January 2018**. The Complainants outline that they also are at a “[*loss of circa 35,000 rent [from] time of sale in 2014 to date*]” and “*loss of future rent of circa 18,000 per annum based on current rent*”.

I do not accept that the sale of the property and associated rental losses from **February 2014** can reasonably be linked to the overcharge in interest on the Complainants' mortgage loan account. The mortgage loan had been redeemed in full some two years earlier in **February 2012** and as such by the time the sale of the property occurred in **February 2014**, the Complainants were not making any mortgage repayments associated with the property. Further it appears on the basis of the Complainants' submissions that the property was yielding a rental income of approximately €11,600 per annum. The fluctuation in value of a property is not something that can be accurately predicted and the evidence shows that the Complainants made the decision to sell the property of their own accord in **February 2014**, having discharged the mortgage in **February 2012**.

I note that the overcharge on the Complainants' mortgage loan account occurred for approximately 11 years from **January 2003** to **February 2014**, when the mortgage loan was redeemed. At the outset between **January 2003** and **May 2006**, the Complainants were making overpayments of €42. This decreased to sums of between 34 cent and €1.32 per month in the period between **June 2006** and **October 2008**.

From **December 2008** the monthly overcharges increased to €147.91, and further increased to €272.46 in **May 2009**, and by **October 2009** increased to €384.07. In particular, I find that the overcharging on the Complainants' mortgage loan account for the final 3 years and 2 months was of a significant amount each month.

The Complainants contend that, during the period of overcharging (i.e. from **December 2002** and **February 2012**), they endured "*financial hardship*" occasioned by the necessity to meet higher levels of payment than should have been necessary. I have not been provided with any evidence of financial hardship. It appears to me that there is in fact evidence to the contrary, in that, the Complainants had sums of money available to them i.e. €150,000 that they invested in the state savings scheme. Further, the Complainants were in such a financial position that they did not sell the property until **2014**, two years after the mortgage loan account was redeemed in **February 2012**. The Complainants were also receiving rental income from the investment property of approximately €11,600 per annum.

The Provider has paid compensation of €1,367.19 to the Complainants, together with redress of €18,229.25 (interest overpaid and time value of money payment) and an independent professional advice payment of €615. In the circumstances of this matter, I accept the compensation paid by the Provider to be reasonable.

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

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Conclusion

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

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

24 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.