



<u>Decision Ref:</u>	2020-0318
<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 ending **0171** held by the Complainants with the Provider and an overcharge of interest in the amount of €17,673.85 on the mortgage loan account.

The mortgage loan was drawn down in **June 2006** in the amount of €141,750 and is secured on a Buy-to-Let property. The Complainants held two other mortgage loans with the Provider, a mortgage loan on their private dwelling house and a mortgage loan on another Buy-to Let property.

The Complainants' mortgage loan account ending **0171** was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "Examination"). The Provider identified that a failure had occurred on the account and the mortgage loan account was deemed to be impacted under that Examination. The Complainants' other two mortgage loans were not impacted as part of the Examination.

The Provider wrote to the Complainants on **17 August 2016** advising them that an error had occurred on their mortgage loan account as follows:

“The review, which is progressing, has found we fell short on our obligations to some customers, including instances where we were not sufficiently clear with them or where we failed to honour contractual commitments.

As part of our review we have established that you were charged too high a rate of interest on your mortgage account [redacted], a failure on our part that we deeply regret and for which we sincerely apologise”.

The Provider went on to state that:

“In order to ensure that you do not experience any further detriment as a result of our failure, the first step we are taking is to reduce your current interest rate 5.08%, to the ‘Buy to Let’ interest rate that your account should be on, which is the European Central Bank (ECB) rate (currently 0.00%) plus a margin of 1.50%. Your new rate is 1.50%”

The Provider restored a tracker interest rate of ECB plus 1.5% to the Complainants’ mortgage loan account on **17 August 2016**.

The Provider wrote again to the Complainants on **09 December 2016** and detailed the circumstances that caused this failure to happen as follows;

“Your mortgage account had the ‘Buy to Let’ rate, which could not be more than 1.50% over the ECB rate. At a point during your mortgage the interest rate moved to a different type of rate. While the interest rate that you moved to was lower for your benefit at the time, we didn’t tell you that as that interest rate moved you might end up paying more than 1.50% over the ECB rate.”

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 and reduced your interest rate, we have been able to calculate the redress and compensation that is due from 31/10/2008, which was when your account was first impacted.”

The Provider made a redress and compensation offering to the Complainants in the letter dated **9 December 2016**. The offer of €21,656.98 made by the Provider to the Complainants comprised the following;

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1. Redress of €18,925,79 covering;
 - The amount overpaid while on the incorrect rate.
 - Interest to compensate the Complainants for not having access to the money they overpaid on the mortgage account (Time Value of Money).
2. Compensation of €2,116.19 for the failure on the mortgage loan account.
3. Independent Professional Advice payment of €615.

The Complainants' mortgage loan account balance was reduced by €9,290.09 from €104,436.38 to €95,146.38.

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

In **April 2017** the Appeals Panel decided that the Complainants' appeal was unsuccessful and outlined as follows:

"..the Panel, in reaching its decision, considered all information available to it and decided that it did not agree with the customers' claim that the loss of ownership of the Buy to Let ("BTL") property, loss of appreciation of the BTL and the cost of selling the BTL arose as a result of the failure by the [Provider] to apply the correct interest rate....."

..it did not agree with the customers' claim that the non-financial losses claimed by the customers arose as a result of the failure by the [Provider] to apply the correct interest rate."

As the Complainants had been through the Provider's internal appeals process, this office was in the position to progress the investigation and adjudication of the complaint.

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

The Complainants' Case

The Complainants submit that the redress and compensation offer made by the Provider does not adequately reflect the financial and non-financial losses suffered as a result of the interest overcharged by the Provider on their mortgage loan account.

The Complainants submit that the compensation offered is “*highly inadequate*” and contend that the Provider’s actions between **2008** and **2016** has caused them both financial and non- financial losses.

The Complainants submit that in **2015**, they placed their “*one other rental property on the market*” and it sold for €165,000 on **01 October 2015**. The Complainants outline that the cost of selling the rental property (the “Rental Property”) was €5,320 in solicitors and estate agent fees. The Rental Property was purchased with and security against a separate mortgage loan account held with the Provider, not the mortgage loan account the subject of this complaint. The Complainants further outline that the loss of their Rental Property leaves them “*more financially compromised into the future*” and contend that by **2017**, the Rental Property would have appreciated in value by approximately €30,000.

The Complainants submit that they sold the Rental Property as they required capital of circa €20,000 - €30,000 in order complete an adoption process. The Complainants contend that if the Provider had not overcharged them for 8 years, they would have had the capital necessary to complete the adoption and they would not have had to sell their rental property. They submit that they hope to adopt a second child and not having this “*major asset (our rental property) will make the financing for this adoption process extremely difficult for [them].*”

The Complainants further contend that they suffered non-financial losses of “*stress, worry and uncertainty*” throughout the adoption process between **2008** and **2015** due to their inability to save for the adoption cost. The Complainants submit that the Provider’s failure “*significantly [and] negatively affected our savings. Despite living very modestly, we found it incredibly difficult to save the considerable amount necessary for us to complete an inter-country adoption process.*”

The Complainants also submit that from the date they put the Rental Property for up for sale, **June 2015**, until the date it was sold, **October 2015**, they had an “*extra workload, stress & inconvenience & uncertainty*” until the Rental Property was sold and they also received a referral email from their adoption agency.

Lastly, the Complainants submit that they are facing uncertainty about completing a second adoption due to the loss of the Rental Property. The Complainants submit that the

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Provider's failure "had the knock on effect of us losing ownership of [property address] which was our one main investment." The Complainants submit that "not having this property leaves us financially compromised [and] creates a huge, if not impossible task of completing a second adoption process". The Complainants submit that they "find this very upsetting".

The Complainants submit that they "believe" it is "poor practice" on the Provider's behalf that they never questioned their reasons for selling their Rental Property. They submit that *if the bank was aware of [their] reason for selling this property and had informed [them] at this stage of redress and compensation due to [them], [they] would not have continued with the sale of [the property].*

The Complainants are seeking compensation for the following:

1. The loss of appreciation of value of the property sold between **2015 and 2017** which the Complainants estimate to be €30,000;
2. The cost of selling the property (solicitors and estate agents fees) which was €5,320; and
3. The loss of rental income from the Rental Property.
4. Stress, worry and uncertainty throughout the adoption process between **2008 and 2015** due to the inability to save for the cost of the intercountry adoption;
5. Extra work load, stress and inconvenience and uncertainty caused by the process of selling the Rental Property between **June and October 2015**; and
6. The uncertainty in relation to their ability to pay for a second intercountry adoption due to the loss of their Rental Property.

The Provider's Case

The Provider submits that it is satisfied that it has adequately compensated the Complainants and believe the amount paid is fair and reasonable.

The Provider outlines that the Complainants' mortgage loan was considered to be impacted as part of the Examination in **December 2016** because when the Complainants moved to a different interest rate, the Provider failed to advise them that it may be higher than the "Buy to Let" interest rate of ECB + 1.5%. It states that the Provider has now honoured the General Terms and Conditions and rectified and redressed the mortgage

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loan account to put the Complainants in the position they would have been in had the “Buy to Let” interest rate of ECB + 1.5% been applied to the account at all times.

The Provider submits that the redress and compensation payment made to the Complainants is “fair” and “reasonable”. The Provider details that it refunded the Complainants the interest overpaid by them in the sum of **€17,673.85**. The Provider outlines that the time value of money payment of **€1,251.94** compensates the Complainants for not having the benefit of the money they overpaid and is calculated by selecting the best annual deposit rates the Provider offered during the impacted period and applies these on a monthly basis to the amounts that were overpaid during the impacted period.

The Provider outlines that it reduced the balance of the mortgage account by **€9,290.09** in respect of interest overcharged and the Provider outlines this was to bring the mortgage loan account to the level it would have been had the failures identified not happened.

It states that in order to determine the level of compensation for the Complainants, it calculated compensation based on a percentage of the interest overcharge plus a percentage of the time value of money payment. The Provider submits that in this case, where the impacted mortgage loan account relates to A Buy to Let Property (“BTL”) that is not in a legal process, the percentage applied is 7.5% of the overcharged interest. The Provider details that the 7.5% compensation payment was **€2,116.79**.

The Provider submits the purpose of the redress and compensation offering was to return the Complainants’ mortgage account to the position that they would have been in had the failure not occurred, and to compensate the Complainants for the detriment caused by the failure. It states that the criteria it considered in setting the level of redress and compensation offered to the Complainants in **December 2016** was in line with the principles of redress outlined under the Central Bank’s Tracker Mortgage Review guidelines.

The Provider submits that the Complainants submitted an appeal to the Independent Appeal Panel and it concluded that the appropriate level of redress and compensation had been provided to the Complainants.

In response to the Complainants’ submission that their savings were significantly compromised by consequence of the Provider’s overcharging of interest and this “forced” them to sell their second property, the Provider submits that it has not been provided with any evidence of this. The Provider submits that the Complainants did not communicate or make the Provider aware that they felt they had to sell their buy to let property and there

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was no indication on any of the Complainants' mortgage loan accounts of any financial restrictions or difficulties during the impacted period.

With respect to the mortgage loan on their private dwelling house, the Provider submits that the Complainants on their own initiative increased their repayments by €300 per month in **April 2011** and in **August 2012** they reduced the term on the mortgage loan by 2 years and 10 months, which had an effect of increasing the monthly repayments by a further €120 per month. The Provider submits that this suggests that Complainants had more than adequate repayment capacity after their increased payments which did not impact on their disposable income.

The Provider submits that *"All principal and interest repayments had been met on both the PDH and Buy to Let property since inception and no forbearance measures were sought at any point throughout the life of either loan."*

The Provider submits that while it was aware that the Complainants were in the process of selling the Rental Property in **March 2015**, it is not practice of the Provider to query a customer's decision to sell a property as this is a matter for the customer to decide. It submits that the *"Complainants sought interest only for six months in order that their outgoings would reduce as the property was vacated for the purpose of the sale."* The Provider submits that the rental income that the Complainants were receiving on the Rental Property was €650 per month. It submits that this would not be an unusual request and it agreed to the interest only period while the Rental Property was marketed for sale. The Provider submits that in order for it to approve the period of interest only repayments until the property was sold, the Complainants were required to complaint a **Standard Financial Statement** in **March 2015**.

The Provider asserts that it only became aware of the Complainants' decision to sell the Rental Property in **March 2015**, and the investigation to identify accounts that were impacted in the cohort of the Complainants' impacted account only began in **April 2016**. Therefore the Provider contends that it did not know the amount of interest overcharged or redress and compensation that might be payable before the Complainants sold the Rental Property.

The Provider outlines that in the event of customer being in financial difficulty it would discuss available options with the customers in order to come to a mutually suitable arrangement prior to progressing towards a sale. It submits that the mortgage loan account was *"in order and had always operated in accordance with the agreed terms and the Bank had no reason to question the Complainants' decision to sell"*.

The Provider submits that it understands the Complainants suffered stress and worry in relation to the adoption process as outlined in their appeal, but the Provider contends that it cannot agree that any stress or worry suffered in relation to this process was attributable in any way to the failure on their mortgage loan account.

The Provider submits that it believes that the redress and compensation paid to the Complainant is *"fair and reasonable"*.

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 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. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **31 August 2020**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

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The Provider has detailed that the redress payment of €18,295.79 reflects the amount of interest overpaid (€17,673.85) on the mortgage loan account and includes a payment to reflect the time value of money (€1,251.94).

The Provider has also reduced the balance of the Complainants' mortgage loan account by €9,290.09. The Provider has detailed that the Complainants' mortgage loan account was restored to a tracker interest rate of ECB + 1.50% in **August 2016**. The Provider also paid the Complainants compensation of €2,116.19 and €615.00 for the purposes of seeking professional advice.

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

The Complainants submitted a **Buy to Let Application Form** to the Provider which was signed by the Complainants on **24 March 2006**. The Loan Details section of the Application Form records that the purchase price of the property was €157,500 and that would be funded by a mortgage loan from the Provider of €141,750 and €12,250 would be funded from the Provider's "*Buy to Let Balance Loan**". Underneath, it reads "** Available only to existing [Provider] mortgage customers. Please complete Section I [Buy to Let Balance Application] if you wish to borrow funds secured on your Private Dwelling Home*". The Complainants selected the Loan Type option of "*Repayment/ Annuity*".

Underneath the "*PROPERTIES OWNED*", the Complainants have listed the following:

Property Address	Market	Lending	*Current Loan Current Monthly	
Repayment Rental	Value	Institution	Balance	Repayment
Income				
[Private Dwelling ----- Home]	€500,000	[Provider]	€248,000	€248,00
		296k	€116.39	
[Rental Property] €750.00	€300,000	[Provider]	€132k	€809.92

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A **Loan Offer** dated **28 April 2006** issued to the Complainants, which does not appear to have been accepted by the Complainants. An **Amended Loan Offer** dated **18 May 2006** issued to the Complainants which detailed as follows;

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1. Amount: €141,750 (one hundred and forty one thousand, seven hundred and fifty euro)
2. Term & Nature: 25 year Repayment Loan (including a capital moratorium for the first 12 months).
3. Purpose of Loan: Towards the purchase of [Property Address] at a cost of €157,500 plus fees.
4. Rate of Interest: Variable at 4.00% p.a.
Rate Basis: Variable Buy To Let Rate
5. Repayments: €472.50 per month comprising interest only for the first 12 months payments based on the above variable rate.

After expiry of the initial 12 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.”

The **Standard Commercial Loan Conditions** detail as follows:

“1. DEFINITIONS

...

“ECB Rate” is defined as the European Central Bank’s Main Refinancing Operating Bid Rate as set by the European Central Bank.

“Buy To Let Rate” shall be the rate as determined by [the Provider] from time to time for variable residential investment loans. The dates on which the “Buy to Let Rate” shall vary shall be determined by the timing of changes to the ECB Rate and shall take place on the sooner of:-

...

Subject to the timing differences outlined above, [the Provider] shall undertake that the variable "Buy to Let" Rate shall not at any time be higher than 1.5% over the ECB rate, throughout the term of the Loan.

...

16. FIXED RATE LOANS

...

On the expiry of the fixed rate period, the interest rate will convert to the variable rate set out in the Offer Letter. If at the end of the fixed rate period, [the Provider] is offering a fixed rate for a defined period, the borrower may opt to convert to this rate for that period and defer conversion to a variable Rate".

The **Acceptance** of the loan was signed by the Complainants on **19 May 2006**.

The Complainants' mortgage loan account was drawn down on **19 May 2006** on the Provider's Buy to Let Variable Rate. In a document contained in the documents received from the Independent Appeals Panel entitled "*CASE SUMMARY AND RESPONSE*", the Provider states that on "*10/08/2007: Bank applied a 0.5% discount to the Variable BTL Rate at request of Borrowers*". The Complainants' mortgage loan account remained on this rate until **October 2008**.

It was at this time that the failure that was subsequently identified in **August 2016** as part of the Examination occurred on the Complainants' mortgage loan account, in that, the interest rate applicable to the Complainants' mortgage loan could not be more than 1.5% over the ECB rate. However from **November 2008** the actual rate on the account was higher than the ECB + 1.5% rate.

In the period between **November 2008** and **March 2010**, the mortgage account remained on the Provider's variable Buy to Let rate which fluctuated between 4.38% and 5.63%. The tracker interest rate that should have been applied was ECB + 1.5%. Between **November 2008** and **March 2010**, the overall tracker rate (ECB + margin) fluctuated between a rate of 2.5% and 5.25%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **November 2008** and **March 2010**, is also represented in the table below:

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Date Range	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
Nov 2008 – Dec 2008	0.38% - 0.88%	€896.62	€827.24 - €866.26	€30.36 - €69.38
Jan 2009 – May 2009	0.88% - 1.63%	€799.71 - €837.53	€681.98 - €770.67	€66.86 - €119.35
Jun 2009 - Mar 2010	1.88%	€799.71	€665.13	€134.58

The Provider has submitted into evidence an “APPLICATION FOR A FIXED RATE MORTGAGE”, signed by the Complainants on **05 February 2010** seeking to apply a 2 year fixed interest rate of 4.9% to the mortgage loan account. The Applications details:

“I/We wish to apply for a fixed rate of 4.9% for the first 2 year(s) of my/our mortgage.

*I/We understand that when this fixed rate period has expired the interest rate will **convert to the applicable variable rate then prevailing**. The variable interest rate basis will be specified in the loan offer letter issued by [the Provider] (if the loan is approved).*

The Provider has also submitted into evidence a letter from the Provider to the Complainants’ dated **01 April 2010** stating that the fixed interest rate had been applied to the mortgage loan account and detailing the following:

“Thank you for your recent application to fix the rate on your account at 4.90% over 2 years. We are writing to you to confirm that your account has been converted to this rate as requested.”

In the period between **April 2010** and **March 2012**, the mortgage account remained on the fixed interest rate of **4.90%**. The tracker interest rate that should have been applied to the mortgage loan account was ECB + 1.5%. Between **April 2010** and **March 2012**, the overall tracker rate (ECB + margin) fluctuated between 2.50% and 3.00%. The difference

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in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **April 2010** and **March 2012**, is also represented in the table below:

Date Range	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
Apr 2010 – Apr 2011	2.4%	€837.66	€665.13	€172.53
May 2011 – Jul 2011	2.15%	€837.66	€680.06	€157.60
Aug 2011 – Nov 2011	1.9%	€837.66	€695.42	€142.24
Dec 2011	2.15%	€837.66	€679.85	€167.81
Jan 2012 – Mar 2012	2.4%	€837.66	€664.75	€168.28

The fixed rate period expired in **March 2012** and the mortgage loan account reverted to the Provider's Buy to Let Variable rate.

In the period between **April 2012** and **October 2015** the Complainants' mortgage loan account remained on the Buy to Let Variable rate which fluctuated between 4.83% and 5.08%. The tracker interest rate that should have been applied to the mortgage loan account was ECB + 1.5%. Between **April 2012** and **October 2015**, the overall tracker rate (ECB + margin) fluctuated between 1.55% and 2.50%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **April 2012** and **October 2015**, is also represented in the table below:

Date Range	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
Apr 2012 – Jul 2012	2.33%	€833.03	€664.75	€168.28
Aug 2012 – May 2013	2.58%	€833.03	€649.86	€183.17
Jun 2013 – Nov 2013	3.08%	€849.27	€635.44	€213.83
Dec 2013 – Jun 2014	3.33%	€849.27	€621.83	€227.44
Jul 2014 – Sep 2014	3.43%	€849.27	€616.20	€233.07
Oct 2014 – Oct 2015	3.53%	€849.27	€611.00	€238.27

The Provider submits that it was aware in **March 2015** that the Complainants were seeking to sell their Rental Property. The Complainants have submitted that the Rental Property was secured by a separate mortgage loan account held by the Provider and was not the property secured against the mortgage loan account the subject of this complaint.

The Provider has submitted into evidence a recording of a **telephone call** from **15 March 2015** between the First Complainant and a representative of the Provider. During that call the First Complainant sought the balance of the mortgage secured against the Rental Property and was informed it was around €90,000.

I note that from the evidence that the Complainants have submitted a copy of the letter dated **17 March 2015** which details as follows;

“We will be placing our investment property at [the rental property address] on the market for sale in July of 2015. We will therefore have a deficit of rental income from July until the completion of the sale. For this reason we would like to begin repayments of the interest only on the loan account no. [ending 3471] from July until the completion of the sale. When the house is sold, this loan account will be cleared in full.”

A copy of the Standard Financial statement has not been submitted into evidence by either party. It appears from the evidence that a decision was made by the Complainants in **March 2015** to sell the Rental Property. The evidence shows that in **March 2015**, the First

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Complainant contacted the Provider seeking the redemption figures of the mortgage loan account secured on the Rental Property. On **17 March 2015**, the Complainants wrote to the Provider stating that they wished to sell the Rental Property and enclosing a Standard Financial Statement. The Complainants also sought a period of 6 months interest only repayments on the Rental Property which appears to have been granted by the Provider on **08 July 2015**.

The Complainants contend that they only decided to sell the Rental Property as they required between €20,000 and €30,000 in order to complete the adoption. The Complainants submit that:

“If [the Provider] had not overcharged us for 8 years, we would have had the capital necessary to complete this adoption process and would not have sold our rental property”.

I have summarised the position from **November 2008** up to **March 2015** which is when the evidence shows the decision was made to sell the Rental Property as follows;

Total mortgage repayments made	Total mortgage repayments that should have been made	Total monthly overpayments
€62,672.78	€49,723.46	€12,949.46

It appears that had the Complainants been charged the correct interest rate on their mortgage loan the total repayments that the Complainants would have been required to make during the period between **November 2008** up to **March 2015**, would have been €12,949.46 less than the repayments that they were required to make. I accept that this is a significant sum for the Complainants to pay over this period of time. However the evidence does not support the Complainants position that if they had not been over charged on their mortgage loan account then they would have had funds of between €20,000 and €30,000 arising from the overcharge available to them in **March 2015**.

The evidence does not support the Complainants’ assertion that the decision to sell the Rental Property in **March 2015** was a direct consequence of the incorrect interest rate being charged on the Complainants’ other mortgage loan account at that point in time.

The Complainants “believe” that it was “bad practice” that the Provider did not ask why they had decided in **March 2015** to sell the Rental Property. There was no obligation on the Provider to query this with the Complainants. It is not the Provider’s role, and could indeed be considered intrusive for the Provider to seek further clarification from the

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Complainants as regards a private decision being made by the Complainants to sell the Rental Property. This was entirely a matter for the Complainants themselves.

I have not been provided with any evidence that the Complainants were in any financial difficulty with respect to any of their mortgage loans. Indeed the Complainants have submitted copies of statements from a Credit Union which shows that the First Complainant held savings of €19,393 as of **03 September 2015** and the Second Complainant held savings of €13,861.86 as of **02 October 2015**.

The evidence shows that the Rental Property was sold on **01 October 2015** for a sum of €165,000. The Complainants have submitted a receipt dated 01 October 2015, indicating that the mortgage had been redeemed in the amount of €91,925.96. The Complainants have submitted into evidence a "Completion Statement" showing that the balance due and owing to them following the sale was €68,059.86.

The Complainants have submitted that they completed the adoption after the sale and used the funds from the sale of the Rental Property to complete the adoption. The Complainants have submitted into evidence various receipts totalling €25,300, which they attribute to their intercountry adoption. I understand that the Complainants are of the view that had they not been overcharged from November 2008 up to November 2015, when they appear to have begun the adoption process, they would not have had to sell the Rental Property in **October 2015**.

I have summarised the position from **November 2008** up to **November 2015** which is when the evidence shows the adoption process began as follows;

Total mortgage repayments made	Total mortgage repayments that should have been made	Total monthly overpayments
€69,466.94	€54,611.46	€14,855.49

It appears that had the Complainants been charged the correct interest rate on their mortgage loan the total repayments that the Complainants would have been required to make during the period between **November 2008** up to **November 2015**, would have been €14,855.49 less than the repayments that they were required to make. I note that this is approximately €10,444.51 less than the amount the Complainants submit that they required to complete the adoption process. The evidence does not support the Complainants' position that if they had not been over charged on their mortgage loan account then they would have had the €25,300 arising from the overcharge available to them in **November / December 2015** to complete the adoption, without requiring other funds.

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I note that the Complainants are of the view that they had no option but to sell their Rental Property for €165,000 in **2015** and contend that it would have *“appreciated in value by €30,000”* in **2017**. I am of the view that any fluctuation in the value of the Rental Property is not something that can be accurately predicted. The Complainants’ assertion does not in any way evidence a definitive future valuation of the Complainants’ Rental Property such that the Complainants could have accurately known the future value of the property at the time they sold the property in **October 2015**.

The Complainants further contend that *“losing ownership of this rental property will continue to financially compromise [them] into the future”* as they are hoping to make another adoption. They submit that not having this *“major asset (our rental property) will make the financing for this adoption process extremely difficult for [them].”* The evidence shows that the Complainants sold the Rental Property of their own volition in order to have release equity at that time. When the Complainants discharged the balance due and owing on the mortgage they had €68,059.86 available to them from the proceeds of the sale. When the Complainants made the decision to sell the Rental Property they should have known that the consequence of the sale of the property was that the Complainants would no longer receive a rental income from that property. This was a decision for the Complainants to make.

From **November 2015** the Complainants’ mortgage loan account remained on the Buy to Let Variable rate was 5.08%.

The tracker interest rate that should have been applied to the mortgage loan account was ECB + 1.5%. Between **November 2015 and November 2016**, the overall tracker rate (ECB + margin) fluctuated between 1.50% and 1.55%. The Provider restored the mortgage loan account to the tracker interest rate of ECB +1.50% in **August 2016**, however the mortgage loan account continued to be overcharged until **November 2016**. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage account between **November 2015 and November 2016**, is also represented in the table below:

Date Range	Difference in Interest rate	Actual Monthly	Monthly repayments if the	Overpayment per month
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	charged vs the tracker interest rate	Repayments	mortgage was on the Tracker Rate	
Nov 2015 - Mar 2016	3.53%	€849.27	€611.00	€238.27
Apr 2016 – Aug 2016	3.58%	€849.27	€606.74	€242.53
Sep 2016 – Nov 2016	0.00%	€664.80	€606.10	€58.70

I accept that the Complainants should not have been overcharged on their mortgage loan between **31 October 2008** and **17 August 2016**. I note that over the impacted period the monthly overpayments on the mortgage loan continued to increase significantly from November 2008 when the overpayment per month was €30.36, to May 2011 when the overpayment per month €157.60, to December 2013 when the overpayment per month was €227.44 up to April 2016 when the overpayment per month was €242.53. I accept that these are significant overpayments for the Complainants to have had to bear on a monthly basis. However the evidence shows that the Complainants sold their Rental Property which was the subject of a separate mortgage with the Provider in **October 2015** of their own volition. There is no evidence to support the Complainants' position that the Provider "forced" them to do so. Therefore, the Provider cannot be held responsible for all of the losses arising from the sale of that property as have been claimed by the Complainants with respect to the sale.

The Provider has paid compensation of €2,116.19 to the Complainants, together with redress of €18,925.79 (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 set out above, I do not uphold the complaint.

Conclusion

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

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



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.