



<b><u>Decision Ref:</u></b>	2020-0334
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer appropriate compensation or redress CBI Examination
<b><u>Outcome:</u></b>	Partially upheld

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

##### **Background**

This complaint relates to one of the mortgage loan accounts held by the Complainants with the Provider and an overcharge of interest in the amount of €39,986.14 on that mortgage loan account. The mortgage loan account was secured on the Complainants' private dwelling home.

The loan amount was €278,000 and the loan was repayable over 30 years. The mortgage loan account was drawn down on **30 August 2004** pursuant to a Mortgage Loan Offer Letter dated **14 July 2004**.

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

The Provider contacted the Complainants 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 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;

*“How this failure affected you  
As a result of our failure, we can confirm that you were charged an incorrect interest rate between 4 Feb 2009 and 28 Nov 2017.”*

The Provider made an offer of redress and compensation to the Complainants in its letter dated **12 December 2017**. The offer of €47,184.00 was made by the Provider to the Complainants and comprised the following;

1. Redress of €41,985.45 covering:
  - Total interest overpaid of €39,986.14
  - Interest to reflect the time value of money of €1,999.31.
2. Compensation of €4,198.55 for the Provider’s failure.
3. Independent Professional Advice Payment of €1,000.00.

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

In **February 2018**, the Complainants appealed the redress and compensation offering to the Independent Appeals Panel.

On **22 March 2018** the Appeals Panel decided to uphold the Complainants’ appeal and awarded additional compensation of €5,000 to the Complainants. In determining the appeal the Appeals Panel outlined;

*“The Panel noted the significant level of the overpayment and the impact of the overpayment on the Customers’ as articulated in the appeal.”*

As the Complainants have been through the Provider’s internal appeals programme, and the offer made and accepted as part of the appeal process was not in full and final

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settlement, this office was in a position to progress the investigation and adjudication of the complaint.

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

### **The Complainants' Case**

The Complainants submit that the compensation offer does not "*adequately*" compensate them for the "*direct financial impact*" that the overcharging has had on them.

The Complainants state that during the period they were being overcharged on the mortgage loan account, they were dealing with "*a short term debt problem which was consolidated into one [Provider] term loan in July 2009. The original debt problem was not a direct result of the tracker issue however the mortgage overcharge significantly impacted our ability to pay off this debt*".

The Complainants outline that they were "*pro-active in engaging with the bank and agreed many changes to [their] repayments over the years – including interest only / reduced payment periods and term extensions. All of which gave short term breathing space but increased the total amount to be repaid. This would not have been necessary if [they] had been paying the correct rate on [their] mortgage.*"

The Complainants have outlined the engagements they had with the Provider in relation to alternative repayment arrangements for the mortgage loan account between **2010** and **2015**, as follows;

- They accepted and signed a **Mortgage Form of Authorisation ("MFA")** on **6 May 2010** to change the loan to interest only for a period of 6 months.
- They accepted and signed an MFA on **4 November 2010** to change the loan to interest only for a period of 6 months.
- They accepted and signed an MFA on **26 May 2011** to change the loan to reduced repayments of €800 per month for a period of 6 months.
- They accepted and signed an MFA on **20 November 2011** to change the loan to reduced repayments of €900 per month for a period of 12 months.
- The Complainants detail that they sought a further reduced repayment period in **October 2012** which was declined by the Provider.
- The Complainants outline that they requested an interest only period for the mortgage loan account in **August 2015**, and instead the Provider offered to extend the mortgage loan term by 5 years. The Complainants signed and accepted an MFA

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on **4 September 2015** to extend the term of the mortgage loan for 60 months to a new maturity date of **23 August 2039**.

The Complainants are seeking additional compensation in the sum of €28,657, for the following;

- i. They submit that the First Complainant took out a 7 year personal loan (account ending **4531**) of €63,000.00 with the Provider pursuant to the terms of a **Credit Agreement** dated **3 July 2009** which was signed and accepted by the First Complainant on **7 July 2009**. The Complainants state that therefore they were “*effectively borrowing the money [they] were overcharged*” from the Provider at interest rates of between 7.62% and 9.51%. They estimate that they have paid interest of €10,000 on the personal loan.
- ii. The Complainants submit that, as outlined above they had to enter into interest only and reduced repayment periods on the mortgage loan account between **May 2010** and **November 2012**, and because they were unable to reduce the capital balance on their mortgage loan account during that period, they will pay estimated additional interest of €2,500 on the capital for the remainder of the mortgage term.
- iii. The Complainants submit that they had to extend the term of the First Complainant’s personal loan in **November 2012** and again in **August 2015**, which would not have been necessary if not for the overcharge on their mortgage loan account. They submit that the Provider extended the term of the personal loan for 7 years in **November 2012** on condition that the interest rate on the loan increased from 7.62% to 9.51%. They estimate that the cost of this is an additional €7,063 in interest paid on the personal loan.
- iv. The Complainants submit that they had to extend the term of the mortgage loan by 5 years in **2015** which would not have been necessary if not for the overcharging. They state that as a result, they will pay additional interest of an estimated €820.00 over the remaining term of the mortgage loan.
- v. The Complainants are seeking compensation of €8,274.00 for “*personal stress and embarrassment*” caused to them. They submit in this regard that the First Complainant is an employee of the Provider and had to engage with his own colleagues in relation to the restructuring of the Complainants’ debts. They also submit that they have had to forego holidays and family events due to their financial position.

### The Provider's Case

The Provider submits that the Complainants drew down a mortgage of €278,000 on **30 August 2004** for a term of 30 years under **Mortgage Loan Offer Letter** dated **14 July 2004** which was signed and accepted by the Complainants on **27 July 2004**. The Offer Letter provided that the interest rate applicable to the loan was a variable interest rate which *"shall be no more than 1.10% above the European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the loan"*.

The Provider states that the purpose of the loan was to refinance the existing mortgage on the property of approximately €208,000 and additional funds of €70,000 were to be used towards the purchase of a residential investment property.

The Provider details that the following rate changes took place on the mortgage account;

- The Complainants signed and accepted a **Mortgage Form Authorisation ("MFA")** on **25 January 2006** to apply a staff tracker variable rate of ECB + 0.85% to the loan.
- The Complainants signed and accepted an MFA on **22 August 2006** to apply a staff non-standard variable rate to the account.
- The Complainants signed and accepted an MFA on **2 January 2007** to apply a staff 2 year fixed rate of 3.95% to the account.
- On the expiry of the 2 year fixed rate, the mortgage loan account rolled to a standard variable rate in **February 2009**.
- The Complainants signed and accepted an MFA on **8 February 2017** to fix the rate for 3 years at 3.1%.

The Provider outlines that the Complainants' mortgage loan account was included in the Examination because it was formerly on a tracker rate. The Provider found that when the Complainants moved from a tracker rate to the staff non-standard variable rate and then a fixed rate the Provider *"failed to provide them with sufficient clarity as to what would happen at the end of that fixed rate"* and that the language used by the Provider may have been *"confusing or misleading"*.

The Provider submits that it *"had not breached any contract"* with the Complainants and that there was no positive representation made by the Provider before the Complainants entered the two year fixed rate that they could move to a new tracker rate on the mortgage loan at the end of the fixed rate period. The Provider outlines that it does not seem to the Provider *"that there would have been a natural expectation to return to a tracker rate after the fixed rate ended, given that the Complainants were not tracker customers on their mortgage loan account when they entered the fixed rate."*

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 significantly less serious as a shortcoming in terms of conduct than (say) a breach of contract or miss-selling a fixed rate through positive misrepresentation that a new tracker rate would be provided when it ended.”*

The Provider submits that the Complainants’ account was moved to a tracker rate of ECB + 0.85% on **29 November 2017**. The Provider asserts that the redress payment with respect to each account was calculated to compensate the Complainants for the overpayments in the relevant period when they were paying higher rates than the tracker rates and that payment adequately compensates the Complainants for the absence of their tracker interest rate during the relevant period. The Provider states that they have 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 are of the view that therefore this is adequate compensation. The Provider submits that the Appeals Panel awarded an additional sum of €5,000 in compensation and this *“strengthens the argument that compensation paid was at least adequate”*.

The Provider does not accept the Complainants’ submission that the First Complainant had to seek the term loan in **July 2009** in order *“to meet the overpayments”* on the Complainants’ mortgage loan account. It states that on **29 June 2009** the Complainants emailed the Provider stating that they were experiencing *“financial problems due to short term debt”*. It submits that the Complainants sought a term loan in order to consolidate a number of short term debts *“which they had accumulated of their own volition and regardless of anything to do with their mortgage loan”*.

The Provider details that on **7 July 2009** the First Complainant signed and accepted a **Credit Agreement** from the Provider for €63,000 for a term of 84 months. It details that on **31 July 2009** the monthly mortgage loan account repayments would have been €1,037.95 on the tracker rate of 1.85% (ECB + 0.85%) in comparison to the actual mortgage repayments of €1,087.94 on the standard variable rate of 2.25%. The Provider states that the Complainants themselves say that the personal loan was taken out as a result of their *“financial mess”* and in the Provider’s view *“it cannot fairly and reasonably be said that the Complainants’ decision to borrow resulted from the conduct complained of”*.

The Provider submits that each of the alternative repayment arrangements and payment breaks requested by the Complainants were stated to be for the following reasons;

- The six month period of interest only from **May 2010** was *“to sort out the immediate bills and credit card”*. The Complainants signed and accepted an MFA on **6 May 2010** to implement this on both of their mortgage loan accounts.

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- The further six month period of interest only from **November 2010** was *“to clear the credit card (2000) and outstanding loan payment (988) and use the rest of the extended interest only period to build [their] savings”*. The Complainants signed and accepted an MFA on **4 November 2010** to implement this on both of their mortgage loan accounts.
- The six month period of reduced repayments of €800 from **June 2011** was *“to allow [the Complainants] to continue re-positioning ourselves correctly to meet all our financial commitments fully in future”*. The Complainants signed and accepted an MFA on **26 May 2011** to implement this on the mortgage loan account.
- The 12 month period of reduced repayments of €900 from **December 2011** was stated to be required due to *“payment of [the personal] loan at 1000 per month, along with high petrol costs, tax increases, a pay freeze at work, and having 4 children to provide for, [which] would leave [them] under financial pressure if [their] mortgages reverted to full payment”*. The Complainants signed and accepted an MFA on **20 November 2011** to implement this on the mortgage loan account.
- The 60 month term extension in **September 2015** was *“to allow [the Complainants] to fund [their] daughter’s first year at College”*

The Provider submits that *“in no place do [the Complainants] mention interest cost or the absence of a tracker rate or, more generally, the cost of servicing the mortgage as a factor”*. It states that the Complainants incurred very significant short term debts before **January 2009** which resulted in them having to borrow a large personal loan with high monthly repayments of circa €1,000 on a sole income for a family of [number redacted]. The Provider states that it was this that *“inhibited the Complainants’ ability to repay their mortgage loan account and was the proximate cause of their continued requests for forbearance on the mortgage loan”*.

The Provider does not accept that the Complainants would not have had to enter into interest only and reduced payment arrangements on the mortgage loan from **May 2010** to **November 2012** if they were paying the tracker rate from **January 2009**. It submits that if the Complainants did not have the personal loan repayments they *“would have had sufficient disposable monthly income to meet their mortgage repayment in full”* and would not have to enter into interest only and reduced payment agreements from **May 2010** to **November 2012**. The Provider submits that the *“overwhelming probability is that the Complainants would have restructured their mortgage loan account as an answer to their financial challenges regardless of the interest rate charged on their mortgage loan”*.

The Provider states that in **October 2012** the Complainants completed a **Standard Financial Statement** seeking a further reduced repayment period.

It details that on **31 October 2012** the Provider declined to offer the Complainants further forbearance on their mortgage loan account, as it had concluded that there was sufficiently repayment capacity to allow the Complainants to continue to meet the full repayments on the mortgage at that time.

The Provider details that on **14 November 2012** the Complainants requested to reduce the payments on the term loan instead to €700 per month, and pay the full mortgage amount. The Provider states that on **26 November 2012** it offered the Complainants a restructure of the existing term loan account. It details that on **5 December 2012** the First Complainant signed and accepted a **Credit Agreement** from the Provider for €37,920 for a term of 84 months.

The Provider states the Complainants completed a further **Standard Financial Statement** on **7 June 2015** which stated that the *“Reason(s) for Review/Arrears”* was *“... Daughter Starting College”*. It details that the First Complainant wrote to the Provider on **11 August 2015** seeking an interest only period on the Complainants’ mortgage loan accounts for 6 months, to *“allow [them] to fund [their] daughter’s first year at College”*.

The Provider details that as a result of the Complainants’ request for forbearance on the mortgage loan account, its Arrears Support Unit approved a *“radical restructure”* on the First Complainant’s personal loan account, and a 5 year term extension on the mortgage loan account, in **2015**. A **Credit Agreement** was signed and accepted by the First Complainant on **31 August 2015** to restructure the personal loan over 84 months. The Provider also approved a term extension on the mortgage loan account for 60 months, to a new maturity date of **23 August 2039**. The Complainants signed and accepted a MFA to implement this on **4 September 2015**.

The Provider submits that there *“would not have been any need for the Complainants to restructure either their mortgage loan account repayments or the First Named Complainant’s personal loan repayments without those pre-2009 difficulties”*.

The Provider submits that the FSPO does not have the power to order a reward for such things as *“embarrassment, holidays or family events foregone”* as they are not in the nature of *“loss, expense or inconvenience”* mentioned in **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**. It submits that the only viable measure of compensation for the lost use of money in the Provider’s view, is interest. The Provider further submits that the FSPO does not have the power to make an award for stress, on the basis that stress is not a *“loss or expense”* and the Provider does not believe that the Complainants have demonstrated any inconvenience.

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The Provider states that it is of the view that for a claim of stress to succeed, for example in a court action for tort, there must be a personal (psychiatric) injury. It refers in this regard to *Larkin v Dublin City Council* [2007] IEHC 416. The Provider states that the FSPO does not have the power to make an award for personal injury and refers in this regard to *Carr v Financial Services Ombudsman* [2013] IEHC 182. The Provider further submits that a court will not make an award for stress arising from a breach of contract or professional negligence (with certain exceptions such as holidays or leisure or arrangements that had peace of mind as a particular aim) and refers in this regard to *Murray v Budds* [2017] IESC 4 and *Addis v Gramophone Co. Ltd* [1909] AC 488.

The Provider states that it responded “*well and repeatedly*” to the Complainants’ requests for forbearance. It outlines that it responded in an “*accommodative manner and did so several times*” and that “*is solid evidence of responsive, empathetic account management*” which in the Provider’s view “*could only have had the effect of reducing the level of stress suffered by the Complainants arising from financial difficulties that originated since January 2009 and life milestones that occurred since then*”.

### **The Complaint for Adjudication**

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

### **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 15 September 2020, outlining my preliminary determination 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, I set out below my final determination.

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 the sale of a fixed rate. 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. The issue for decision is whether the Provider has offered adequate redress and 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 in **December 2017**. I fail to understand why the Provider has made submissions as to the nature of the failure in the circumstances of this complaint. I do not find the Provider's approach in this regard to be helpful in finding a resolution to the complaint under investigation.

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 €41,985.45 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €1,999.31 to reflect the time value of money. The Provider also paid the Complainants €1,000 for the purposes of seeking legal advice and compensation of €4,198.55. The Provider submits that the Appeals Panel added a further sum of €5,000 which the Provider is bound by. 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.

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

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The Complainants' mortgage loan account was drawn down on a tracker interest rate of ECB + 1.10% on **30 August 2004** for a term of 30 years.

A Loan Offer dated **14 July 2004** issued to the Complainants which detailed as follows;

- |  |   |
|--|---|
| 1. "Amount of Credit Advanced                | €278,000  |
| 2. Period of Agreement                       | 30 Years  |
| 3. Number of<br><u>Repayment Instalments</u> | <u>Instalment Type</u><br>360 Variable at 3.100%" |

**Part 3 – The General and Special Conditions** of the Loan Offer detail as follows;

**"6. Variable Interest Rates**

- (a) *Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at [the Provider's] discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*
- (b) *[The Provider] shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*
- (c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR)"*

The Complainants signed the Acceptance and Consent on **27 July 2004** on the following terms and conditions;

*"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."*

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On **25 January 2006**, the Complainants signed a **Mortgage Form Authorisation** to apply the staff tracker mortgage variable interest rate of ECB + 0.85% to the mortgage loan account. On **22 August 2006**, the Complainants signed a **Mortgage Form Authorisation** to apply the staff non-standard variable rate to the mortgage loan account.

On **2 January 2007** the Complainants signed a **Mortgage Form Authorisation** to apply the staff 2 year fixed rate of 3.95% to the mortgage loan account. On the expiry of the fixed interest rate period in **February 2009** the mortgage loan rolled to the standard variable rate.

It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainants' mortgage loan account, in that, the Provider failed to provide the Complainants with sufficient clarity as to what would happen at the end of the fixed rate. The Provider found that the language used may have been confusing or misleading.

I note that the First Complainant contacted the Provider by email dated **29 June 2009** stating that *"My wife and I have are having financial problems due to short term debt"* which he outlined as follows;

<b>Debt</b>	<b>Balance Owed</b>
Provider loan	€22,000 +
Provider credit card	€13,000
Provider overdraft	€8,500 (agreed limit €6,200)
Provider overdraft	€2,500
Credit Union loan	€16,700
<b>Total</b>	<b>€62,700</b>

The Provider replied to the First Complainant by email on **29 June 2009** at **15:16 PM** as follows;

*"If the loan to value is in your house you might consider applying for an equity Release through [the Provider] if not we coul[d] try and do a personal loan over 7/10 yrs"*

The First Complainant responded by email on the same date at **15:56 PM** as follows;

*"I contacted [the Provider] on Friday to get an idea about equity release*

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*I think the loan may be the only option at this time.”*

The Provider wrote to the First Complainant by letter dated **3 July 2009**, detailing as follows;

*“It has been agreed to provide finance to you over a 7 year term to clear all your existing short-term debt. Please find enclosed Loan Credit Agreement not to exceed €63,000.*

*...*

*This facility is given to you on the following conditions:*

- *Overdraft will be cancelled on a/c [ending] 1888. This a/c is to operate in credit at all times.*
- *Overdraft will be cancelled on [the Second Complainant’s] a/c [ending] 1888. This a/c is to operate in credit at all times.*
- *TL a/c [ending] 1888 will be cleared in full, a/c closed & s/o cancelled.*
- *[Provider] CC [ending] 9778 will be cleared in full and limit reduced to €1,000.*
- *€16,800 will be lodged to your Credit Union loan, CU savings to be used to clear balance and close a/c...*
- *No further borrowings including Credit Cards, overdraft facilities or term loans to be entered into, either solely or jointly, with a Financial Institute for a minimum of 2 years.”*

The **Important Information** section of the **Credit Agreement** dated **3 July 2009** details as follows;

- |  |                                    |
|--|------------------------------------|
| 1. <i>“Amount of credit advanced</i>                                   | <i>: EUR63,000.00</i>              |
| 2. <i>Period of Agreement</i>  | <i>: 84 months</i>                 |
| 3. <i>Number of Repayment Instalments</i>                              | <i>: 84</i>                        |
| 4. <i>Amount of Each Instalment</i>                                    | <i>: EUR988.34</i>                 |
| ...  |                                    |
| 9. <i>Rate of Interest</i>   | <i>: 8.26% [Variable]</i>          |
| ...  |                                    |
| 12. <i>Date of expiry of the Loan</i>                                  | <i>: 23<sup>rd</sup> June 2016</i> |
| <i>(subject to the terms and conditions of this credit agreement””</i> |                                    |

The First Complainant signed and accepted the **Credit Agreement** on **7 July 2009**.

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The evidence shows that the First Complainant emailed the Provider on **8 July 2009** asking “could you let me know what amounts were paid out to close each of the debts please.”

The Provider responded to the First Complainant by email also dated **8 July 2009**, as follows;

*“Breakdown as follows from 63k loan;*

*Credit Union – 16.8k*

*[Account ending] 4705 ([First Complainant]) = 8,759.67*

*[Provider] CC = 13,068.08*

*[Account ending] 5137 ([Second Complainant]) = 2,500*

*TL [ending] 2412 = 21,872.25”*

The evidence shows that the proceeds of the loan of €63,000 were applied as set out above.

The **mortgage loan statements** show that the Complainants met the capital and interest mortgage payments on the mortgage loan account between **February 2009** and **April 2010**.

The variable interest rate that applied to the mortgage loan between **February 2009** and **April 2010** commenced at 3.25% and varied downwards to 2.25%. Between **February 2009** and **April 2010**, the overall tracker rate (ECB + 0.85% margin) commenced at 2.85% and reduced to 1.85% 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 **February 2009** and **April 2010**, is represented in the table below:

<b>Date Range</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
Feb 2009	0.40%	€1,216.80	€1,163.67	€53.13

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Mar 2009	0.40%	€1,152.07	€1,099.75	€52.32
Apr 2009	0.40%	€1,119.11	€1,068.31	€50.80
May 2009 – Mar 2010	0.40%	€1,087.94	€1,037.95	€49.99
April 2010	0.90%	€1,149.54	€1,037.95	€111.59

In the circumstances of this particular matter, I do not accept that the First Complainant took out the personal loan of €63,000 in **July 2009** solely because of the higher interest repayments being charged on the mortgage account.

Whilst I accept that the overpayments of approximately €50.00 per month between **February 2009** and **July 2009** on the mortgage account leading up to the period when the First Complainant sought the loan are unsatisfactory, unhelpful and inconvenient for the Complainants, I am of the view that the evidence shows there were other factors outside of the interest rate applying to the mortgage account that influenced the First Complainant to apply for the loan of €63,000. To me the evidence shows that the short term debts accumulated by the Complainants in advance of the overcharge on the mortgage loan account were the main contributing factor.

The Provider emailed the First Complainant on **22 April 2010** and detailed as follows;

*“Just got a chance to review your situation today. As you are behind on your bills and you[r] Credit Card is maxed, there are a number of item’s on your budget which are not a necessity and should be cancelled to reduce your monthly outgoing’s. Unfortunately, we would not be in a postion [sic] to apply for new fund’s due to condition’s attached to your existing restructure loan. I reviewed this with the Mortgage Advisor here and the best thing we can [remainder of email cut off]”*

The Complainants contacted the Provider by email dated **23 April 2010** and detailed as follows;

*“We are looking again at our budgeting. We think the moratorium would be the most sensible solution to sort out the immediate bills and credit card. Once paid off I intend to cancel the card and we should be back on track then.”*

I note that the direct debits presented for payment on **4 May 2010** and **14 May 2010** were returned unpaid. The repayment was successfully made when the sum of €1,149.54 was lodged on **25 May 2010**.

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On **6 May 2010**, the Complainants sought a 6 month interest only facility on their mortgage loan account by way of **Mortgage Form of Authorisation** (“MFA”) together with a **Financial Review Form** signed by the Complainants on **23 April 2010**. The **Financial Review Form (April 2010)** assessed the Complainants’ income and expenditure and recorded that their monthly surplus totalled €33.79. Their outgoings included the monthly mortgage loan payment of €1,087.94 and the First Complainant’s monthly personal loan payment of €988.34.

The **mortgage loan statements** show that the 6 month interest only period commenced in **May 2010**.

The Complainants wrote to the Provider on **6 October 2010** detailing as follows;

*“We would like to extend the interest only period on the above 2 mortgages for a further 6 months.*

*The reason for requesting this extension is to allow us to position ourselves correctly to meet all our financial commitments fully in future.*

...

*Unfortunately, in [date redacted] my mother, who lived in [Location] was diagnosed with a terminal illness. I had no access to cash at this point, as we had no savings. I got my credit card limit increased to 2000 euros from 1000 euros ... to allow me to get to [Location].*

*I made a number of trips to [Location] to help out and also for the funeral in [Date]. During this time I paid no attention to my finances and a lot of my bills went unpaid. I used the money for flights, food, travel and other expenses*

...

*If we could extend the interest only period for a further 6 months – we would like to clear the credit card (2000) and the outstanding loan payment (988) and use the rest of the extended interest only period to build our savings. This will ensure we wont run into issues so easily again.”*

The **Financial Review Form** signed on **6 October 2010** assessed the Complainants’ income and expenditure and recorded that their monthly surplus totalled €12.78. At that time their monthly outgoings included the mortgage loan payments of €752.68 (€611.10 for the mortgage loan account which is the subject of this complaint and €141.58 for another mortgage loan account), the monthly personal loan payment of €988.34, and credit card payment of €200.

/Cont’d...



The Provider's internal mail dated **29 October 2010** detailed that;

*"6 mts only agreed on XXX0587 and XXX8808*

*Text MFA*

*There is no guarantee this facility will be extended in 6 mts time.*

*Applicants must have reorganised all of their finances over the next 6 months."*

The Complainants signed a **Mortgage Form Authorisation** on **4 November 2010** for interest only repayments to be applied to both of their mortgage accounts for a further period of 6 months.

The variable interest rate that applied to the mortgage loan between **May 2010** and **April 2011** commenced at 2.75% and moved upward to 3.00%. Between **May 2010** and **April 2011**, the overall tracker rate (ECB + 0.85% margin) commenced at 1.85% and increased to 2.10% 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 **May 2010** and **April 2011**, is represented in the table below:

<b>Date Range</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
May 2010 – July 2010	0.90%	€560.14	€377.55	€182.59
Aug 2010 – Oct 2010	1.15%	€611.10	€377.55	€233.55
Nov 2010 – Mar 2011	1.15%	€611.10	€377.35	€233.55
Apr 2011	0.90%	€611.10	€426.58	€184.52
May 2011	0.90%	€1,214.84	€1,101.79	€113.05

/Cont'd...

I accept that the repayments that would have been required under the interest only alternative repayment arrangements that were entered into between **May 2010** and **May 2011** would have been less had the mortgage loan been on the tracker rate of interest. The evidence shows that at this time the Complainants were overpaying between €113.05 and €233.55 per month. For the Complainants on a single income, these are significant overpayments to make on a monthly basis. I accept that having access to these funds at the time would have assisted the Complainants to make fully informed decisions about the management of their finances and had an impact on the finances available to them.

However I do not accept that the overcharge on the mortgage loan “*significantly impacted*” the Complainants’ ability to repay the personal debt during this time, as they have suggested. The monthly loan repayments on the loan were €988.34 which is significantly larger than the monthly overpayments that the Complainants were making on their mortgage loan at the time. Further the evidence shows that during the time period between **May 2010** and **May 2011** the Complainants entered into further debt by increasing the limit from €1,000 to €2,000 on their Credit Card and spending to the limit of €2,000.

In a letter to the Provider dated **11 April 2011**, the Complainants detailed as follows;

*“During the last 6 months we have continued to make all payments, some small additional loan payments and have no additional borrowings. In this period, however we had had 1 son’s confirmation, 1 daughter’s communion and an expensive (Euro 1000+) NCT. This added to a rise in our petrol bills, child benefit reduction and tax increases etc has not allowed us to make the progress we would have liked in placing us on a sound long-term footing.*

*If we could extend the interest only period on the 1 mortgage account [ending] 0587 for a further 12 months – This will free up enough money to allow us to continue the process of restoring our finances to proper order.”*

A **Financial Review Form** signed by the Complainants on **26 April 2011** assessed the Complainants’ income and expenditure and recorded that their monthly surplus totalled €15.61.

The Provider’s internal mail dated **13 May 2011** detailed that;

*“Interest Only declined. Alternative solution solution [sic] offered for fixed repayments. We have agreed to accept 800pm from customers for the next 6 months , a/c to be set to i/o but direct debit to be set to 800pm – the surplus above int only to be put towards the capital balance.”*

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The Complainants then signed a **Mortgage Form Authorisation** on **26 May 2011** for reduced repayments of €800 to be applied to the mortgage account for a period of 6 months.

The **mortgage loan statements** show that from **June 2011** the monthly repayments being made by the Complainants were €800 per month.

The difference in interest charged on the variable rate and interest that would have been charged on the tracker interest rate of ECB + 0.85% between **June 2011** and **October 2011**, is represented in the below table;

<b>Date Range (inclusive)</b>	<b>Rate charged</b>	<b>Rate that would have been charged</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Amount of overcharged interest per month</b>
June 2011	3.00%	2.10%	0.90%	€180.09
July 2011	3.00%	2.35%	0.65%	€147.30
Aug 2011	3.00%	2.35%	0.65%	€142.83
Sept 2011	3.50%	2.35%	1.15%	€156.31
Oct 2011	3.50%	2.35%	1.15%	€214.15
Nov 2011	3.50%	2.10%	1.40%	€287.16

The Complainants wrote to the Provider by letter dated **10 October 2011** and detailed as follows;

*“We had previously got into financial difficulties through bad management of our finances – which resulted in us taking out a restructuring loan of 63,000 euros. The balance of this loan is now 46,550 euros. The payment of this loan at 1000 per month, along with high petrol costs, tax increases, a pay freeze at work, and having [number redacted] children to provide for, would leave us under financial pressure if our mortgages reverted to full payment.*

*We would like to arrange another fixed payment agreement for a further 6 or 12 month period, but feel we can pay slightly more than we are currently. We believe we can pay 1150.00 across the two mortgages.”*

At that time the Complainants completed a **Standard Financial Statement** on **17 October 2011** to enable the Provider to assess their situation.

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It detailed that the Complainants' monthly income was €5,424 and their outgoings totalled €5,408.38, including the monthly loan repayment of €988.34, leaving a monthly surplus of €15.61.

The Provider's internal mail dated **7 November 2011** detailed that;

*"Fixed repayments of e900/month for 12 month sanctioned.*

*This arrangement is for a period of 12 months however to however to [sic] comply with the terms of the Code of Conduct for for [sic] Mortgage Arrears an interim review of borrower(s) financial circumstances must occur after 6 months. Where there is a material change in circumstances or borrower fails to cooperate fully with the interim review the Lender reserves the right to revoke or alter this arrangement Please issue MFA"*

The Complainants then signed a **Mortgage Form Authorisation** on **20 November 2011** for reduced repayments of €900 to be applied to the mortgage account for a period of 12 months.

The **mortgage loan statements** show that from **December 2011** the monthly repayments being made by the Complainants were €900 per month. The difference in interest charged on the variable rate and interest that would have been charged on the tracker interest rate of ECB + 0.85% between **December 2011** and **November 2012**, is represented in the below table;

<b>Date Range (inclusive)</b>	<b>Rate charged</b>	<b>Rate that would have been charged</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Amount of overcharged interest per month</b>
Dec 2011	3.50%	1.85%	1.65%	€305.60
Jan 2012	3.40% - 3.50%	1.85%	1.55% - 1.65%	€345.21
Feb 2012	3.40%	1.85%	1.55%	€298.21
Mar 2012	3.40%	1.85%	1.55%	€308.15
Apr 2012	3.40%	1.85%	1.55%	€318.18
May 2012	3.40%	1.85%	1.55%	€317.83
Jun 2012	3.40%	1.85%	1.55%	€297.14
Jul 2012	3.40%	1.60%	1.80%	€360.52

/Cont'd...

Aug 2012	3.40%	1.60%	1.80%	€368.14
Sept 2012	3.40%	1.60%	1.80%	€332.33
Oct 2012	3.40% - 3.90%	1.60%	1.80% - 2.30%	€414.20
Nov 2012	3.90%	1.60%	2.30%	€454.11

An **SFS/Product Amendment Assessment Form** dated **25 October 2012** has been provided in evidence which details as follows;

***“Summary of Customer Position:***

*[First Complainant] is [Provider] staff in [Location] on basic 86.4k incl car allowance. Wife doesn't work/appear is former staff. Seeking to slightly increase fixed payments to 1250.*

...

***Forbearance Recommendation/Decision (including taking of any additional security):***

*Cover letter from same as last Nov-seeking 6/12 months reduced payment. Only difference is proposed amount incr to 1250 from 1150. Note not insignificant discretionary spending evident from CC stats. Custs payslips include on call allowance and OT so average taken. Cust also states on SFS that CU loan taken out as prev car was costing too much to maintain and [third party provider] card opened as on 0% int (intends to pay this off with proceeds from [redacted] scheme). Note previous approval 2011 recommended no further debt to be drawn. On readjusted income, C&I should be affordable. Listed 4132 monthly expenses May 2010-now 2870. Profile of STD built up here. Whilst scope to extend term, customer likely to start incurring 3<sup>rd</sup> level costs in 3/4 years and TE may be more appropriate then. Recommend decline/full C&I on both affordable. Further refinance of [Provider] loan possible.”*

The Provider's internal mail dated **26 October 2012** detailed as follows;

*“Decision for CCMA Red XXX0587/XXX8808: Decline reduced payments. REASON: We have considered all the facts of your case and have concluded that there is sufficient income evident to maintain your current full capital and interest repayment commitments.”*

The Provider wrote to the Complainants by letter dated **31 October 2012** and set out as follows;

/Cont'd...

*"I have now completed a review and assessment of the financial and other information you provided and regret to advise that your request has been declined.*

*I have considered all the facts of your case and concluded that there is sufficient repayment capacity to allow you to continue to meet the full repayments on your mortgage at this time."*

It is clear that the Complainants engaged with the Provider in relation to arrangements to pay their mortgage and entered into two fixed repayment arrangements between **June 2011** and **November 2012** to continue repayments on their mortgage loan. The Complainants are of the view that the capital balance of the mortgage loan did not reduce in the manner it would have had the tracker interest rate applied. The Complainants appear to be of the view that they should be compensated for this. With respect to the fixed repayment arrangement periods, it is correct that a lower portion of the fixed repayment was attributed to the capital balance than would have been had the tracker interest rate applied to the mortgage loan. In redressing the Complainants for the overcharge on the mortgage loan, the Provider has repaid the Complainants the difference between the monthly amounts the Complainants were charged and the amounts they should have been charged. The Provider did not conduct a capital balance adjustment. If it is the case that the Complainants want the capital balance on the mortgage loan to be as if the fixed term repayments did not take place, it is a matter for the Complainants to attribute a portion of the redress payment to the capital balance of the mortgage loan. It is important to observe that the Complainants have been refunded the overpaid interest and have not sought to reduce the capital balance owing by the interest overpaid. It would lead to double redress for the Complainants to retain the totality of the overpayments and have the capital reduced in the manner in which it would have been had the mortgage amortised as it should have on the tracker interest rate.

The First Complainant wrote to the Provider by letter dated **14 November 2012** in relation to his personal loan. The letter detailed as follows;

*"REF: Staff Loan Account [ending] 4531*

*..*

*The balance on this loan is 37,090 and was originally 63,000.*

*This was a restructure loan and was taken out in July 2009 as I had made a complete mess of my finances.*

***Reason for review***

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*Over the last 2 and half years I have been paying a reduced amount on my mortgages with [the Provider] to allow me to cover this loan and the mortgage.*

*I had been gradually been paying a bit more each year on the mortgage and was hoping to do the same for another year, however [the Provider] have declined my request this time. I am currently paying 1150 across the 2 mortgages (nb. on same property) but that will rise to 1700 from November. This is a rise in outgoings of 550 which I feel will put me under pressure to pay along with the restructure loan.*

...

*I have significant costs in travelling to work (around 500pm ...) and I also have the loan and mortgage payments to make. This along with [number redacted] school children and associated costs means that things are fairly tight.*

*I have the option to appeal the [Provider] decision, but would like to see first if it would be possible to reduce the payments on the above loan to 700 per month instead, as a more permanent solution, and pay the full mortgage amount. Would you be able to advise if this is possible?"*

At that time the Complainants completed a **Financial Review Form** to enable the Provider to assess their situation. This Form detailed that the Complainants' monthly income was €5,388 and their monthly outgoings were €5,413.12, leaving them with a monthly deficit of €25.12.

The Provider wrote to the First Complainant by letter dated **26 November 2012** and set out as follows;

*"I am pleased to confirm approval of new staff term loan account in the sum of €37920.00 over 7 years, being a restructure of your existing term loan account.*

...

*This facility is given to you on the following conditions:*

- *Current Account [ending] 5965 to continue to operate in credit at all times.*
- *T/L a/c [ending] 4351 will be cleared in full, account closed and standing order cancelled.*
- *New T/L [ending] 5045 will be linked to a/c [ending] 5965.*
- *Standing Order will be set-up on a/c [ending] 5965 for 23<sup>rd</sup> monthly, commencing 23/12/2012.*

/Cont'd...

- *No further borrowings in your name including Credit Cards, overdraft facilities or term loans to be entered into, either solely or jointly, with any Financial Institution until this loan [ending] 5045 has been reduced by 50%.”*

The **Important Information** section of the **Credit Agreement** dated **27 November 2012** details as follows;

- |  |                            |
|--|----------------------------|
| 1. <i>“Amount of credit advanced</i>                                   | <i>: EUR37,920.00</i>      |
| 2. <i>Period of Agreement</i>  | <i>: 84 months.</i>        |
| 3. <i>Number of repayment instalments</i>                              | <i>: 84</i>                |
| 4. <i>Amount of each instalment</i>                                    | <i>: €618.51</i>           |
| ...  |                            |
| 9. <i>Borrowing Rate</i>   | <i>: 9.51%% [Variable]</i> |
| ...  |                            |
| 12. <i>Date of expiry of the Loan</i>                                  | <i>: 23 Dec 2019</i>       |
| <i>(subject to the terms and conditions of this Credit Agreement)”</i> |                            |

The First Complainant signed and accepted the **Credit Agreement** on **5 December 2012**. I note that by extending the term of the personal loan to **23 December 2019** the monthly repayments were reduced to €618.51.

The variable interest rate that applied to the mortgage loan between **December 2012** and **July 2015** was 3.90%. Between **December 2012** and **July 2015**, the overall tracker rate (ECB + 0.85% margin) commenced at 1.60% 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 had been applied to the mortgage account between **December 2012** and **July 2015**, is represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>

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Dec 2012 – Apr 2013	2.30%	€1,366.39	€1,063.11	€303.28
May 2013 – Oct 2013	2.55%	€1,366.39	€1,037.05	€329.34
Nov 2013 – May 2014	2.80%	€1,366.39	€1,011.62	€354.77
June 2014 – Aug 2014	2.90%	€1,366.39	€1,001.64	€364.75
Sep 2014 – Jul 2015	3.00%	€1,366.39	€991.94	€374.45

The Complainants wrote to the Provider by letter dated **11 August 2015** and detailed as follows;

*“We would like to apply for an interest only period on mortgages XXX0587, XXX8808 for 6 months...*

*The reason for requesting this is to allow us to fund our daughters first year at College.”*

At that time the Complainants completed a **Standard Financial Statement** on **7 August 2015** to enable the Provider to assess their situation. This Form detailed that the Complainants’ monthly income was €5,530 and their monthly outgoings were €5,493.45, including the monthly personal loan repayment of €618.51, leaving a monthly surplus of €36.55.

The Provider’s internal note dated **17 August 2015** details as follows;

*“Agree Max TE on both mortgage accounts until 07/2039. Agreed restructure of [Provider] STD over 84m. Borrowers to be advised to go and restructure CU TL to prioritise their mortgage payments”*

On **4 September 2015**, the Complainants extended the period of the mortgage loan for 60 months to a new maturity date of **23 August 2039** by signing and accepting a **Mortgage Form of Authorisation (“MFA”)**.

The First Complainant also further extended the term of the personal loan to **23 December 2022** by signing and accepting a new Credit Agreement on **1 September 2015**. This had the effect of reducing the monthly repayment to €421.49.

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The **Important Information** section of the **Credit Agreement** dated **25 August 2015** details as follows;

- |  |                     |
|--|---------------------|
| 1. "Amount of credit advanced  | : EUR25,841.00      |
| 2. Period of Agreement   | : 84 months         |
| 3. Number of repayment instalments                                     | : 84                |
| 4. Amount of each instalment   | : €421.49           |
| ...  |                     |
| 9. Borrowing Rate  | : 9.51%% [Variable] |
| ...  |                     |
| 12. Date of expiry of the Loan   | : 23 Dec 2022       |
| <i>(subject to the terms and conditions of this Credit Agreement)"</i> |                     |

The variable interest rate that applied to the mortgage loan between **August 2015** and **January 2017** remained at 3.90%. A fixed interest rate of 3.10% was applied to the mortgage loan from **February 2017** to **November 2017** of 3.10%. Between **August 2015** and **November 2017**, the overall tracker rate (ECB + 0.85% margin) commenced at 0.90% and reduced to 0.85% 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 had been applied to the mortgage account between **August 2015** and **November 2017**, is 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
Sep 2015 – Feb 2016	3.05%	€1,177.75	€802.40	€375.35
Mar 2016 – Nov 2017	2.25%	€1,177.75	€798.10	€379.65

/Cont'd...

Whilst I accept that the Complainants' submission that they did not want to enter into arrangements that meant that the term of the First Complainant's personal loan would be extended in **2012** and again in **2015**, or that the term of the mortgage loan would be extended in **2015**, nonetheless there is no evidence that this restructure was caused by the overcharging interest on the Complainants' mortgage loan account.

The contemporaneous evidence shows that the Complainants' required funds "*to allow [them] to fund [their] daughters first year at College*" and that was the reason for the request to extend the term. However that being said, I recognise that the overpayments on the Complainants mortgage loan account had a direct impact on the funds that the Complainants had available to them to service their mortgage loan, and other expenses, during this time period.

I am of the view that for a single income family with the number of children the Complainants have, an overpayment of interest on average of €380 per month for a period of 105 months is significant. Throughout the nine year period, the Complainants were denied the opportunity of making informed decisions about their finances as they did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan account. During this time, the Complainants were challenged financially as they were servicing both of their mortgage loans and paying the First Complainant's personal loan. I have no doubt that the personal loan in and of itself placed a strain on the Complainants' finances and it cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused additional hardship and serious inconvenience to the Complainants during this period. I am of the view that the evidence supports the Complainants' position that the overcharge on the Complainants' mortgage loan account impacted the Complainants financial position and ability to service their debts. It is evident from the Complainants' submissions that it has been a source of major inconvenience during the impacted period.

Taking into consideration all of the evidence before me in terms of the level of overcharging and the extended period over which the overcharging occurred, the impact such overcharging had on the Complainants, I am of the view that the level of compensation offered of €9,198.55 is not sufficient or reasonable to compensate the Complainants for the inconvenience suffered by the Complainants during the impacted period.

I note the Provider's statement that I do not have the power to direct compensation for embarrassment, holidays and family events forgone. It also states that I do not have the

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power to “*make an award for stress*”. The Provider also states that it does not believe that the Complainants have “*demonstrated any inconvenience*”.

I am at a total loss to know how the Provider can have considered the evidence in this complaint and come to the conclusion that its conduct has not caused any inconvenience to the Complainants. This shows a serious lack of understanding on the part of the Provider as to the impact of its conduct on the Complainants and is most disappointing.

Therefore, I partially 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 €15,000 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered. For the avoidance of doubt, the total sum of compensation of €15,000 is inclusive of the €9,198.55 compensation already offered to the Complainants for the Provider’s failure.

### **Conclusion**

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

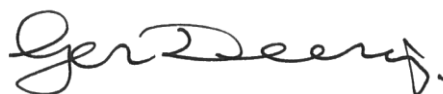
Pursuant to **Section 60(4) and Section 60 (6)** of the ***Financial Services and Pensions Ombudsman Act 2017***, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €15,000 (to include the €9,198.55 compensation already offered to the Complainants by the Provider), to an account of the Complainants’ choosing, within a period of 35 days of the nomination of account details by the Complainants 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.**

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**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 October 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.**