



<u>Decision Ref:</u>	2020-0321
<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 €19,248.78 on that mortgage loan account. The mortgage loan was secured on the Complainants' Principal Private Residence.

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

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

"In our review, we found that when you moved to a fixed rate from a tracker rate we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate. Because of this, you may have had an expectation that a tracker rate would be available to you at the end of the fixed period. The language used by us in your documentation may have been confusing as to whether it was a variable interest rate which varied upwards or downwards

tracking the ECB Rate or a variable interest rate which varied upwards or downwards at our discretion.”

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

“How this failure affected you

As a result of [the Provider’s] failure, we can confirm that you were charged an incorrect interest rate between 14 Mar 2011 and 28 Nov 2017”.

The Provider made an offer of redress and compensation to the Complainants by letter dated **12 December 2017**. The offer of €23,272.92 was made by the Provider to the Complainants and comprised of the following;

1. Redress of €20,249.02 covering;
 - Total interest overpaid by the Complainants of €19,248.78
 - Interest to reflect time value of money of €964.24
2. Compensation of €2,024.90 for the failure on the mortgage loan account.
3. Independent Professional Advice payment of €1,000.00.

The Provider applied a tracker interest rate of ECB + 0.85% to the Complainants’ mortgage loan account on **29 November 2017**.

The Complainants signed the Acceptance Form on **16 December 2017** and the amount of €23,272.92 was paid into the Complainants’ nominated bank account.

In **January 2017**, an appeal was submitted to the Independent Appeals Panel by the Complainants. The Appeals Panel decided on **1 February 2018** that the appeal was upheld and awarded additional compensation of €1,000.00 to the Complainants. The key factors in determining the decision by the Appeals Panel were as follows;

- *“The Panel took into account the level of overpayment by the customers*
- *The fact that the customers were engaging with the bank in questioning the rates of interest being applied to their account*

- *The impact of the overpayment of the customers”.*

As the Complainants completed the Provider’s internal appeals process, and the appeal offer was not made in full and final settlement by the Provider, 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 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 compensation offer made by the Provider is *“completely inadequate”*.

The Complainants detail that they overpaid on their mortgage loan account between **2011** and **2017**, during which time they were *“struggling to meet payments”*. In this respect, the Complainants state that during that period they had to *“alter”* their mortgage loan repayments by way of moratoriums and an interest only period.

The Complainants submit that they endured *“financial stress”* during the impacted period, which arose as a consequence of the Provider’s failure on their mortgage loan account. The Complainants assert that had their mortgage loan account been operating on the *“correct rate”* at all times, they would not have required three moratoriums in **November 2007, November 2010** and **October 2012** or the three month interest only period in **June 2014**.

The Complainants detail that they were *“questioning”* the interest rates applied to their mortgage loan account *“as far back as 2015 and only received a satisfactory final response letter in April 2018.”* The Complainants state that they had been *“fighting for [their] tracker for years”* and their complaints were *“never investigated correctly at that time”*.

The Complainants acknowledge that the Provider has accepted that there was a *“lengthy delay”* in dealing with their complaint in relation to the interest rates applied to their mortgage loan account. The Complainants detail that they have received an apology from the Provider to this effect, however, they are of the view that the level of compensation which they have received is *“not adequate”*.

The Complainants assert that they should be awarded €2,024.90 for each year that their mortgage loan account was impacted by the Provider’s failure, amounting to total compensation of €12,149.40.

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The Provider's Case

The Provider outlines that the Complainants' mortgage loan was considered to be impacted as part of the Examination in **December 2017** because the Provider found that when the Complainants moved from a tracker rate to a fixed rate in **March 2006**, the Provider failed to provide the Complainants with sufficient clarity as to what would happen at the end of the fixed rate in **March 2011** and the language used by the Provider may have been confusing and misleading.

The Provider submits that the redress and compensation payment made to the Complainants is "*reasonable*", "*fair*" and "*adequate*".

The Provider details that the Complainants drew down a mortgage of €130,000 on **25 July 2002** for a term of 35 years under Mortgage Loan Offer Letter dated **19 April 2002**.

The Provider states that the Letter of Offer provided for a fixed interest rate of 3.99% for the first 12 months, with a variable interest rate applying thereafter, which at the time was 4.470%. The Complainants signed a **Staff Application for Change to Tracker Mortgage Mortgage Form Authorisation ("MFA")** on **15 July 2004** to apply a tracker interest rate of ECB + 1.10%. On **8 March 2006** the Complainants completed a MFA to apply a fixed interest rate to the loan of 4.45% for a period of 5 years. The Complainants accepted and signed a further MFA on **23 February 2011** to apply a fixed interest rate of 4.20% to their mortgage loan account for a period of three years. On the expiry of the three year fixed rate period, the mortgage loan account rolled to a staff variable rate. On **9 July 2015**, the Complainants accepted and signed a MFA opting to apply a fixed interest rate of 3.6% to the mortgage loan for a period of two years.

The Provider submits that although the Complainants' mortgage loan account was included in the Tracker Mortgage Examination and the loan was restored to a tracker rate at a margin of 0.85% and paid redress and compensation, it is clear to the Provider that the Complainants "*did not have a contractual claim to that tracker rate*". Furthermore, the Provider details that "*no positive misrepresentation was made to the Complainants*" concerning tracker rates such as could ground a valid complaint. In this regard, the Provider submits that the Complainants' claim for compensation is "*not well grounded in contract*".

The Provider indicates that the Complainants have not provided any evidence that the Provider misled them to believe that they had an entitlement to a new tracker rate at the end of the 5 year fixed period before they applied a fixed interest rate for a period of three years in **March 2011**.

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The Provider submits that it *“accepts that the documentation used to apply a fixed interest rate to the mortgage loan account was not sufficiently clear on what would happen at the end of the fixed rate period but that is a significantly less serious shortcoming than a breach of contract or a positive misrepresentation”* that a tracker rate would be made available at the end of the fixed rate period. Against that background, the Provider asserts that the redress and compensation paid to the Complainants to date has been *“fair and reasonable”*.

With respect to the Complainants’ request for additional compensation on the basis that the overpayment on their mortgage loan account was ongoing between **March 2011** and **November 2017** and that they had been questioning the rates of interest being applied to their account since **2015**, the Provider states that it has *“engaged at all times in relation to the Complainants’ complaint”*.

The Provider notes that the Complainants state that they should be entitled to additional compensation for the financial stress in *“struggling to meeting payments and having to alter [their] payments”* on their mortgage loan account. The Provider submits that the FSPO does not have the power to make an award for stress. In this respect, the Provider notes that under s60 (4) (d) of the ***Financial Services and Pensions Ombudsman Act 2017*** the FSPO is empowered to award a sum *“for any loss, expense, or inconvenience sustained by the complainant as a result of the conduct complained of”*. The Provider states that stress is not a *“loss or expense”* and the Provider does not believe that the Complainants have demonstrated any *“inconvenience”*.

The Provider submits that the documentation which it has provided in evidence to this office in response to this complaint demonstrates that the Provider *“responded well and repeatedly”* and in an *“accommodative manner”* to the Complainants’ requests for forbearance arising from life milestones. The Provider sets out the forbearance periods that applied to the mortgage loan account, as follows;

- “(a) Moratorium for 3 months from November 2007 “First Moratorium”*
- “(b) Moratorium for 2 months from November 2010 “Second Moratorium”*
- “(c) Moratorium for 3 months from October 2012 “Third Moratorium”*
- “(d) Interest Only repayments for 3 months from June 2014 “Interest Only””*

The Provider outlines that the Complainants’ request for the first moratorium relates to the Second Complainant’s family related leave. The Provider afforded the Complainants a three month moratorium at this time and the Mortgage Form of Authorisation was signed by the Complainants on **28 November 2007**.

The Provider states that the Complainants' mortgage loan account was operating on a five year fixed interest rate of 4.45% at that time and it submits that the Complainants *"have no complaint about that fixed rate: their complaint is about the rate that should have applied once it ended"*. The Provider submits that it therefore *"is not fair or reasonable after the passage of 11 years"* for the Complainants to submit that the moratorium was sought because of the absence of a tracker interest rate.

The Provider details that the second moratorium was accepted by the Complainants on **8 February 2010** and coincided with the Second Complainant's family related leave. The Provider states that this payment break also *"facilitated the clearing of one month's arrears which had arisen on the mortgage account in October 2010 when the repayment due on the 24th September 2010 was not met."* Again, the Provider submits that the forbearance requested at this point in time occurred during the five year fixed rate interest period, *"with which the Complainants have no issue"*.

The Provider submits that the third moratorium was granted for a period of 3 months on foot of an application dated **13 April 2012**, where the Complainants set out their financial position at the time and referred to the fact that the First Complainant was unemployed and the reason for the request for forbearance was that the Second Complainant was on family related leave. The Provider notes that the Complainants declared in this application that they were *"not in danger of going into financial difficulties"* nor were they concerned that their mortgage loan would fall into arrears. The Provider asserts that it is *"clear that the reason for the Moratorium was because the Complainants had [family circumstances redacted] coupled with the First Named Complainant's unemployment and not because of the fact that the mortgage account was not on a tracker rate."*

In relation to the interest only period in **2014**, the Provider submits that the Complainants completed a **Product Amendment Form** on **4 April 2014** seeking a three month moratorium break to facilitate family related leave for the summer months. The Provider notes that the Complainants stated that they were *"not under any financial stress"* in the form and detailed that they had a joint monthly surplus income of €1,761.00, together with €20,000 savings in the Post Office. The Provider outlines that it offered a period of 3 months' interest only repayments, which the Complainants duly accepted.

The Provider submits that the *"repeated willingness to give forbearance"* could only have had the effect of reducing levels of stress connected to the Complainants' life milestones since **November 2007**.

The Provider further submits that throughout the period in question, the Complainants had opted to *"omit"* months over the repayment year and instead of repaying their loan

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over a period of 12 months per year, the Complainants opted to pay over a short amount of months to facilitate payment free months. The Provider asserts that had the Complainants been suffering during that period of time, they would have elected to pay over 12 months thereby reducing their monthly repayments. The Provider submits that the reason they had chosen to do so is because *“they were not suffering from financial stress during this period of time.”*

With respect to the Complainants’ claim for additional compensation on the basis that the overpayment was ongoing from **March 2011** to **November 2017** and they had been questioning the interest rates applied to their mortgage loan account since **2015**, the Provider states that there has been *“considerable engagement by the Provider with the Complainants in relation to the matter”*.

The Provider details that the sum of compensation provided to the Complainants has been calculated with respect to a *“number of characteristics of the impacted account”*. The Provider outlines that the methods used to calculate the redress and compensation amount has been *“reviewed and approved by an independent third party under the prescribed Framework”*.

The Provider notes that the Independent Appeals Panel made an additional award of €1,000 to the Complainants and this compensation reflects the *“nature and severity of the impact”* with reference to a number of factors as a direct result of the Provider’s failure on the mortgage account. The Provider asserts that the Complainants’ complaint to this office has advanced *“no new grounds which undermine the determination of the Independent Appeals Panel.”*

The Provider is of the view that the compensation payment made to the Complainants is *“reasonable and fair taking into account the Complainants’ circumstances.”*

The Complaint for Adjudication

The complaint for adjudication is that the Provider has failed to offer 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

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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 lengthy and detailed submissions about its view that there was no breach of contract and no misrepresentation in the sale of a fixed rate. I will not be making any determination in this decision as to the nature of the Provider's failure as I do not think that this is necessary in the circumstances of this matter. The Provider has already conceded to the Complainants' entitlement to a tracker interest rate. The issue for decision is whether the Provider has offered adequate compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainants dated **12 December 2017**.

The Provider has detailed that the redress and compensation offered and paid to the Complainants 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 €20,249.02 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €964.24 to reflect the time value of money. The Provider also paid the Complainants compensation of €2,024.90 for its failure on the mortgage loan account and a further €1,000 for the purposes of seeking legal advice. The Provider submits that the Appeals Panel directed that the Provider make an additional compensatory payment of

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€1,000 to the Complainants, which the Provider has accepted. The Provider submits that the Complainants have not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel has already provided for and was paid by the Provider to the Complainants.

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

The Complainants' mortgage loan was drawn down on a fixed interest rate mortgage loan at 3.99% on **25 July 2002** for a term of 35 years. The fixed interest rate applied to the mortgage loan until **July 2004**, when the Complainants accepted and signed a **Staff Application for Change to Tracker Mortgage MFA**. The **July 2004 MFA** provided that *"The interest rate shall be no more than 1.10% above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan."*

It appears from the Complainants' **mortgage loan statements** that the total tracker interest rate applied to the mortgage loan from **26 July 2004** was 3.10%. The tracker rate increased to 3.35% on **05 December 2005**.

The Provider's internal notes record a *"Product Switch"* on **13 December 2005**. It appears that this *"Product Switch"* represents the switch from a tracker interest rate of ECB + 1.10% to a tracker interest rate of ECB + 0.85% at this time.

The **mortgage loan statements** show a tracker interest rate of 3.10% being applied to the mortgage loan on **13 December 2005**. The tracker interest rate increased to 3.35% on **08 March 2006**.

On **8 March 2006** the Complainants completed a further **Mortgage Form of Authorisation**, electing to apply a fixed interest rate of 4.45% to the account for a period of five years. The fixed interest rate was applied to the mortgage loan account on **13 March 2006**.

It was at this time that the failure that was subsequently identified in **December 2017** as part of the Examination occurred on the Complainants' mortgage loan account, in that, sufficient clarity was not provided as to what would happen at the end of the fixed interest rate period. The Provider has recast the Complainants' mortgage loan account as if the tracker interest rate of ECB + 0.85% applied from the end of the fixed interest rate period on **14 March 2011** and refunded the overpaid interest.

The evidence shows that the Complainants requested a three month moratorium on their mortgage loan in **October 2007**. In this regard, I note that the Provider's internal mail dated **8 October 2007** details as follows;

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*“Reason for moratorium request: customer on [family related] leave
How many months required (up to 3): 3 mths
What months are required: dec jan feb”*

I note that the Provider subsequently issued a letter to the Complainants on **26 November 2007**, confirming that the Complainants’ request for the moratorium had been *“granted for a period of 3 month(s)”* subject to the receipt of a signed **acknowledgment and agreement form** enclosed with the letter.

On **28 November 2007**, the Complainants accepted and signed the form confirming that they *“accept the offer of a capital and interest moratorium facility on [mortgage loan accounts ending 2990 and 3219] for DECEMBER 2007, JANUARY AND FEBRUARY 2008”* subject to the terms and conditions associated with the payment break as set out in the form.

The Complainants requested a further moratorium in **January 2010** to be applied to their mortgage loan between **October 2010** and **December 2010**. I note the Provider’s internal mail dated **20 January 2010** details as follows;

“We have today received a financial review form for this customer. The details will be reviewed and a decision communicated by mail on the case shortly.”

I note that the screenshot of the Provider’s internal mail on **21 January 2010** provided in evidence to this office details that the moratorium was *“agreed for Oct/Nov/Dec 2010”*. However, it appears that this agreement was subsequently amended as the Provider’s internal mail dated **25 January 2010**, states as follows;

*“Moratorium approved for November and December 2010.
(note omit month October 2010)”*

The Provider issued a letter to the Complainants on **25 January 2010** confirming that the moratorium had been *“granted for a period of 2 month(s)”*. On **8 February 2010**, the Complainants accepted and signed the **form** enclosed with the letter confirming that they *“accept the offer of a capital and interest moratorium facility on [mortgage loan account ending 2990] for November 2010 & December 2010”*.

The dates where the Complainants requested the first and second moratoriums in or around **October 2007** and **January 2010** pre-dates the impacted period where the tracker interest rate should have applied. At both points in time, the interest rate applicable to the mortgage loan was a five year fixed interest rate of 4.45% which the Complainants elected

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to apply to the mortgage loan, by way of MFA on **8 March 2006**. The application of the five year fixed interest rate in **2006** is not in dispute between the parties. The evidence does not support the Complainants' submission that had they been on a "*lower payment and correct rate*" their budget would have allowed them to refrain from asking for these breaks in **October 2007** and **January 2010**. The evidence shows that at this time the Complainants' mortgage loan was on the "*correct rate*", being the fixed interest rate that they elected to apply to the mortgage loan account. The Complainants requested these payment breaks of their own volition and as a result of their own personal circumstances at the time, in that, the Second Complainant was "*on [family related] leave*" on both occasions. I do not accept that the overcharging on the Complainants' mortgage loan account that occurred from **14 March 2011** was in any way linked to the moratoriums sought by the Complainants at an earlier point in time, in **October 2007** and **January 2010**.

Prior to the expiry of the fixed interest rate period in **March 2011**, the Complainants were issued with a **Mortgage Form of Authorisation** on **11 February 2011**. The Complainants were not offered a tracker interest rate at this time. The Complainants completed the form on **23 March 2011** and elected to apply the fixed interest rate of 4.20% to the account effective for a period of three years. As outlined above, the Provider has recast the Complainants' mortgage loan account as if a tracker interest rate of ECB + 0.85% applied to the mortgage loan account from **21 March 2011**.

Between **21 March 2011** and **24 February 2014** a fixed interest rate of 4.20% applied to the mortgage loan. The tracker interest rate that should have been applied was ECB + 0.85%. Between **21 March 2011** and **24 February 2014**, the overall tracker (ECB + margin) rate fluctuated between a rate of 2.35% and 1.10%.

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 + 0.85%) had been applied to the mortgage account between **21 March 2011** and **24 February 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
Mar 2011	2.35%	€664.17	€507.32	€156.85
Apr 2011	2.10%	€664.17	€522.63	€141.54
Jun 2011	2.10%	€663.92	€522.60	€141.32
Jul 2011 – Oct 2011	1.85%	€663.92	€540.10	€123.82
Dec 2011 – Feb 2012	2.35%	€731.62	€560.58	€171.04
Apr 2012	2.35%	€733.06	€558.14	€174.92
May 2012 – Jun 2012	2.35%	€736.90	€560.22	€176.68
July 2012 – Oct 2012	2.35%	€736.90	€543.11	€193.79
Feb 2013 – Apr 2013	2.60%	€676.36	€498.45	€177.91
Jun 2013 – Oct 2013	2.85%	€747.70	€534.62	€213.08
Nov 2013 – Dec 2013	3.10%	€747.70	€519.68	€228.02
Feb 2014	3.10%	€747.70	€519.68	€228.02

It appears from the evidence that the Complainants had “omit” payment months in **May 2011, November 2011** and **March 2012**, which allowed the Complainants to pay the mortgage over fewer months in the year and have payment free months. There is no dispute between the parties that this repayment option was agreed between the parties.

The evidence shows that during the fixed interest rate period that applied from **March 2011**, the Complainants sought a third moratorium by way of a **Home Loan Product Amendment Form** which was signed by the Complainants on **13 April 2012**.

The Complainants signed the form on the first page below the following declaration;

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“I declare that I/we are not in danger of going into financial difficulties and/or I/we are not concerned about going into mortgage arrears on my/our primary residence mortgage with [the Provider].”

The form recorded the First Complainant as “*unemployed at present*”.

The Complainants were also required to set out statements of their assets, financial commitments and monthly income and outgoings. The Complainants recorded that they held a balance of €10,000 in a deposit account and €20,000 in the post office. The Complainants’ monthly income (€2,813) less outgoings, inclusive of mortgage repayments (€2,536) showed a monthly surplus of €277. The “***Reason for Request***” was noted as “[*family related*] leave”.

The Provider granted the Complainants the 3 month moratorium for **October, November and December 2012** as requested.

The contemporaneous evidence does not support the Complainants’ position that they were struggling to meet the repayments at this time and for this reason they had to alter the repayment arrangements in late **2012**. The evidence shows that in **April 2012** the Complainants sought the three month moratorium for the period **October to December 2012** on their mortgage loan on account of the Second Complainant taking family related leave. The Complainants specifically confirmed at the time that they were not in danger of going into financial difficulties and/or that they were not concerned about going into arrears.

I note the Complainants have also suggested that if they were on the correct rate and therefore the lower repayment their budget would have allowed them to “*refrain from asking*” for the moratorium. The two positions advanced by the Complainants are somewhat incompatible. Either it is the case that they were struggling to meet the repayments or they were in a secure financial position and did not require this moratorium. I note that the Complainants have not suggested that they wish to now pay the amounts that would have been due as monthly repayments had the three month moratorium not been applied to the mortgage loan for the period **October to December 2012**. This would put the Complainants in the position they would have been in had the three month moratorium not taken place.

The evidence shows that in the lead up to the application for the moratorium in **April 2012**, the Complainants were overpaying on their mortgage loan by €171.04 a month. I note that the statements show that the Complainants’ direct debits for the mortgage loan repayments were returned unpaid in **September and October 2011**. These repayments were made by the Complainants by way of lodgement. The evidence shows that in the lead

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up to the commencement of the three month moratorium in **October 2012** the Complainants were overpaying on their mortgage loan by €193.79 per month. I accept that these were significant overpayments for a family to make. In particular in circumstances where the First Complainant was unemployed at the time. However the evidence shows that the moratorium was sought by the Complainants by reason of the Second Complainant's family related leave as opposed to by reason of financial difficulties. The Complainants specifically confirmed at the time that they were not in danger of going into financial difficulties or that they were not concerned about going into arrears.

On the expiry of the three year fixed interest rate period, the Complainants' mortgage loan account rolled to the Provider's staff variable interest rate on **14 March 2014** of 4.50%. The Complainants then applied a 2 fixed interest rate of 3.60% to the mortgage loan which took effect on **14 July 2015**. The Complainants broke out of that fixed interest rate period on **23 March 2016** by applying a 2 year fixed interest rate of 3.35% to the mortgage loan. The Complainants again broke out of that fixed interest rate period and a 3 year fixed interest rate of 3.10% was applied to the mortgage loan from **19 September 2016**. The tracker interest rate of ECB + 0.85% was reinstated to the mortgage loan account from **29 November 2017**.

Between **14 March 2014** and **29 November 2017**, the overall tracker (ECB + margin of 0.85%) rate fluctuated between a rate of 1.10% and 0.85%.

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 + 0.85%) had been applied to the mortgage account between **14 March 2014** and **29 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
March 2014	3.40%	€747.70	€519.68	€228.02
April 2014	3.00%	€740.41	€519.68	€220.73

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Jul 2014 – Aug 2014	3.10%	€455.72	€106.92	€348.80
Sept 2014 – Dec 2014	3.20%	€750.56	€515.44	€235.12
Feb 2015	3.20%	€750.56	€515.44	€235.12
Mar 2015	3.20%	€750.62	€515.41	€235.21
May 2015 – Jun 2015	3.20%	€750.62	€515.41	€235.21
Jul 2015 – Dec 2015	2.70%	€717.76	€515.41	€202.35
Feb 2016	2.70%	€715.80	€515.70	€200.10
Mar 2016	2.75%	€715.80	€512.80	€203.00
Apr 2016 – Jun 2016	2.50%	€700.10	€512.80	€187.30
Aug 2016	2.50%	€700.10	€512.80	€187.30
Sept 2016	2.25%	€700.10	€512.80	€187.30
Oct 2016 – Nov 2016	2.25%	€683.68	€512.80	€170.88
Feb 2017 – Jun 2017	2.25%	€682.91	€513.30	€169.61
Aug 2017 – Nov 2017	2.25%	€682.91	€513.30	€169.61

It appears from the evidence that the Complainants had “omit” payment months in **May 2014, June 2014, January 2015, April 15, January 2016, July 2016, December 2016** and **July 2017** which allowed the Complainants to pay the mortgage over fewer months in the year and have “payment free” months. There is no dispute between the parties that this repayment option was agreed between the parties.

The evidence shows that during this time, the Complainants sought a further mortgage break. The Complainants signed a **Product Amendment Form on 4 April 2014** to request this.

The Complainants signed the form on the first page below the following declaration;

“I declare that I/we are not in danger of going into financial difficulties and/or I/we are not concerned about going into mortgage arrears on my/our primary residence mortgage with [the Provider].”

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The Complainants were required to set out their financial commitments, property assets, monthly income, monthly expenditure and other assets. In **Section 6** of the form, the Complainants outlined as follows:

“Looking for 3mts mora break as approved parental leave for summer mts

[The First Complainant] has very successful [name of company] business” fully registered, and we would really be grateful of mora so as [the Second Complainant] can take approved [family related leave]

We are not under any financial stress presently”

The Provider issued a **Mortgage Form of Authorisation** to the Complainants on **23 April 2014** approving *“interest only for a period of 3 months”* commencing on **24 June 2014**. The Complainants subsequently accepted and signed the MFA on **29 April 2014**.

The contemporaneous evidence again does not support the Complainants’ position that they were struggling to meet the repayments at this time and for this reason they had to alter the repayment arrangements in **April 2014**. The Complainants recorded that they held a balance of €20,000 in the post office savings bonds and that their combined monthly income (€5,288) less outgoings, inclusive of mortgage repayments (€3,527.50) showed a monthly surplus of €1,761. The evidence shows that in **April 2014** the Complainants sought forbearance on their mortgage loan on account of the Second Complainant taking family related leave. The Complainants specifically confirmed at the time that they were not in danger of going into financial difficulties and/or that they were not concerned about going into arrears, and specifically in their own words stated that they were not under any *“financial stress”*.

With regard to the delay with the Complainants’ mortgage loan account being deemed impacted under the Central Bank directed Tracker Mortgage Examination, the Complainants submit that they were *“questioning these rates as far back as 2015 and only received a satisfactory final response letter in April 2018”*.

I note that the Complainants wrote to the Provider by letter dated **8 October 2015** in respect of the loss of the tracker interest rate on their mortgage loan account when they applied a fixed rate in **March 2006** and requested that the Provider *“open this investigation again and further review”* their mortgage loan account. The Provider issued an acknowledgement letter to the Complainants on **9 November 2015** which stated that the Provider was *“working on resolving the matter as quickly as possible”* and would be in contact once it had *“more information”* for the Complainants.

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On **25 November 2015**, the Provider issued a Final Response Letter to the Complainants. The Provider detailed the history of the Complainants' mortgage loan account and concluded that it was *"unable to uphold"* the Complainants' complaint on the basis that **General Condition 7(b)** of their mortgage loan agreement set out that at the end of a fixed rate period, a variable interest rate would apply to the mortgage loan.

The Complainants wrote to the Provider by letter dated **20 April 2016** requesting that the Provider *"investigate on [their] mortgage account number [ending 2990] regarding the reinstatement of [their] tracker rate"*. In response to the Complainants' request, the Provider issued an acknowledgement letter to the Complainants on **25 April 2016** and informed them that they would receive *"a full response, or an update, within twenty working days"* from the date on which their complaint was received. The Complainants subsequently received holding letters from the Provider dated **23 May 2016**, **15 June 2016** and **23 November 2016**. I note that the Provider indicated to the Complainants in its **June 2016** letter that the examination was *"expected to conclude before the end of 2016"*. However, this projected date was extended in its **November 2016** letter which detailed as follows;

"Given the scale and complexity of the [Tracker Mortgage Examination] it is anticipated that this examination will be ongoing through 2016 and will conclude in 2017."

In line with Regulation 10.9 of the **Consumer Protection Code 2012**, I note that the Provider informed the Complainants in their letters of **15 June 2016** and **23 November 2016** of the right to refer their complaint to the Financial Services Ombudsman, as it then was, in circumstances where the complaint had not been resolved within 40 business days. The Complainants submitted a complaint to this office in **April 2018** when the examination on their mortgage account was completed.

The Provider issued a letter to the Complainants on **28 November 2017**. The letter detailed that their mortgage loan account had been reviewed as part of the Tracker Mortgage Examination and the review showed that the Provider *"charged [the Complainants] an incorrect rate of interest for a period of time."* The letter further detailed that the Provider was working on a *"detailed review"* of their mortgage loan account and would issue a Redress and Compensation pack once this was completed, but as its *"first step"* to *"make things right"*, the Provider amended the interest rate on their account to *"the tracker rate set out in [their] mortgage documentation."* A tracker interest rate of ECB + 0.85% was applied to the Complainants' mortgage loan account on **29 November 2017**.

I accept that the issues with respect to the Complainants' entitlement to a tracker interest rate have been ongoing for some time, including a previous complaint to the Financial

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Services Ombudsman, and the Complainants wished for their mortgage loan account to be looked at again as part of the Tracker Mortgage Examination from late **2015**. I accept that the Examination took longer than the Provider had anticipated to complete and the outcome for the Complainants was not arrived at until **November 2017**. However the Provider did respond to the Complainants and issue letters in the interim. I note the tracker interest rate was restored to the mortgage loan account from **November 2017** and the Complainants have been repaid the overpaid interest during the impacted period (**14 March 2011 – 28 November 2017**).

As set out above, the issue for decision is whether the Provider has offered adequate compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account.

The Provider has paid compensation of €3,024.90 to the Complainants, including the additional compensatory payment of €1,000 directed by the Independent Appeals Panel, together with redress of €20,249.02 (interest overpaid €19,284.78 and time value of money payment of €964.24) and an independent professional advice payment of €1,000.

I note that at each point when the Complainants requested payment breaks on their mortgage loan account, there were personal circumstances (i.e. family related leave, unemployment and parental leave) which caused the Complainants to seek forbearance. The forbearance sought in **November 2007** and **November 2010** predated the Provider's error with respect to the tracker interest rate on the Complainants' mortgage loan account so cannot on any reasonable basis be found to be on account of the overcharge as the Complainants have suggested.

While I accept that the Complainants were overpaying significant amounts on their mortgage loan account on a monthly basis at the time the forbearance was sought in **April 2012** and **June 2014** of €174.92 and €220.73, respectively. The evidence shows these forbearance periods do not appear to be because of financial difficulties as the Complainants have submitted.

Having regard to all of the evidence before me in terms of the particular circumstances of the Complainants, the level of overcharging and the period over which the overcharging occurred, I accept that the amount of compensation paid by the Provider is reasonable in the circumstances of this particular matter.

For the reasons set out above, I do not uphold the complaint.

Conclusion

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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.



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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.