



<u>Decision Ref:</u>	2020-0380
<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 Complainant with the Provider and an overcharge of interest in the amount of €868.51.

The mortgage loan offer letter dated **05 July 2006**, outlined the mortgage loan in the amount of €275,000 over a term of 25 years and 1 month. The mortgage loan was drawn down in **July 2006**.

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

The Provider wrote to the Complainant on **15 December 2017** advising him of the error that occurred on his mortgage loan account. The Provider detailed how its failure and how its failure effected the Complainant's mortgage loan account as follows;

"A review of your account identified that based on your facility letter you have been charged an incorrect rate of interest from 22/09/2006 to 11/12/2007.

Your rate is made up of two components, the European Central Bank Refinancing Rate (the “ECB Rate), and the margin.

Your mortgage agreement with the Bank specifies that your mortgage should have been charged at a margin of 0.99% over the ECB Rate.

Unfortunately, your loan account was incorrectly charged at a margin of 1.25% from 22/09/2006 to 11/12/2007. This has led to you being overcharged.

This means that the interest which had been charged to your account and the repayments you had made to your loan were too high.”

The Provider made an offer of redress and compensation to the Complainant. The offer of in the sum of €1,454.60 made by the Provider to the Complainant comprised the following;

1. Refund of overpayments made of €868.51;
2. Time Value of Money Payment of €135.49;
3. Compensation of €150.60; and
4. Contribution to Independent Advice Costs of €300.

The Complainant submitted an appeal to the Independent Appeals Panel, established by the Provider as part of the Examination, on **11 January 2018**. The Appeals Panel decided on **20 March 2018** that the appeal was unsuccessful.

The Provider wrote to the Complainant again on **07 November 2018** advising the Complainant that there was an error in respect of the Complainant’s original redress and compensation offering. The Provider advised that the Complainant was entitled to an additional Time Value of Money Payment of €20.04 and additional compensation of €3.00. This brings the total redress and compensation offering to €1477.64.

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

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

The Complainant’s Case

The Complainant submits that the offer of compensation made by the Provider is “*ludicrously low and not acceptable*”.

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The Complainant contends that the Provider has not explained how the Provider has calculated the amount of compensation offered. The Complainant submits that the calculation of compensation is without any foundation and is inadequate as it's *"legitimacy and accuracy cannot be verified"*.

The Complainant further submits that the Provider offered the Time Value of Money rate of Euribor plus 0.05% without an explanation which also *"results in a low compensation payment compared to having been denied the ability to invest the funds in investments at that time"*.

The Complainant contends that it is *"impossible to believe"* that if the amount of interest overcharged (€868.51) was available to him to invest in **2006**, that the return today would only be €286.09 (the compensation and Time Value for Money payments combined). The Complainant submits that the compensation offered *"... is insufficient based on opportunity costs"*.

The Complainant submits that the level of compensation offered by the Provider is *"well below market rates for investors in 2006/2007"*. The Complainant submits that he has *"researched financial news articles from the Guardian noting a prevailing rate of c5.1% and similarly, from the Telegraph quoting 6.25%."* The Complainant also contends that at the time the market *"provided 'several equity bond' type products at a much higher rate"*.

The Complainant goes on to detail that he would also have had the opportunity *"to invest (further) in 4 tax free children's bonds"* which he held at the time. The Complainant contends that had the amount of overcharged interest, €868.51, been invested at a rate of 5.1% per annum, which he submits were the rates advised for children's bonds, it would give a return of €651.68, which the Complainant submits is the *"absolute minimum which should have been offered"*. The Complainant contends that it would have been an effectively risk free return from a Government agency.

The Complainant further asserts that he could have invested the overcharged interest and that the compensation does not recognise *"the opportunity cost of other investments that could have been undertaken"* during the impacted period. The Complainant submits that he held a share account with the Provider at this time and submits that he could have invested the overcharged interest into his account.

The Complainant submits that during **2006 – 2007**, he traded in listed shares. The Complainant submits that he researched the *"average return over 10 years on the FTSE 100 which indicates growth of between 50-250%"*.

The Complainant submits based on this, if he had invested the amount of interest overcharged (€868.51), it would have produced returns of between €1,389.62 and €3,039.79. The Complainant submits that *compensation offered "is well below that lowest return"*.

The Complainant contends that the compensation offered by the Provider is akin to a return of 15% interest over eleven years or around 1.36% interest per annum. The Complainant asserts that any of the above mentioned options would have produced a higher return than the amount of compensation offered by the Provider.

The Complainant submits that the amount of €300 which was allocated to him for legal and financial advice is *"completely insufficient for either a legal or financial review"*. The Complainant contends that the Provider *"explicitly and forcibly"* stated that he should avail of legal and financial advice. The Complainant goes on to submit that most legal or financial advisors charge an initial fee of €250 followed by fees of in excess of €100 per hour. The Complainant contends that it is *"preposterous"* for the Provider to suggest that two professionals would carry out a review and provide advice for €150 each. The Complainant further contends that other providers offer €615 for professional and legal advice and submits the Provider should *"at least match this amount"*.

The Complainant is seeking the following:

1. A professional advice fee of at least €615.00 for financial and legal advice.
2. A higher level of compensation based on the higher returns he may have achieved if he had the amount of interest overcharged (€868.51) available to invest in **2006 – 2007**.
3. The Complainant further requests compensation as he says it was *"very upsetting to be advised that this error occurred"*.

The Provider's Case

The Provider submits that as a result of an investigation by the Central Bank, the Provider identified a failure in connection with the management of certain mortgage loan accounts, including the Complainant's mortgage loan account.

The Provider outlines that the mortgage loan account was deemed to be impacted as part of the Central Bank directed Tracker Mortgage Examination. The Provider outlines that the Complainant's mortgage loan was deemed to be a "Margin Fail" under the Examination. The Provider submits that this means that the Complainant was on the correct *"Tracker*

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loan product” but was charged the incorrect margin over the ECB Base rate for a period of time.

The Provider submits that the Complainant’s mortgage loan account was charged an incorrect interest rate of ECB + 1.25% from **22 September 2006 to 11 December 2007**. The Provider submits that the correct interest rate which should have been applied was ECB + 0.99%. The Provider goes on to state that this error resulted in an over charge of 0.26% for the period of **22 September 2006 to 11 December 2007**. The Provider submits that this amounted to an overcharge of €868.51 during the impacted period.

The Provider submits that it recalculated the impacted mortgage loan account on the basis that the correct margin had been applied since the date on which the error occurred in order to readjust the balance on the mortgage loan account to the correct figure.

The Provider submits that it wrote to the Complainant on **15 December 2017** outlining the failure which occurred on the Complainant’s account, and offering redress and compensation. The Provider submits the following regarding its calculation of the Complainant’s redress and compensation offering:

1. Overpayment refund

The Provider submits that all customers deemed to be a “*Margin Fail*” under the Examination were customers who were on a tracker interest rate but on an incorrect margin. The Provider submits that in these cases, the Provider recalculates the mortgage loan account on the basis the correct margin has applied from the date on which the error occurred. The Provider submits “*the calculation is intended to show the loan as if the error had not occurred*”.

The Provider outlines that it identified an incorrect interest rate applied to the Complainant’s mortgage loan account from **29 September 2006 until 11 December 2007**, resulting in an overcharge of 0.26% for that period. The Provider asserts that the calculations used in coming to the overcharge figure of €868.51 were correct.

2. TVM (Time Value of Money) Payment

The Provider submits that the rate of 3 month Euribor was chosen to calculate the Time Value of Money (TVM) as it is the “*main benchmark rate which [Providers] use to price retail loans and deposits*” and the Provider “*added +50bps to err on the side of the customer*”. The Provider details that its initial calculation of TMV as set out in its letter to the Complainant dated **15 December 2007** was €135.49.

The Provider goes on to submit that it made an error in this calculation and used the incorrect reference rate of 1 month Euribor + 0.5%. The Provider submits that the correct rate was the 3 month Euribor rate + 0.5%.

The Provider outlines that on recalculating the Complainant's redress and compensation offering using the correct rate, the Complainant was entitled to a further TVM payment of €20.04 and additional compensation of €3.00. The Provider submits that it wrote to the Complainant on **07 November 2018** offering him the additional TVM and compensation payments.

The Provider submits that it deems this a "*fair mid-point between lending and deposit rates*". The Provider goes on to detail that using the above referenced calculation of the 3 month Euribor + 0.5%, the TVM was calculated at €155.53. The period for the calculation was from the date of the overcharge to the date of the redress offering.

The Provider submits that the Complainant advises that had he had access to the amount of overcharge (€868.52) in 2006, he could have invested it. The Provider contends that the Complainant would not have had access to this amount in its entirety in 2006. The Provider contends that the amount of overcharge was spread over 15 months, which equates to €57.90 per month and this is the amount that the Complainant did not have access to. The Provider submits that the Complainant brought an appeal to the Independent Appeals Panel in relation to the amount offered and notes that the Determination of the Appeal dated **20 March 2018** found that the "*Appellant refused to provide evidence*" that he could have generated a greater return from the overcharged amount.

The Provider notes the articles provided by the Complainant and submits that these relate to UK interest rates. The Provider submits that it does not consider these articles to be relevant in this context. The Provider submits that the Complainant references an annual interest rate of 5.1% per annum which could have been earned over this period and submits that it should be noted that the 3 month Euribor fell from over 4% in 2007 to below -0.30% in 2018, whilst the 3 month Libor fell from over 5% in 2007 to under 0.30% in 2015 before increasing gradually to over 2% in 2018.

3. Compensation

The Provider submits that all compensation under the Examination is calculated at a rate of 15% of the total redress, a figure which was arrived at "*following interactions between the Provider and the Central Bank*".

The Provider states that the Complainant's redress consisted of a refund of overpayments plus the Time Value of Money. The Provider submits that using this method, it calculated a compensation payment of €150.60.

The Provider submits that on recalculating the Complainant's redress and compensation offering using the correct rate as set out above, the Complainant was entitled to additional compensation of €3.00. The Provider submits that it wrote to the Complainant on **07 November 2018** offering him the additional compensation. The Provider submits that this resulted in the Complainant being offered a total of €153.60 in compensation.

The Provider states that they *"had the ability to increase the compensation payments on individual cases where there were individual circumstances that merited it, it did not find any evidence from its review the Complainant's files to justify a higher payment"*. The Provider submits that the compensation payment is subject to a minimum payment of €125.

4. Independent Advice Payment

The Provider submits that payment for independent advice was tiered depending on the complexity of the case, as per guidance from the Central Bank of Ireland. The Provider states that independent advice payments are set at *"levels reflective of the nature of the error"*. The Provider states that its impacted customers fall into two *"fail types"*:

1. Margin Fails; and
2. Product Fails.

The Provider *"is of the view that customers who were margin fails may require an accountant or financial adviser to confirm the redress calculations"*. The Provider submits that those who fall under the category of *"Product fails"* would *"require legal advice in order to sign new loan documentation"*. The Provider submits that the Complainant falls under the *"margin fail"* category. The Provider goes on to state that customers with *"larger redress payments... may require advice on the level of compensation being offered"*.

It also maintained that it took the view that where customers were charged at an incorrect rate, rather than being provided with an incorrect product, they would require an accountant or financial advisor to confirm their redress calculations, but only where they were provided with the incorrect product, would they require legal advice. The Provider contends that the Complainant confirmed to the Independent Appeals Panel that he *"did not engage any person in respect of independent advice"*.

The Provider submits that it provides a minimum independent advice payment of €185 which was derived from a minimum professional fee being €150 plus 23% VAT. The Provider submits that it offered the Complainant €300, which is 35% above that amount. The Provider believes that the independent advice payment *“is sufficient taking into account the amount of overcharge and the relative lack of complexity of this case.”* The Provider submits that the Central Bank of Ireland has *“accepted the Provider’s level of Independent advice payments which are tiered in relation to the amount of overcharge and complexity of each customer’s case”*.

In response to the Complainant’s submission that the offer of €300.00 for independent advice was insufficient, the Provider submits that the Complainant *“has not provided evidence of his expected outlay or that that outlay is reasonable and proportionate”*. The Provider submits that it considered the amount offered to be appropriate based on the materiality and nature of the error. The Provider submits that due to the amount of the overcharge and relative lack of complexity of this case, it feels the payment is sufficient.

The Provider submits that it is not aware of nor in a position to comment on the nature of any compensation scheme offered by any other Provider and that the Central Bank has accepted the level of the Provider’s independent advice payments.

The Provider contends that the Complainant has not provided evidence of any specific detriment suffered by him by learning of the Provider’s error except for him not being in a position to invest money during the relevant period. The Provider asserts that in these circumstances, the compensation is sufficient to compensate the Complainant.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has failed to offer adequate compensation to the Complainant for the failures identified on his Mortgage Loan Account.

Decision

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

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

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

A Preliminary Decision was issued to the parties on 7 October 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.

The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress. The redress payment of €1,024.04 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €155.53 to reflect the time value of money. The Provider also paid the Complainant compensation of €153.60 and a payment of €300 for the purposes of seeking legal and/ or financial advice. The Provider outlines that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider has already provided for. The Provider submits that the Appeals Panel rejected the Complainant's appeal for additional compensation.

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

A Loan Offer dated 05 July 2006 issued to the Complainant which detailed as follows;

- | | | |
|--|------------|-------------------|
| <i>"1. Amount of credit advanced:</i> | <i>EUR</i> | <i>275,000.00</i> |
| <i>2. Period of Agreement: 25 years 1 month(s) from drawdown.***</i> | | |
| <i>3. Number of Repayment Instalments: 299 plus any final balance:</i> | | |
| <i>4. Amount of Each Instalment: 299 payment(s) of</i> | <i>EUR</i> | <i>1,416.63</i> |
| <i>1 payment(s) of</i> | <i>EUR</i> | <i>1,412.48"</i> |

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The “**Schedule**” section of the **Loan Offer** details as follows:

“Purpose of the Loan:

Home Purchase, as specified in your Loan Application.

Property to be mortgaged (the “Property”):

[Redacted]

Latest Drawdown Date: 5 October 2006

Rate of Interest: 3.74% per annum, variable. Linked to the ECB Refinance Rate.

Repayment intervals: month”

The **General Conditions for Annuity Home Loans** detail as follows:

“1. Definitions and Interpretation

...

“ECB Refinance Rate” means the refinance rate of the European Central Bank as varied from time to time or, if such rate ceases to exist, the rate which we determine is the nearest equivalent thereto;

....

12. Interest – Variable Rate Loans

.....

12.2 If the Loan is an ECB Tracker Variable Rate Home Loan, the interest rate is linked to the ECB Refinance Rate. The rate of interest specified in the Schedule is the rate applicable to the Loan at the date of the facility letter, and it represents the sum of the ECB Refinance Rate on that date and an agreed margin (the “ECB rate margin”). The ECB Refinance Rate is subject to variation, and the rate of interest applicable to the Loan shall be the ECB rate margin added to the ECB Refinance Rate from time to time, and shall vary accordingly.”

.....

12.4 In the event of any change in the variable home loan rate applicable to the Loan, the following provisions will apply:

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12.4.1 we shall give notice of such change to you by any one or more of the following methods:

(a) by displaying in a conspicuous place in our branches a statement in relation to such change;

(b) by advertisement published in at least one national newspaper;

(c) by letter or by statement of account addressed and despatched to you; or

(d) in such other manner as we may from time to time reasonably determine is sufficient notice of such change;

12.4.2 any increase or reduction in the appropriate rate shall take effect from such date as the said notice shall specify.

12.5 Any change in the ECB Refinance Rate will take effect within 3 days of such change.”

I understand that the tracker interest rate of 3.74% outlined in the Complainant's mortgage **Loan Offer** dated **05 July 2006**, comprised the ECB base rate which was 2.75% at the time, together with a margin of 0.99%. The mortgage loan was drawn down on **22 September 2006**. However the Provider has since found that it applied the incorrect margin of 1.25% to the Complainant's mortgage loan from **22 September 2006** to **11 December 2007**. This failure was subsequently identified in **2017** as part of the Examination that occurred on the Complainant's mortgage loan account, in that, the Provider charged the incorrect tracker margin.

In the period from **22 September 2006** to **11 December 2007** a tracker interest rate of ECB + 1.25% was applied to the mortgage loan instead of the contracted tracker interest rate of ECB + 0.99%. 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 interest charged (ECB + 1.25%) and the amount of interest which should have been charged if the correct tracker interest rate (ECB + 0.99%) had been applied to the mortgage account ending between **September 2006** and **December 2007**, is represented in the table below:

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Date Range (inclusive)	Rate charged	Rate that should have been charged	Difference in Interest rate charged vs the tracker interest rate	Amount of overcharged interest per month
Sep 2006	3.99%	3.99%	0%	€0
Oct – Dec 2006	Between 4.25% and 4.50%	4.24%	Between 0.01% and 0.26%	Between €57.93 and €64.41
Jan 2007 – Mar 2007	4.75%	4.49%	0.26%	Between €55.20 and €60.79
Apr 2007 – Jun 2007	5.00%	4.74%	0.26%	Between €59.50 and €61.65
Jul 2007 – Dec 2007	5.25%	4.99%	0.26%	Between €59.89 and €78.93

The Complainant submits that if the total amount of the interest overcharged, €868.51, had been available to him in **2006**, he would have been able to make various investments. The Complainant has submitted various documents into evidence to support this submission, including a document containing a table which he contends outlines what return he would make if he invested in children’s bonds at an interest rate of 5.1%:

“TABLE 1 – COMPOUND INTEREST CALCULATION

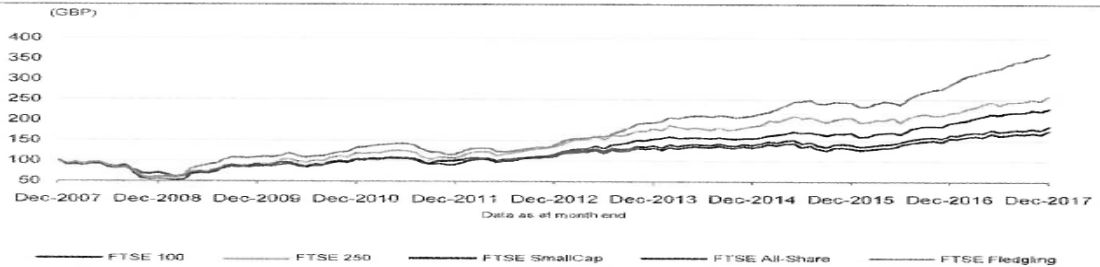
<i>Year</i>	<i>Year Deposits</i>	<i>Year Interest</i>	<i>Total Deposits</i>	<i>Total Interest</i>	<i>Balance</i>
<i>1</i>	<i>€0.00</i>	<i>€45.34</i>	<i>€868.51</i>	<i>€45.34</i>	<i>€913.85</i>
<i>2</i>	<i>€0.00</i>	<i>€47.71</i>	<i>€868.51</i>	<i>€93.06</i>	<i>€961.57</i>
<i>.....</i>					
<i>11</i>	<i>€0.00</i>	<i>€75.43</i>	<i>€868.51</i>	<i>€651.68</i>	<i>€1,520.19”</i>

The Complainant has also submitted into evidence a document entitled **FTSE RUSSELL Factsheet** detailing the below:

FTSE 100 Index

The FTSE 100 is a market-capitalisation weighted index of UK-listed blue chip companies. The index is part of the FTSE UK Series and is designed to measure the performance of the 100 largest companies traded on the London Stock Exchange that pass screening for size and liquidity. FTSE 100 constituents are all traded on the London Stock Exchange's SETS trading system.

10-Year Performance - Total Return



The Provider has submitted into evidence a letter from the Independent Appeals Panel to the Complainant dated **26 February 2018** which outlines as follows:

“

1. *You have stated in your letter dated 10 January 2018 that you could have invested the overcharging sum of €868.51 in four tax free children's bonds and that you can provide evidence if so required. Can you please provide us with full details in relation to this opportunity and any children's bonds which you held at that time and still hold (as indicated in your letter) which confirm the applicable interest rates and the relevant time periods for those applicable rates for such investments for the time period when you were deprived of this sum.*
2. *We understand that the overcharged sum of €868.51 relates to a period between 22 September 2006 and 11 December 2007 and therefore the sum of €868.51 represents the aggregate of all accruals in respect of overcharging during this period. You might, therefore, please let us have your views on how this sum could have been invested during this period in circumstances where the sum represents the aggregate of accruals over a period of approximately 15 months.”*

The Provider has also submitted into evidence an email from the Complainant to the Independent Appeals Panel on **06 March 2018** which states:

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“.....

1. *Let me initially say that I used the children's bonds purely as an example of one of many types of investment that I held at the time and could have augmented, had the €868.51 in question been available to me...*

...Therefore, I don't understand the focus purely on this topic (bonds). However, you can obtain full historic information on same at www.nsandi.com. I can confirm that in 2006, I held 2 such bonds (still held) as well as 4 collective investment funds (still held). However, I do not propose to list each and every investment that I had at the time of the transgression. That simply is an administrative task that is too onerous to bear and I'm more than disappointed that you might expect me, as an individual, to undertake same.

I have previously provided you with an assessment of the opportunity cost of the funds illegally withheld by [the Provider] by referencing average stock exchange returns over the period. This is a generally accepted benchmark for measuring investment. Therefore, I request that for simplicity and the avoidance of further conjecture, you refer to my previous comments in relation to average stock market returns over the past 10 years, and not any specific individual investment held.

2. *I utterly reject the point you appear to be making here I have wrongfully been deprived of €868.51 for a period of c. 10 years. The pertinent question absolutely is, what could I have recouped on investment of this sum in the intervening period. This is absolutely not, as you suggest an exercise of examination over 15 months*

Might I simplify your query by saying, let us assume that I invested the entire amount in December 2007 and that the stock market return calculation previously provided is a fair estimation of the return that I could have obtained as at and up until the identification and notification of the error by [the Provider]”

The Complainant has received a payment to reflect “the time value of money” on the interest of €868.51 overpaid of €155.53. The Complainant is of the view that he is entitled to a higher time value of money payment reflective of the return he could have made had he invested the overcharged interest in children's bonds at rate of 5.1%, invested in a share account he held with the Provider or invested in the stock exchange

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and has submitted that the average return over 10 years after investing in the FTSE stock exchange was between 50 and 250%.

The Complainant has not submitted any evidence as to what investments he was making at the time, nor any investment opportunities or specific products which were available to him at this time between **September 2006** and **December 2007** to support his claims. I note that the Complainant has made various assertions to investment opportunities he could have made in **2006 and/or 2007** which would have yielded a higher return than the 3-month Euribor +50bps method used by the Provider to calculate the TVM and the 15% of the total redress amount method used by the Provider to calculate the compensation.

The monthly overpayments ranged from €55.20 and €78.93 per month between **September 2006 and December 2007**. I appreciate that with the benefit of hindsight the Complainant believes he might have used that money differently had it been available to him at the time and he would have invested in the most beneficial investment opportunities. The Complainant has not submitted any evidence to support the contention that had these amounts been available to him each month, he would have invested them in any of the above-mentioned investment opportunities, and that the monthly overpayments on his mortgage loan account were the sole reason he did not invest in the abovementioned investment opportunities at the time.

With respect to the Complainant's claim for a greater contribution towards independent legal advice, I note that the Complainant has not submitted any evidence that he sought representation or advice in **December 2017**.

The Provider has submitted an email from the Complainant to the Independent Appeals Panel on **06 March 2018** where the Complainant has submitted in response to a question from the Appeals Panel regarding whether he had sought independent professional advice:

“...

3. *Given the paltry amount on offer and no guarantee of having my expenses recouped, no I have not engaged anyone at this juncture...Again, as previously stated, the industry standard as paid by Banks in the Irish market is €615.00. I will accept parity with same.”*

It does not appear that the Complainant engaged any independent legal or financial advisor in respect of the interest overcharge on his mortgage loan account.

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It is unclear to me why the Complainant is seeking additional monies for independent professional advice in respect of the overpayment on his mortgage loan account when he confirms that he did not engage the services of a professional advisor at the time, nor has he submitted any evidence that he engaged a professional advisor at any time subsequent.

With regard to any costs the Complainant may have incurred in making his complaint to this office, I would point out that while the use of solicitors, or any other professional assistance, to handle a complaint to this office, while not necessary, is acceptable, it is important to note that any costs incurred, legal or otherwise, are entirely the responsibility of the Complainant. There is no provision for awarding costs under the **Financial Services and Pensions Ombudsman Act 2017**.

Having considered the documentary evidence submitted, it appears to me that the Complainant has not tendered any evidence which demonstrates that he has suffered the losses or damages that he has claimed.

The Provider has paid compensation of €153.60 to the Complainant, together with redress of €1,024.04 (interest overpaid and time value of money payment), and an independent professional advice payment of €300. In the circumstances of this matter I accept the compensation paid by the Provider to be reasonable.

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

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

29 October 2020

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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.

