



<b><u>Decision Ref:</u></b>	2020-0383
<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>	Rejected

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

##### **Background**

The complaint relates to two mortgage loan accounts held by the Complainants with the Provider.

The Complainants' two mortgage loan accounts are held as follows:

- Mortgage loan account ending **9443** was drawn down on **29 September 1999** in the amount of £73,000. This mortgage is secured on the Complainants' private dwelling house.
- Mortgage loan account ending **0452** was drawn down on **15 October 2001** in the amount of £13,000 (€16,506.00). This mortgage was secured on the Complainants' private dwelling house and was redeemed in full in **January 2014**.

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

The Provider contacted the Complainants in **December 2017** advising them of the error that had occurred on their mortgage loan accounts.

The Provider detailed that the error that occurred on the accounts was as follows;

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

The period of overcharging on account ending **9443** was from **May 2009** until **November 2017**. The period of overcharging on account ending **0452** was from **May 2009** until **January 2014**.

The Provider restored mortgage loan account ending **9443** to the tracker interest of ECB + 1.3% in **November 2017**. Mortgage loan account ending **0452** was redeemed in full by the Complainants in **January 2014**.

The Provider made an offer of redress and compensation to the Complainant in relation to the mortgage loan accounts as follows;

	<b>Account ending 0452</b>	<b>Account ending 9443</b>
Redress covering; (a) Total Interest Overpaid. (b) Interest to reflect time value of money.	€280.86	€7,070.63
Compensation for the failure on the mortgage loan account	€650.00	€707.06
Independent Professional Advice payment	€250.00	€250.00
<b>Total</b>	<b>€1,180.86</b>	<b>€8,027.69</b>

In summary the total redress and compensation offered by the Provider in respect of both mortgage loan accounts amounted to €9,208.55, which comprised of;

1. Redress in the sum of €7,351.49;
2. Compensation in the sum of €1,357.06; and
3. Payment towards the cost of professional advice in the sum of €500.00

/Cont'd...

In **January 2018**, the Complainants submitted appeals to the Independent Appeals Panel in respect of both mortgage loan accounts. The basis of the Complainants' appeals were was the inadequacy of the redress and compensation offering, due to not being provided with a balance adjustment on the mortgage loan accounts.

In **February 2018** the Appeals Panel decided to uphold the Complainants' appeal in relation to mortgage loan account ending **9443** and awarded additional compensation of €1,000 to the Complainants. In determining the appeal the Panel outlined;

*“With reference to the request for a revised statement in respect of the account, the panel is satisfied that this is not required as the bank’s approach to redress and compensation calculation is based on “monthly differences in interest charged” as approved by the Central Bank of Ireland. The Panel acknowledges the impact of the overpayment on the borrowers personally.”*

In **February 2018** the Appeals Panel decided to not uphold the Complainants' appeal in relation to mortgage loan account ending **0452**. In determining the appeal the Panel outlined;

*“With reference to the request for a revised statement in respect of the account, the panel is satisfied that this is not required as the bank’s approach to redress and compensation calculation is based on “monthly differences in interest charged” as approved by the Central Bank of Ireland. The panel is of the view the compensation awarded in respect of his account is appropriate.”*

As the Complainants had been through the Provider's internal appeals process and the additional compensation was not offered in full and final settlement of the complaint, 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 failed to offer the Complainants a balance adjustment on both mortgage loan accounts ending **9443** and **0452** as part of the Examination.

### **The Complainants' Case**

The Complainants submit that that the Provider has failed to offer a balance adjustment on their mortgage loan accounts ending **9443** and mortgage loan account ending **0452**.

The Complainants submit that they requested a revised statement of both mortgage loan accounts to show what balance would have been on their mortgage loan accounts had the tracker error not happened.

The Complainants detail that for *“the majority of [their] mortgage, the payments made were set, fixed amounts and included an agreed overpayment.”* The Complainants outline that *“according to the statement of overcharged interest from the [Provider], there were a number of months when the amount overcharged was quite high, with many in the region of €100.”* The Complainants outline that they requested breakdowns of both mortgage loan account to reflect the correct details on the mortgage loan *“but these have not been provided”*. The Complainants submit *“without these breakdowns, I am unable to determine the amount required to correct the balance on the mortgage”*.

The Complainants contend that had the correct tracker interest been applied, and the overcharged amount been regularly paid off the outstanding capital amount, *“...some months €100 extra would have been offset against the balance and [the Complainants’] balance today would be much lower than it is”*. They outline that this is the reason why they requested a “balance adjustment” rather than just returning the overcharged interest amount.

The Complainants submit that had the balance been adjusted on their mortgage loan accounts, mortgage loan account ending **0452** would have been cleared quicker and the capital balance of mortgage loan account ending **9443** would have been €4,561.57 lower had the issue not occurred.

The Complainants outline the following in respect of each mortgage loan account:

#### **Mortgage loan account ending 9443**

The Complainants detail that the Provider has confirmed that the capital balance of mortgage loan account ending **9443** would have been €4,561.50 lower had the tracker interest rate been applied, and that the interest overcharged was €6,733.94, adjusted to €7,070.63 to reflect time value of money.

The Complainants submit that they believe that the cost of the “issue” in respect of mortgage loan account ending **9443** is *“the sum of both the overcharged interest AND the value of the corrected capital balance had the error not occurred.”* They outline that the Provider should have paid them compensation of **€11,632.20** (the sum of €4,561.50 plus €7,070.63).

The Complainants outline that whilst the interest overcharged was repaid, *“this was always [their] money which was incorrectly debited from [their] account.”* They further outline that this *“should not form part of the corrective measure, it was simply an overcharge which was rightfully refunded.”*

The Complainants submit that *“the more accurate correction would be to amend the balance on the mortgage to what it should be today. Confirmed by [the Provider] to be €4,561.57 lower than the current balance.”*

### **Mortgage loan account ending 0452**

The Complainants detail that the Provider has supplied amortisation *“details”* which show *“...earlier date this mortgage would have been cleared”* had the correct tracker interest rate been applied.

The Complainants submit that there has been no *“balance adjustment”* on their two mortgage loan accounts and only an offer to refund the overcharged interest and compensation.

The Complainants submit that they *“feel that if the [Appeals Panel] had full sight of these figures they would have approved a higher additional payment, as [the Provider] rightly pointed out, it was within their power to do so.”*

The Complainants are seeking that the balance outstanding on both mortgage loan account ending **9443** and mortgage loan account ending **0452** are adjusted to what they would have been if the Provider’s errors in relation to the tracker interest rate had not occurred. The Complainants detail that their current balance is *“circa 25k”* and they expect that it would be *“between 5k & 8k” now if tracker rate was applied”*.

### **The Provider’s Case**

The Provider submits that the Complainants held the following mortgage loan accounts with the Provider;

<b>Account Number</b>	<b>Drawdown Date</b>	<b>Original Amount</b>
***9443	29 September 1999	£73,000.00
***0542	15 October 2001	£13,000.00

The Provider outlines that mortgage accounts ending **9443** and **0452** were deemed impacted as part of the Examination.

### **Mortgage loan account ending 9443**

With respect to mortgage account ending **9443** the Provider outlines the following history of the mortgage loan;

- The mortgage drew down in **September 1999** for a term of 20 years on a 12 month fixed interest rate of 3.99%, reverting to a non-tracker variable rate.
- The Complainants signed a Mortgage Form Authorisation (“MFA”) on **9 July 2003** to apply a tracker rate of ECB + 1.49% to the mortgage loan account. It submits that this instruction was implemented on **18 July 2003**.
- The mortgage loan account remained on a tracker interest rate of ECB + 1.49% until **25 May 2004**, when the Complainants signed a MFA on **21 May 2004** to apply a tracker rate of ECB + 1.30% to the mortgage loan account.
- The Complainants then signed a further MFA on **31 January 2006** to extend the term of their mortgage loan account by 10 years until **30 September 2026**.
- The Complainants then signed a MFA on **4 July 2007** applying a 2 year fixed rate of 5.09%.
- The Provider submits that prior to the expiry of the fixed rate period, it issued the Complainants with a letter dated **24 April 2009** enclosing an MFA setting out the different rates available to them, which did not include a tracker rate. The Provider outlines that the Complainants selected the standard variable rate in **April 2009**.
- The Provider details that the Complainants completed and signed the MFA on **30 September 2009** requesting fixed interest rate of 3.15%, applicable until **18 November 2011**.
- The Provider submits that upon the expiry of the fixed period, the Complainants signed an MFA on **24 October 2011** requesting that the standard variable rate be applied to the mortgage loan account.
- The Provider submits that the Complainants signed a MFA on **9 March 2015** to apply a 3 year fixed interest rate of 3.85% to their mortgage loan account.

The Provider in its review, found that when the Complainants moved from a tracker rate to a fixed rate to it failed to provide them with sufficient clarity as to what would happen at the end of the fixed rate and that the language used by the Provider may have been confusing or misleading. The Provider submits that the Complainants’ mortgage loan account was moved to a tracker interest rate of ECB + 1.30% on **29 November 2017**.

### **Mortgage loan account ending 0452**

With respect to mortgage account ending **0452** the Provider outlines the following history of the mortgage loan;

/Cont’d...

- The Provider submits that the Complainants drew down a mortgage of £13,000 on **15 October 2001** for a term of 15 years on a 12 month discounted variable rate of 4.5%, which was to revert to a non-tracker variable rate upon the expiry of the discounted period.
- The Complainants signed an MFA on **9 July 2003** applying a tracker rate of ECB + 1.49% to the mortgage loan account. It submits that this instruction was implemented on **18 July 2003**.
- The mortgage loan account remained on a tracker interest rate of ECB +1.49% until **25 May 2004** when the Complainants requested a tracker interest rate of ECB 1.30% be applied.
- On **4 July 2007** the Complainants signed a MFA requesting a 2 year fixed interest rate of 5.09% which was implemented on **6 July 2007**.
- Prior to the expiry of the fixed period it issued the Complainant with a letter dated **24 April 2009** enclosing a MFA setting out the different rate options available to them. It submits that the Complainants signed the MFA on **28 April 2009** requesting a standard variable rate of 2.95%.
- The Complainants signed a further MFA on **30 September 2009** applying a fixed rate of 3.15% until July 2011.
- Prior to the expiry of the fixed rate, the Provider issued the Complainants with a letter dated **27 June 2011** enclosing a MFA setting out the different rates available to them. The Complainants signed the MFA on **6 July 2011** requesting a standard variable rate of 3.65%.
- The Complainants redeemed the mortgage in full in **January 2014**.

The Provider outlines that it included the Complainants' mortgage loan accounts (ending **9443** and **0452**) in the Examination because they were formerly on a tracker interest rate. The Provider details that it found that when mortgage accounts ending **9443** and **0452** moved from a tracker rate to a fixed rate, the Provider failed to furnish the Complainant with sufficient clarity as to what would happen at the end of the fixed rate period and the language used by the Provider may have been confusing and misleading.

The Provider submits that it has not breached a contract with the Complainant and that there was no positive representation made by the Provider before the Complainant entered either fixed rate that the mortgage loans could move to a new tracker rate at the end of the fixed rate period.

The Provider submits that mortgage loan account ending **9443** was “*moved*” to a tracker interest rate of ECB + 1.3% on **29 November 2017**. Mortgage loan account ending **0452** was redeemed in full in **January 2014**.

The Provider details that it is satisfied that the redress and compensation offered to the Complainants in **December 2017** in respect of both mortgage loan accounts is “*reasonable*”, “*fair*” and “*adequate*”.

The Provider submits that the amount of interest overpaid is calculated by using the actual balance existing on the impacted mortgage account each day during the impacted period, and applying the daily interest rate differential to the daily balance to determine the daily amounts overcharged during the impacted period - with fair value interest and compensation applied to the full redress amount.

The Provider outlines that for the delivery of redress, it allows the customer to decide to either, have the monies paid against their mortgage balance or receive a payment directly to their nominated current account by way of electronic funds transfer. The Provider outlines that as mortgage loan account ending **0452** was redeemed in **January 2014**, it was of the view that the only reasonable method was to offer the refund and compensation for payment to a nominated current account.

The Provider details that it is of the view that the redress and compensation offered to the Complainants in respect of both mortgage loan accounts represents the extent to which interest was overcharged, and includes interest charged on a capital balance that was higher than it would have been had they reverted to a tracker rate.

The Provider rejects the Complainants’ assertions that the balance for mortgage loan account ending **9443** would have been €19,426.44 at the end of the impacted period in **November 2017** and outlines that Complainants’ actual balance at the end of the impacted period was “...€23,988.01 which is €4,561.57 higher than what it would have been had the issue not occurred”. The Provider details that it has given the Complainants the choice of what they wish to do with their total refund amount.

The Provider outlines that if it adjusted the Complainants’ balance by the capital difference, they would have received a refund of cash overpayments with “...*fair value and compensation to their nominated account amounting to €2,919.26*”, which would bring the total amount received by the Complainants to €7,480.83 (the sum of the cash amount [€2,919.26] and the application against the mortgage [€4,561.57]). The Provider outlines that this would be €546.87 less than what it has offered as redress, fair value and compensation.

/Cont’d...



The Provider submits that the Complainants chose to receive the funds as a payment to themselves and they can apply all or part of the redress and compensation against their mortgage balance.

The Provider does not accept the Complainants' assertions that the appropriate settlement amount with respect to mortgage account ending **9443** is €4,561.57 plus €7,070.63. It submits that the capital balance adjustment value is embedded in the total refund amount. The Provider refers to **Section 60(4) (d)** of the **Financial Services and Pensions Ombudsman Act 2017** which allows for compensation to be directed for loss, expense or inconvenience and submits that there is no basis to reasonably contend that the redress should compensate the Complainants twice for the same loss.

The Provider submits that the Complainants cannot reasonably speculate as to what the Appeals Panel would have done. The Provider submits that the Appeals Panel did not request to be provided with the alternative method of calculation of redress. The Provider outlines that the Appeals Panel is "*strictly independent*" from it, and that the Appeals Panel awarded €1,000 in additional compensation, which in the Provider's view must "*...certainly indicate the Appeals Panel regarded that award (and no more) as appropriate*".

The Provider submits that it remains satisfied that the compensation and redress was adequate.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainants a balance adjustment on their mortgage loan accounts ending **9443** and **0452** in **December 2017**.

### **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.

/Cont'd...

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

Following the issue of my Preliminary Decision, the following submissions were received from the parties:

1. Letter from the Complainants on **29 September 2020**; and
2. Letter from the Provider dated **29 September 2020**;

Copies of these additional submissions were exchanged between the parties.

Having considered these additional submissions and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination in respect of this complaint.

At the outset, I note that the Provider has made submissions about its view that there was no breach of contract and no misrepresentation in this matter. As the Provider has already conceded that the Complainant was entitled to have tracker interest rates restored to the Complainants' accounts, I fail to understand why the Provider seeks to advance arguments as to why it believes the Complainants were not contractually entitled to a tracker interest rate. I believe this approach is not helpful to resolving the matter at issue which is the amount of redress and compensation offered by the Provider for its acknowledged failures. I will not be making any comment or determination as to the nature of the Provider's failures as it is neither necessary nor appropriate to do so.

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 €7,351.49

/Cont'd...

reflects the amount of interest overpaid on both mortgage loan accounts and includes a payment €350.07 to reflect the time value of money. The Provider also paid the Complainants compensation of €1,357.06 and €500 for the purposes of seeking legal advice. The Provider submits that the Appeals Panel awarded the Complainants an additional €1,000 compensation which the Provider is bound by. It appears from the evidence that the Complainants have not accepted the €1,000 offer as of yet. I understand that this offer remains available to the Complainants to accept.

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

This complaint concerns two of the Complainants' mortgage loan accounts, details as follows;

- Mortgage loan account ending **9443** which was drawn down in **1999** in the amount of £73,000.00 for a term of 20 years, commencing on a 12 month fixed rate of 3.99% which reverted to a variable interest rate.
- Mortgage loan account ending **0452** which was drawn down in **2001** in the amount of £13,000.00 (€16,506.00) for a term of 15 years, commencing on a 12 month discounted variable rate which reverted to a variable interest rate.

On **09 July 2003**, the Complainants signed two **Mortgage Form Authorisation's ("MFA's")** to apply an interest rate of 1.49% "*above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate")*" to mortgage loan accounts ending **9443** and **0452**. In **May 2004** the Complainants signed two MFAs to apply a tracker interest rate of ECB + 1.30% to both mortgage loan accounts ending **9443** and **0452**.

The Complainants subsequently signed two MFAs to apply a 2 year fixed interest rate of 5.09% to mortgage accounts ending **9443** and **0452** from **July 2007** to **May 2009**.

It was at this time that the failures that were subsequently identified in **December 2017** as part of the Examination occurred on the Complainant's mortgage loan accounts ending **9443** and **0452**.

I will consider each of the mortgage loan accounts in turn:

**Mortgage Loan account ending 4052**

In **May 2009** mortgage account ending **4052** was moved by the Complainants onto the “Existing Variable LTV Rate PDH” which at the time was 2.95% at the time, and was then moved in **September 2009** to a fixed interest rate of 3.15%.

In **June 2011**, the Complainants then selected to apply the “Existing Variable LTV Rate PDH”, which at the time was 3.650%. **Page 3** of the **MFA** signed by the Complainants on **06 July 2011** applying the “Existing Variable LTV Rate PDH” interest rate to mortgage loan account ending **0452**, contains a had written note detailing the following:

*“Please note – my standard repayment will be €102.81 monthly, however I wish to increase this to €200 per month.”*

It appears from the evidence that at this time, the Complainants elected to make accelerated repayments off the capital on the mortgage loan which resulted in the mortgage loan being paid in full by **January 2014**.

The tracker interest rate that should have been applied from **May 2009** was ECB + 1.30%. Between **June 2009** and **January 2014**, the overall tracker (ECB + margin) rate fluctuated between a rate of 1.55% and 2.80%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account ending **4052** between **June 2009** and **January 2014**, is also 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>
Jun 2009 - Sept 2009	0.40%	€115.92	€114.22	€1.70

/Cont’d...

Oct 2009 – Jan 2010	0.85%	€119.03	€114.22	€4.81
Feb 2010 – Mar 2011	0.85%	€184.03	€179.22	€4.81
Apr 2011 – Jun 2011	0.60%	€184.03	€166.96	€17.07
Jul 2011	0.85%	€166.34	€164.33	€0.00
Aug 2011	0.85%	€200.00	€200.00	€0.00
Sep 2011 – Oct 2011	0.85%	€200.00	€200.00	€0.00
Nov 2011 – Dec 2011	1.35%	€200.00	€200.00	€0.00
Jan 2012 – Sept 2012	Between 1.75% and 2%	€200.00	€200.00	€0.00
Oct 2012 – Apr 2013	2.50%	€200.00	€200.00	€0.00
May 2013 – Oct 2013	2.75%	€200.00	€200.00	€0.00
Nov 2013 – Dec 2013	3.00%	€200.00	€200.00	€0.00
Jan 2014	3.00%	€200.00	€112.82	€0.00

I note that the overcharge on the Complainants' mortgage loan account extended over approximately a five year period (**May 2009 – January 2014**). In the two year period between **June 2009** and **June 2011**, the monthly overpayments on this mortgage loan ranged between €1.70 and €17.07 per month.

The Complainants contend that they should have been offered a balance adjustment on mortgage loan account ending **0452**, in addition to the interest refund offered by the Provider.

The Provider submits that it could not carry out a balance adjustment on mortgage loan account ending **0452** in **December 2017** as the mortgage loan account had already been redeemed in full.

I accept that the Provider was not able to carry out a balance adjustment as the mortgage loan was no longer active with the Provider at that time. The evidence shows that the Complainants chose to make higher monthly repayments which were almost double the

/Cont'd...

monthly repayments required on the mortgage loan, from **August 2011** and thus redeemed mortgage loan account ending **0452** in full in **January 2014**.

### Mortgage loan account ending 9443

In **May 2009** mortgage account ending **9443** was moved by the Complainants onto the “*Existing Variable LTV Rate PDH*” which at the time was 2.950% at the time, and was then moved in **September 2009** to a fixed interest rate of 3.15%.

In **October 2011**, the Complainants selected to apply the “*Existing Variable LTV Rate PDH*”, which at the time was 4.150%, and the MFA contains a handwritten note stating “*with agreed overpayment*”. Between **October 2011** and **February 2015**, the “*Existing Variable LTV Rate PDH*”, fluctuated between 4.05% and 4.55%.

In **March 2015** the Complainants applied a three year fixed interest rate of 3.85% to the mortgage loan. In **November 2017**, the Provider identified mortgage loan account ending **9443** as impacted, and applied the tracker interest rate of ECB + 1.30% to the mortgage loan account.

I note from the bank statements provided that from **March 2014** to **November 2017**, the Complainants began to make accelerated repayments on their mortgage loan. The Complainants made repayments of either €500 or €600 per month, which was an overpayment of between €50.00 and €150.00 per month.

The tracker interest rate that should have been applied from **March 2009** was ECB + 1.30%. Between **March 2014** and **November 2017**, the overall tracker (ECB + margin) rate fluctuated between a rate of 1.30% and 2.80%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account ending **9443** between **May 2009** and **October 2017**, is also 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>
Jun 2009 - Sept 2009	0.40%	€379.37	€367.27	€12.10
Oct 2009 – Jan 2010	0.85%	€394.52	€367.27	€27.25
Feb 2010 – Mar 2011	0.85%	€424.94	€401.66	€23.28
Apr 2011 – Jun 2011	0.60%	€424.94	€402.06	€22.88
Jul 2011 – Oct 2011	0.85%	€424.94	€406.80	€18.14
Nov 2011	1.35%	€440.29	€399.04	€41.25
Dec 2011	1.35%	€440.29	€392.92	€47.37
Jan 2012 – Jun 2012	1.75%	€437.32	€392.92	€44.40
Jul 2012 – Sep 2012	2.00%	€437.32	€384.24	€53.08
Oct 2012 – Apr 2013	2.50%	€445.69	€384.24	€61.45
May 2013 – Oct 2013	2.75%	€445.69	€374.49	€71.20
Nov 2013 – Feb 2014	3.00%	€445.69	€366.97	€78.72
Mar 2014 – May 2014	3.00%	€600.00	€600.00	€0.00
Jun 2014 – Aug 2014	3.10%	€600.00	€600.00	€0.00
Sep 2014 – Feb 2015	3.20%	€600.00	€600.00	€0.00
Mar 2015 – Feb 2016	2.50%	€500.00	€500.00	€0.00
Mar 2016 – Nov 2017	2.55%	€500.00	€500.00	€0.00

/Cont'd...

I note that the overcharge on the Complainants' mortgage loan account extended over approximately an eight year period (**May 2009 – November 2017**). I note that in the period between **June 2009** and **February 2014**, the overcharge on a monthly basis was of sums between €12.10 and €78.72.

I note that in reviewing mortgage loan account ending **9443** in **December 2017**, the Provider assessed the interest paid on the Complainants' mortgage loan account during the impacted period (**May 2009 to November 2017**), as against the interest that would have been paid had the tracker interest rate of ECB + 1.30% been applied to the account. It was determined that the Complainants had overpaid interest of €6,733.93 with respect to mortgage account ending **9443**. The Complainants were repaid the overpaid interest in the amount of €6,733.93, together with a time value for money payment of €336.70, which bought the total redress up to €7,070.63.

I note that the Complainants are of the view that the Provider should have paid them compensation of **€11,632.20** (the sum of €4,561.57 [the amount of the balance adjustment] plus €7,070.63). It is important for the Complainants to understand that the mortgage loan would have amortised differently had the tracker interest rate been applied to the mortgage loan between **May 2009** and **November 2017**. When making repayments on the mortgage loan, a portion of each of the monthly repayments made to their mortgage loan is attributed to interest and a portion is attributed to capital. Had the Complainants been on the tracker interest rate a larger portion of the monthly repayments would have been attributed to the capital balance on the mortgage loan, which would have meant that the capital balance would have reduced by €4,561.57 between **May 2009** and **November 2017**. Taking this approach the overpaid interest on the mortgage loan account that would have been due to the Complainants would have been €2,311.05. However instead of reducing the capital balance by the sum of €4,651.57 in **November 2017** and repaying the overpaid interest of €2,311.05 the Provider issued the interest overpaid amount to the Complainants in a lump sum payment.

It is important for the Complainants to be aware that they do not have an entitlement to both a repayment of the total sum of overpaid interest and a reduction in capital of a sum of overpaid interest off the mortgage loan. The application of both would not restore the Complainants to the position they would have been in and would instead result in the Complainants receiving a sum of money over and above what is calculated as the sum owed by the Provider to the Complainants.

I understand that it was open to the Complainants to apply the redress payment made by the Provider to their mortgage loan account ending **9443** but they did not elect to do so.

/Cont'd...



The Complainants, in their post Preliminary Decision submission dated **29 September 2020**, detail as follows;

*“In relation to account ending 9443, the amount of compensation paid is €707.06, with a further amount of €1,000 awarded by the Independent Appeals Panel, not yet drawn down.*

*The amount of interest refunded is €7,070.63. I still maintain that this amount is, and always was, incorrectly charged and was simply “refunded” to me – redress is the term used.*

*As stated previously, my belief is that had this error not occurred, the above noted €7,070.63 would have remained in my possession, and my mortgage balance would have been €4,561.57 lower.*

*The effect of this is that I am out of pocket to the tune of €2,854.51 (after I receive the outstanding €1,000 due).*

*However, I also understand that the above does not fall under the limited categories for further submission, and that I therefore have no alternative other than to accept your decision.*

*Can you confirm if I need to contact the bank directly in order to receive payment of the €1,000 awarded by the appeals panel?*

It appears that the Complainants are still of the view that they are entitled to both a balance adjustment and a refund of the total sum of interest overpaid on their mortgage loan account ending **9443**. Again, it is important for the Complainants to be aware that they do not have an entitlement to both a repayment of the total sum of overpaid interest and a reduction in capital of a sum of overpaid interest off the mortgage loan. This would go beyond putting them in the same position had the overcharge not occurred. If the Complainants wish to reduce the capital balance to the amount it would have been had the error not occurred, then they can apply €4,651.57 of the redress amount to the capital.

The Provider, in its post Preliminary Decision submission dated **29 September 2020**, detailed the process for claiming the additional compensation amount awarded by the Independent Appeals Panel. Completing this process is a matter for the parties to progress themselves.

Having regard to all the evidence before me I do not accept that the Provider did not offer the Complainants a balance adjustment on their mortgage loan account ending **9443**.

/Cont’d...

Further, with respect to mortgage loan account ending **0452** the Provider was not in a position to offer a balance adjustment as the mortgage loan had already been redeemed by the Complainants.

The Provider has paid compensation of €1,357.06 to the Complainants together with the redress of €7,351.49 (including interest overpaid and time value of money payment) and an independent professional advice payment of €500.00. I understand that the award of the Independent Appeals panel of €1,000 remains open to the Complainants to accept, as it was not made in full and final settlement. In these circumstances I accept that the redress and compensation paid, together with the further compensation payment of €1,000 which remains available to the Complainants, is reasonable in the circumstances.

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

### **Conclusion**

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

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



**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

30 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,

/Cont'd...

**(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.**

