



<u>Decision Ref:</u>	2020-0319
<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>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainant with the Provider and the overcharge of interest in the amount of €8,278.24 on the mortgage loan account.

The mortgage loan account was drawn down in **January 2004** in the amount of €75,000 over a term of 15 years.

The Complainant's mortgage loan account 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 mortgage loan account and as such that mortgage loan account was deemed to be impacted under that Examination.

The Provider wrote to the Complainant on **02 February 2018** advising her of the failure. The Provider detailed how it "*got things wrong*" as follows;

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

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

“As a result of our failure, we can confirm that you were charged an incorrect interest rate between 19 Jan 2012 and 28 Nov 2017.”

The Complainant’s mortgage loan account was restored to a Tracker Interest Rate of ECB + 0.85% in on **29 November 2017**.

The Provider made an offer of redress and compensation totalling €10,692.15 to the Complainant. The offer comprised of the following:

1. Redress covering;
 - Total interest overpaid by the Complainant of €8,278.24; and
 - Interest to reflect time value of money of €413.91
2. Compensation of €1,000 for the failure on the mortgage loan account.
3. Independent Professional Advice Payment of €1,000.

The Complainant was not satisfied with the amount of redress and compensation offered.

In **March 2018**, the Complainant appealed the redress and compensation offering to the Independent Appeals Panel. The basis for appeal was *“the level of balance adjustment refund, compensation or independent advice payment offered, for example compensation to reflect any lost opportunity for capital appreciation.”*

The Appeals Panel decided on **18 May 2018**, the appeal was upheld and the Complainant was awarded additional compensation of €1,500.00. The key factors in determining the decision by the Appeals Panel was as follows;

“The Panel had regard to the level of the overpayment and its impact on the Customer’s financial and personal circumstances as supported by the evidence in the Customer’s appeal”.

As the Complainant completed the Provider’s internal appeals process and the offer made by the Provider was not made in full and final settlement of the matter, this office was in a position to progress the investigation and adjudication of the complaint.

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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 Complainant by consequence of the Provider's failure in relation her mortgage loan account.

The Complainant's Case

The Complainant submits that the offer of redress and compensation made by the Provider does not adequately take account of the stress, hardship and financial pressure placed on her as a result of the conduct of the Provider.

The Complainant submits, that she had a meeting with the Provider every time she changed the interest rate on her mortgage loan account, and submits that she was never advised or informed by the Provider that her choice of interest rate, would "*eliminate [her] options further down the line*".

The Complainant submits that the overpayment caused her financial pressure and on **21 October 2014**, she was forced to forfeit critical illness cover to the value of €63,816 from her mortgage protection policy due to this financial pressure. The Complainant contends that she had to forfeit this critical illness cover as "*a result of paying exorbitant and unnecessary mortgage interest*".

The Complainant further submits that had she been charged the correct interest rate on her mortgage loan account, she would not have had to cancel her critical illness policy and downgrade to a basic mortgage protection policy. The Complainant contends that had she had the extra money each month, she would have continued paying her critical illness policy.

The Complainant submits that the critical illness cover would have been of great assistance to her during an extremely difficult time in **2015** when the Complainant was diagnosed with a serious illness. The Complainant submits that the compensation she was awarded is not adequate in respect of the financial losses she incurred.

In this regard the Complainant states;

"I am not questioning the refund of overpayment and interest. I am, however, very disappointed with an offer of €1,000 compensation when I lost a payment of €63,816 in respect of Critical Illness Cover as a result of the overpayment.

I should be obliged if you would assess the above bearing in mind the stress caused to me and the hardship to me as a result of same"

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The Complainant further submits that she suffered stress as a result of the overpayments on her mortgage loan account.

The Complainant is seeking compensation for the following;

- (i) Critical Illness Cover - The Complainant submits that the overpayment caused her financial pressure and she was forced to forfeit Critical Illness Cover to the value of €63,816 from her Mortgage Protection Policy on 21 October 2014. The Complainant submits that the Critical Illness Cover would have been of great assistance to her during an extremely difficult time in 2015 when the Complainant was diagnosed with an illness; and
- (ii) Stress – The Complainant submits that she suffered stress as a result of the overpayments on her mortgage loan account.

The Provider's Case

The Provider submits that it issued a Loan offer letter for the Complainant's mortgage loan account dated **01 May 2003**, and it was drawn down on **26 January 2004**, initially on a 12 month fixed interest rate. On the expiry of the fixed rate period, the mortgage loan account was to revert to a *"(non-tracker) variable rate"*.

The Provider details that on the expiry of the fixed rate period in **January 2005**, the Complainant signed a Mortgage Form of Authorisation ("MFA") on **17 January 2005** electing to apply a tracker interest rate of ECB +1.10%. The Provider submits that the mortgage loan account remained on this interest rate until **13 December 2005**, when the interest rate was reduced to ECB + 0.85%. The Provider submits that it unilaterally reduced the staff tracker variable margin to 0.85% and it issued a letter to the Complainant regarding this.

The Provider submits that the tracker interest rate of ECB + 0.85% remained on the mortgage loan account until **31 August 2006** as the Complainant elected to apply a *"Staff Non Standard Variable Rate"* by way of MFA signed on **29 August 2006**. The Provider states that the Staff Non Standard Variable Rate was a non-tracker variable rate. The Provider contends that the MFA signed by the Complainant on **29 August 2006** *"definitively ended the former tracker rate and means that the Complainant has no claim in contract to a tracker rate"*.

The Provider submits that the Complainant signed an MFA on **16 January 2007**, applying a 5 year fixed interest rate to her mortgage loan account.

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The Provider submits that prior to the expiry of the fixed interest rate period in **December 2011**, it wrote to the Complainant setting out what rates were available to her at that time and enclosing an MFA to enable the Complainant to make her choice. The Provider outlines that it offered her a choice of a non-tracker variable rate and 3 different fixed rate options. The Provider submits that the MFA did not include a tracker interest rate option as;

- a. the Complainant was on a non-tracker variable rate when she applied the fixed rate which was ending in December 2011; and
- b. the Provider had withdrawn tracker rates generally in 2008 and the Complainant was on a non-tracker variable rate when she applied the fixed rate which was ending in December 2011.

The Provider submits that the choices offered in the MFA accorded with General Condition 7 (b) as contained in the Loan Offer letter dated **01 May 2003**, which sets out the treatment of the interest rate on the expiry of a fixed rate period. The Provider details that the Complainant chose to apply the standard variable rate by signing the MFA on **4 January 2012**.

The Provider notes *“the Complainant’s confirmation of meeting with a mortgage advisor”* prior to changing the interest rates on her mortgage loan, but submits it holds no record of any such meeting. The Provider further submits that it notes the Complainant has not asserted that she was provided with confirmation that a tracker interest rate would be available to her in the future.

The Provider outlines that it included the Complainant’s mortgage loan account in the Central Bank directed Tracker Mortgage Examination because it was formerly on a tracker interest rate. The Provider submits that when the mortgage loan account moved to a fixed rate from a tracker rate, the Provider failed to *“provide sufficient clarity as to what would happen at the end of that fixed rate”* and the language used by the Provider may have been *“confusing or misleading”*.

The Provider submits that it *“had not breached any contract”* with the Complainant and that there was no positive representation made by the Provider to the Complainant before she entered the fixed rate that she could move to a new tracker rate on the mortgage loan at the end of the fixed rate period. The Provider outlines that the failure on its part was to *“identify any type of variable rate that would apply at the end of the fixed rate period”* and the Provider submits that this is a *“significantly less serious shortcoming than a breach of contract or a positive misrepresentation, at a point before the Complainant fixed the rate, that a tracker rate would be made available at the end of the fixed rate period.”*

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The Provider details that it has “restored” the Complainant’s mortgage loan account to the tracker interest rate of ECB +0.85%. The Provider asserts that the redress payment with respect to the account was calculated to compensate the Complainant for the overpayments in the relevant period when she was paying a higher rate than the tracker rate and that payment accurately and adequately compensates the Complainant for the absence of her tracker interest rate during the relevant period. The Provider states that it has included a sum for the “*time value of money, in effect interest*” and this is “*the only feasible and accurate way of compensating for the loss of use of money due to overcharging*” and is of the view that therefore this is adequate compensation. The Provider submits that the Appeals Panel awarded an additional sum of €1,500 in compensation and this “*strengthens the argument that compensation paid was at least adequate*”.

The Provider submits that the loss of the Complainant’s critical illness cover cannot “*fairly and reasonably*” be said to be caused as a result of the Provider’s overcharge of interest. The Provider asserts that there was no requirement in the Loan Offer Letter for the Complainant to take out the critical illness cover that was included with her Life Policy, and so the Complainant’s decision to both take out and drop the critical illness cover “*has always been personal to the Complainant*” and the Provider had no role in it.

The Provider outlines that the Complainant surrendered her Life Policy on **21 October 2014** for a sum of €1,421 and replaced it with “*term assurance*”. The Provider submits that the monthly premium which included critical illness cover had been €58.78 and the term assurance policy schedule confirms a monthly premium of €20.85. The Provider submits that the difference between those policies was €40 per month. The Provider further contends that the Complainant has not presented any evidence to show that her decision to cancel the Life Policy in October 2014 and replace it with the term assurance policy was connected to the interest rate on her mortgage loan account or any other financial difficulties.

The Provider submits that it has no record of the Complainant contacting it in 2014 to say that she was in financial difficulty, and that it had no reason to suppose that the Complainant had any form of financial difficulty in 2014 as her payment record on the mortgage loan account and a second mortgage loan account held with the Provider is exemplary. The Provider submits that the Complainant’s monthly repayments at the high non-tracker interest rate for her mortgage loan account in 2014 were €347 and it does not seem likely to the Provider that such a repayment would have forced the Complainant to cancel her critical illness cover to save €40 a month.

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The Provider further contends that the Complainant has provided no reason as to why she had to economise in 2014 nor why the cancellation of her critical illness cover was her only option to economise. The Provider submits that although it is not privy to any discussions the Complainant may have held with her Life Assurance Provider, there are any number of reasons the Complainant may have decided to replace her existing policy in 2014.

The Provider submits that the Complainant's Life Policy was the subject of a review in **December 2008** and would have been subject for a further review in **December 2014**. The Provider submits that *"it is not unreasonable to speculate that this policy review may have given the Complainant cause to reconsider maintaining a whole of life policy"*. The Provider goes on to submit that at *"that life stage such cover generally becomes more expensive to maintain"*. The Provider details that the notes included in the policy review indicates the likelihood of increasing costs to maintain the policy. The Provider reiterates that it is not privy to the details of the policy review in 2014, any assessment of the product suitability surrounding the surrender or the replacement of the policy.

The Provider submits that the Complainant made a submission to the Appeal's Panel which included a consideration for the stress she suffered. The Provider outlines that it stands over the outcome of the Appeals Panel which increased the Complainant's compensation by €1,500. This was not offered in full and final settlement of the matter.

The Provider also outlines that there is no causative link between the question of the tracker interest rate and the Complainant's decision to encash her whole life protection policy. The Provider submits that it is not fair to say that the Complainant's choice of one policy over another resulted from the conduct complained of. The Provider submits that the misfortune of the Complainant becoming seriously ill about a year after cancelling her critical illness policy is too remote to the tracker issue to be fairly or reasonably said to result from it.

The Provider further submits that the Complainant has not established that the loss of €64,000 (the value of the critical illness benefit payable under the policy) resulted from overcharging on her mortgage loan account or that the only reason the Complainant cancelled her policy was due to the tracker overcharging.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has failed to offer adequate redress and compensation to the Complainant for the failure identified on her mortgage loan account.

Decision

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

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

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

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.

At the outset, I note that the Provider has made submissions about its view that there was no breach of contract and no misrepresentation in this matter. I will not be making any determination as to the nature of the Provider's failure as I do not think that this is necessary in the circumstances of this matter. This matter has already been considered by the Provider and I find it most unnecessary that the Provider has decided to put forward arguments as to the Complainant's entitlement to a tracker interest rate on her mortgage. The Complainant has already been put back on a tracker interest rate so the only issue for decision is whether the Provider has offered adequate compensation to the Complainant by consequence of the Provider's failure in relation to her mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainant in **February 2018**.

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The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress. The redress payment of €8,692.15 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €413.91 to reflect the time value of money. The Provider also paid the Complainant €1,000 for the purposes of seeking legal advice and compensation of €1,000. The Provider submits that the Appeals Panel added a further sum of €1,500 which the Provider is bound by. The Complainant has retained the right to proceed with this complaint as that offer of €1,500 was not in full and final settlement of the matter. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel has already paid to the Complainant.

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

The Complainant holds a mortgage loan account with the Provider, which was drawn down in **January 2004** in the amount of €75,000 for a term of 15 years, commencing on a 12 month fixed interest rate of 2.95%.

On the expiry of the fixed rate period, on **17 January 2005**, the Complainant signed a **Mortgage Form of Authorisation ("MFA")** to apply a tracker interest rate of ECB +1.10% to the mortgage loan account. The mortgage loan account remained on this interest rate until **13 December 2005** when it was reduced to ECB + 0.85%. The Provider has submitted that the reason for this reduction was because it unilaterally reduced the staff tracker margin to ECB + 0.85% by sending the Complainant a Product Switch letter to this effect.

On **29 August 2006**, the Complainant signed a MFA to apply the Staff Non Standard Variable Rate to the mortgage loan account.

On **16 January 2007**, the Complainant signed a MFA to apply a 5 year fixed interest rate to her mortgage loan account. It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainant's mortgage loan account.

On **21 July 2008**, the Complainant signed a MFA to extend the term of the mortgage loan by 11 years from a maturity dated of 23 February 2019 to 23 February 2030.

The Complainant signed a MFA on **04 January 2012** for a Variable LTV Rate of 3.85% to be applied to her mortgage loan account on the expiry of the fixed interest rate period. It is from this point in time that the tracker interest rate of ECB + 0.85% should have been and has since been retrospectively applied to the Complainant's mortgage loan account.

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The variable interest rate that applied to the mortgage loan between **January 2012** and **October 2014** commenced at 3.85% and moved upward to 4.35%. Between **January 2012** and **October 2014**, the overall tracker rate (ECB + 0.85% margin) commenced at 1.85% and reduced to 0.90% over the time period.

The difference in the interest rate actually charged to the mortgage loan and the interest rate that would 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 + 0.85%) had been applied to the mortgage account between **January 2012** and **October 2014**, is also represented in the table below;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual monthly repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Jan 2012 – Jun 2012	2.00%	Between €383.02 and €358.56	€303.80	Between €54.76 and €79.22
Jul 2012 – Oct 2012	2.25%	€358.56	€296.43	€62.13
Nov 2012 – Apr 2013	2.75%	€369.84	€296.43	€73.41
May 2013 – Oct 2013	3.00%	€369.84	€290.76	€79.08
Nov 2013 – May 2014	3.25%	€369.84	€284.23	€85.61
June 2014 – Oct 2014	3.35%	€369.84	€282.76	€87.08

It was at this time in **October 2014**, that the Complainant cancelled the critical illness cover she had held. The evidence shows that the monthly overpayments on the mortgage loan were increasing up to this point in time and had reached over €80 per month for the 12 months leading to **October 2014**.

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The Provider has submitted into evidence a letter dated **20 November 2009** issued to the Complainant in respect of her life assurance policy which details as follows:

“Your revised details are as follows:

<i>Life Assured:</i>	<i>[The Complainant]</i>
<i>Life Cover:</i>	<i>€75,000.00</i>
<i>Additional Critical Illness Plus:</i>	<i>€63,816.00</i>
<i>Premium:</i>	<i>€58.78 per month</i>
<i>Term:</i>	<i>€15 years from the policy start date”</i>

On this basis it appears that from **November 2009** to **October 2014**, the Complainant’s monthly payments towards her life assurance policy were €58.78, which included life cover and critical illness cover. The evidence also confirms that the Complainant surrendered this life assurance policy on **21 October 2014** for the amount of €1,421.56.

The Provider has also submitted into evidence a Policy Document, which contains the terms of a new life assurance policy (the “New Policy”) taken out by the Complainant on **22 October 2014**, which details the following:

<i>“Life Insured:</i>	<i>[The Complainant]</i>
<i>Type of Cover:</i>	<i>Single Life</i>
<i>Date of Birth:</i>	<i>[Redacted]</i>
<i>Policyholder:</i>	<i>[The Complainant]</i>
<i>Policy Start Date:</i>	<i>21/10/2014</i>
<i>Initial Premium:</i>	<i>€20.85 per Month</i>
<i>Policy Term:</i>	<i>16 years</i>
<i>Medical-Free Conversion:</i>	<i>No”</i>

The Complainant states that *“If [the Provider] had NOT overcharged me in relation to my Mortgage I would not have had to cancel my Critical Illness Cover”* in **October 2014**. The evidence shows that the Complainant took out a new policy in **October 2014**, which did not include critical life cover and cost approximately €30 less per month. The amount the Complainant was overcharged on her mortgage loan account each month between **January 2012** and **October 2014**, was marginally more than the premium that she was paying on the policy which included the critical illness cover.

The Provider submits that it suspects that a policy review took place in or around **October 2014** and that it was not privy to the surrender and replacement of the policy, but that there was a likelihood of a cost increase to maintain the policy, which included the critical illness cover.

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The Complainant has not offered any evidence with respect to the policy review or any discussions that took place with the life assurance provider when the critical illness policy was surrendered and the new policy was taken out.

I note that the Provider has also made submissions that the loss of the Complainant's critical illness cover cannot "*fairly and reasonably*" be said to be caused as a result of the Provider's overcharge of interest and that the Complainant's decision to both take out and drop the critical illness cover "*has always been personal to the Complainant*" and the Provider had no role in it. I further note that the Provider contends that the Complainant has not presented any evidence to show that her decision to cancel the Life Policy in **October 2014** and replace it with the term assurance policy was connected to the interest rate on her mortgage loan account or any other financial difficulties.

I find it highly speculative that the Provider has put forward arguments suggesting that it in some way knows that the Complainant's decision to cancel her life assurance policy in **October 2014** was not in any ways connected to the monthly overcharge of interest on her mortgage loan account. It is disingenuous for the Provider to put forward an argument suggesting that it knows why the Complainant made certain decisions regarding her finances in **October 2014** with no basis to these assertions.

At this remove, it is not possible for the Provider, or this office to determine whether the Complainant would have maintained the critical illness policy had she been paying the correct interest rate on her mortgage loan account at the time. I accept that the Complainant, with the benefit of hindsight, believes she would have continued to pay into the policy, but there is no way that this can be proven.

However, what is evident, is that in or around **October 2014**, the Complainant made the decision to cancel her critical illness cover. This decision reduced the Complainant's outgoings by €30 per month. At the time, the Complainant was overpaying by €87.08 on her mortgage loan, in circumstances where she should not have been overpaying on her mortgage loan account at all. The Complainant was deprived of knowing her true financial position and was deprived of the opportunity to make fully informed decisions on the basis of that true financial position. It is my view that the decision to cancel the policy was a significant decision to make, in circumstances where the Complainant had been paying into the policy for just short of 5 years. I believe that it cannot but be the case that the Complainant's financial decisions were impacted by the fact that she was overpaying on her mortgage loan at the time. The evidence shows that the Complainant was conscious of her finances at the time and was prudent in the management of her limited resources.

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The variable interest rate of 4.35% continued to apply to the Complainant's mortgage loan account from **November 2014** until **November 2017**, when the tracker interest rate of ECB + 0.85% was reinstated to the mortgage loan account on **29 November 2017**. Between **November 2014** and **November 2017**, the overall tracker rate (ECB + 0.85% margin) reduced from 0.90% to 0.85%.

The difference in the interest rate actually charged to the mortgage loan and the interest rate that would 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 + 0.85%) had been applied to the mortgage account between **November 2014** and **November 2017**, is also represented in the table below;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual monthly repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Nov 2014 – Feb 2016	3.45%	€369.84	€280.18	€89.66
Mar 2016 – Dec 2016	3.50%	€369.84	€280.21	€89.63
Jan 2017	3.50%	€341.45	€257.15	€84.30
Feb 2017 – April 2017	3.50%	€147.28	€147.28	€0.00
May 2017 – Nov 2017	3.50%	€347.36	€259.31	€88.05

The Complainant was diagnosed with a significant illness in **November 2015**. The Complainant has submitted patient correspondence from her Consultant dated **02 March 2016** to this effect.

The evidence also shows that the Complainant submitted a **Standard Financial Statement (SFS)** to the Provider dated **03 January 2017**. The SFS shows that the Complainant's total monthly income at the time was €2,169.00 and total monthly expenditure was €2,224.98.

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In addition the Complainant had monthly mortgage repayments of €474.62 and other monthly debt repayments of €249.61, which resulted in an overall monthly deficit of €780.11.

The Provider has also submitted into evidence a “*Branch SFS/FRF Checklist*” which states:

“...Customer looking for 6 months IO [interest only] as she is out of work on sick leave cusotmer [sic] suffered with [illness] last year and treatment effected her [redacted]. Payments have reduced as she has now gone on to her PHI Scheme and she is down approx. €500.00 per month. Customer is also going through a divorce which she hopes to settle in Feb 2017. Customer feels that the reduced payment for the 6 month her time [sic] to get finances sort after divorce and will have no problem maintain mortgage there after and may even clear in full. Due to her illness [Complainant’s] cost in relation to maintenance of the home increased as she cant lift or stretch....”

This office has not been provided with a copy of an alternative repayment arrangement entered into between the parties at the time, but the Complainant’s Mortgage loan statements submitted into evidence, show that from **03 January 2017**, the Complainant’s monthly mortgage repayments were reduced to €147.28 from **January 2017** to **April 2017**.

It appears from this evidence that the Complainant was in difficult financial circumstances in **January 2017**, arising from her illness and inability to work at the time. The Complainant appears to be of the view that had she maintained the critical illness cover, this would have resulted in a payment of €63,816.00. I appreciate that, with hindsight, the Complainant believes she would not have cancelled the policy in **October 2014** had she been aware that she may have been able to claim on the policy in **2016/2017** when she was diagnosed with an illness and was out of work. In this regard, it is important for the Complainant to be aware that if she had maintained the critical illness policy, she would have had to make a claim on that policy in **2016/2017**, which would have been assessed against the policy criteria. It is not the case that the Complainant would have automatically been paid €63,816.00 and that this now represents a “*loss*” to her, as she has submitted. I understand that from the Complainant’s perspective the fact that she cancelled the policy and was diagnosed with a significant illness just one year after is a source of additional concern and annoyance for the Complainant. However, it cannot be determined with any degree of certainty that had the Complainant continued to pay into the critical illness policy, the terms of her policy would have resulted in a payment of €63,816.00 due to her illness.

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The evidence shows that regardless of the error of the Provider in overcharging interest on the Complainant's mortgage loan account from **January 2012**, the Complainant was in difficult financial circumstances by **January 2017** and had a shortfall on income when compared with expenditure in the period from January 2017. The Provider granted the Complainant forbearance on her mortgage loan in the form of a six month interest only period. At this time the Complainant was dealing with very significant illness from **2015**, going through a divorce and was on sick leave from work. In these circumstances I accept that an overpayment of about €89 per month caused a significant level of stress and inconvenience to the Complainant who was already in a difficult situation. It cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused additional hardship and inconvenience to the Complainant. Therefore, I have no doubt that the Complainant suffered inconvenience as a result of the Provider's overcharging.

The Provider has paid compensation of €1,000 to the Complainant, together with redress of €8,278.24 and an independent professional advice payment of €1,000. The Provider has made an additional compensation payment of €1,500 as directed by the Independent Appeals Panel in **May 2018**. Taking into consideration all of the evidence before me and the particular circumstances of the Complainant's health and financial circumstances, I do not accept that the compensation of €2,500 paid by the Provider is reasonable or sufficient to compensate the Complainant for the inconvenience suffered by her.

Therefore, I uphold this complaint and direct that pursuant to **Section 60(4)** of the ***Financial Services and Pensions Ombudsman Act 2017***, the Provider pay a sum of €5,000 compensation to the Complainant in respect of the inconvenience the Complainant has suffered. For the avoidance of doubt the total sum of compensation of €5,000 is inclusive of the €2,500 compensation already paid to the Complainant by the Provider.

Conclusion

My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in **Section 60(2) (b) and (g)**.

I direct, pursuant to **Section 60(4) and Section 60 (6)** of the ***Financial Services and Pensions Ombudsman Act 2017***, that the Respondent Provider make a compensatory payment to the Complainant in the sum of €5,000 (inclusive of the €2,500 compensation already paid to the Complainant by the Provider), to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** 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**

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.