



<u>Decision Ref:</u>	2020-0398
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination Failure to apply a tracker rate at a point in time CBI Examination
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to three mortgage loan accounts held by the Complainants with the Provider and the overcharge of €48,692.09 in interest by the Provider on the mortgage loan accounts.

- The Loan Offer Letter signed by the Complainants on **13 June 2004** for mortgage loan account ending **129** detailed that the interest rate was “2.690% Variable”. The loan amount was €25,000 and the term of the loan was 20 years. This mortgage loan account was secured on the Complainants’ then principal private residence which they retained as a Buy to Let (“BTL”) property when they moved residence.
- The Loan Offer Letter signed by the Complainants on **14 April 2005** for mortgage loan account ending **094** detailed that the interest rate applicable was “3.550% Variable”. The loan amount was €63,500 and the term of the loan was 20 years. This mortgage loan account was also secured on the Complainants’ then principal private residence which they retained as a BTL property when they moved residence.

- The Loan Offer Letter signed by the Complainants on **16 May 2005** for mortgage loan account ending **486** detailed that the interest rate applicable was “2.500% Variable”. The loan amount was €270,000 and the term of the loan was 30 years.

This mortgage loan account was secured on the Complainants’ Private Dwelling Home (“PDH”).

The Complainants’ three mortgage loan accounts were 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 all three mortgage loan accounts and as such the three mortgage loan accounts were deemed to be impacted under that Examination.

The Provider wrote to the Complainants in **December 2017** in relation to the mortgage loan accounts advising them of the failures with respect to each account. The Provider detailed how it “*got things wrong*” as follows;

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

With respect to the effect of the failure on mortgage loan account ending **486** and **094** the Provider outlined as follows;

“As a result of our failure, we can confirm that you were charged an incorrect interest rate between 31 May 2010 and 23 Nov 2017.”

With respect to the effect of the failure on mortgage loan account ending **129** the Provider outlined as follows;

“As a result of our failure, we can confirm that you were charged an incorrect interest rate between 31 May 2010 and 28 Nov 2017.”

Mortgage loan accounts ending **129 and 486** were restored to a tracker interest rate of ECB + 1.30% and mortgage loan account ending **094** was restored to a tracker interest rate of ECB + 1.55% in **November 2017**.

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

	Account ending 486	Account ending 094	Account ending 129
Redress covering; (a) Total Interest Overpaid. (b) Interest to reflect time value of money.	€39,360.32	€8,334.46	€3,431.91
Compensation	€3,936.03	€1,000.00	€1,000.00
Independent Professional Advice Payment	€1,000.00	€1,000.00	€1,000.00
Total	€44,296.35	€10,334.46	€5,431.91

In **January 2018** the Complainants appealed the redress and compensation offering to the Independent Appeals Panel. The basis of the Complainants' appeal was the inadequacy of the redress and compensation offering.

On **8 March 2018** the Appeals Panel decided to uphold the Complainants' appeal and awarded additional compensation to the Complainants. The Appeals Panel upheld the appeal because of the "*significant level of the overpayment and its impact on the Customers' personal circumstances*" and awarded additional compensation as follows;

	Additional Compensation Awarded
Mortgage loan account ending 094	€2,000
Mortgage loan account ending 129	€2,000
Mortgage loan account ending 486	€6,000

As the Complainants have been through the Provider's internal appeals process and the award of the Independent Appeals Panel process was not offered in full and final 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;

- A. 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 accounts.

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- B. The Provider has failed to apply the tracker interest rate from the correct point in time (**2006**) to the mortgage loan accounts.

The Complainants' Case

The Complainants submit that they *“strongly feel”* that the redress and compensation they have received to date *“was not adequate nor did it reflect or compensate us for the stress and hardship that we suffered because of the bank’s behaviour and handling of our tracker mortgage.”*

The Complainants detail that *“We feel that the bank are attempting to cast us as being reckless borrowers who have suffered through taking on short term debt and are totally ignoring the fact that we were over-charged by €48,692.09 in interest by the bank and the knock-on effects of this to our financial circumstances.”*

They further state that *“the bank appears to dismiss all the evidence of our financial hardship and stress as either being ‘too remote’ to the dispute or a lack of understanding on their behalf. The bank does not even comment of the damage we suffered to our credit rating even though the bank, themselves, refused a credit card application and again contest that the over-payment of interest did not have any impact on our financial circumstances. The bank even go as far to tell the FSPO what they can and cannot take into consideration when coming to a decision on this dispute. They say that we cannot be compensated for ‘pain and stress’”. They state that they “take considerable offence” to the Provider’s statement that the Complainants do not have any contractual entitlement to a tracker interest rate. They submit that the Provider’s stance in this regard is “bizarre and aggressive”.*

The Complainants state that they believe that the period during which the three mortgage loan accounts were *“impacted”* commenced when they entered into a fixed interest rate period on the mortgage loan accounts in **2006** and has been miscalculated by the Provider as commencing in **2010**. They submit *“For example, we believe that the affected date for mortgage [ending] 0486 started in May, 2006 and not June, 2010 as stated by the bank.”* They assert that *“we would never have entered into this arrangement in May 2006 if we had known that doing so would prevent us from accessing a tracker rate in the future.”* They have also queried the basis on which the Provider has made its *“un-supported statement”* that *“the complainants sought to change the terms of their mortgage to avail of a fixed rate in the face of rising ECB rates”* in **2006**.

The Complainants allege that the cost of the Time Value of Money is greater than the total sum of €2,434.60 awarded. They estimate that the sum *“should be €13,254, which is what the bank would charge us in interest, if we wanted to borrow €48,692 from them”.*

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The Complainants further submit that *“In addition to the insufficient compensation for the time value of the over-payment, the bank are not taking into account the lost investment opportunities that this sum could have afforded my family, for example, Government Savings Scheme investment which returns 16%.”* They detail that *“the bank dismisses our said claim for 16% as being “too remote” and make a sweeping, un-supported statement that “there is no evidence that the complainants would or could have availed of an investment”...such as the state savings scheme. In response, we could argue that there is no evidence to suggest that we would not have invested this interest overpayment of €48,692.09 into such an investment. If the funds had been available to us and we had invested this amount, we would have received 16% and not the 5% being offered to us. Furthermore, we had previously invested in another Government scheme (SSIA), so it was definitely an option for our family as an investment opportunity.”*

The Complainants detail that the Provider displayed *“a lack of support o[r] empathy”* towards them and *“regularly bombarded”* them with written and verbal demands for payment when their mortgage loan account fell into arrears. They submit that they made numerous requests for support from the Provider but did not receive any meaningful assistance, particularly *“at the height of our difficulties in March 2013, when we received a response from the bank which declined any form of assistance”*. The Complainants further submit that the Provider incorrectly denied they had any entitlement to a tracker rate in respect of mortgage loan account ending **0486** in **2015**.

The Complainants further submit that *“Whereas the bank are able to produce copies of the numerous and often overwhelming amount of letters and some comments on the telephone exchanges, they state there are ‘none such’ when asked for ‘recordings and/or transcripts’.* For the record, we would like it noted that we felt harassed by the sheer number of calls and the tone of these telephone exchanges, which in our opinion, were very condescending and often aggressive on the bank’s behalf.”

The Complainants are seeking compensation in respect of the following;

- (i) Having to apply for governmental support through the Family Income Supplement (‘FIS’) scheme.
- (ii) Cashing in part of their pension and consequently losing the value of the associated tax benefits.
- (iii) Transferring to a more expensive pre-paid electricity supply arrangement in order to free up short-term funds.
- (iv) Cashing in long-term savings in the form of prize bonds.
- (v) Frequently being unable to meet other financial obligations, including the payment of insurance premiums, utility bills and credit card bills, which resulted in additional stress and the payment of extra fees for missed payments.

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- (vi) Having their credit rating adversely affected and a recent application for a credit card transfer declined by the Provider for this reason.
- (vii) Financial difficulties which placed a huge strain on the Complainants' marriage, which resulted in several periods of separation.
- (viii) The Complainants' family life has suffered and they had to raise and support their children during important school exams in a stressful environment.
- (ix) The First Complainant has received and continues to receive medical treatment for anxiety and depression and has missed time from work as a result.

The Provider's Case

The Provider submits that the Complainants have 5 mortgage loan accounts with the Provider, as follows;

Account no	Property	Drawdown date	Original amount
Account ending 129	BTL	7 July 2004	€25,000
Account ending 094	BTL	26 April 2005	€63,500
Account ending 486	PDH	21 June 2005	€270,000
Account ending 046	PDH	3 September 2007	€45,250
Account ending 489	BTL	3 March 1999	€80,265

The Complainants' mortgage loan accounts ending **129**, **094** and **486** have been deemed impacted under the Examination and are the subject of this complaint.

The Provider details that the Complainants previously resided in the property secured on their mortgage accounts ending **129** and **094**. It states that the Complainants approached the Provider for two additional mortgages in **2005** and their initial proposal was to trade up from the existing property to purchase a new property as their primary residence. It details that the initial application for account ending **094** requested €30,000 as a deposit against the new property and the application for account ending **486** requested the balance of the purchase price following the sale of the existing property, however the Complainants subsequently amended their application to allow for the retention of the existing property as a rental investment property. The Provider states that the Complainants made "*a clear decision to retain their initial property as a rental investment*" which required them to maintain payments on the mortgages in accordance with the terms of their Offer Letters.

The Provider has set out the interactions in relation to interest rates on each of the mortgage accounts, as follows.

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Mortgage loan account ending 129

- This account drew down on **7 July 2004** pursuant to an Offer Letter dated **8 June 2004** signed and accepted by the Complainants on **13 June 2004**. The Offer Letter provided for a 12 month discounted variable rate, thereafter reverting to the standard variable rate. The Provider submits that there is no provision for a tracker rate of interest in the Offer Letter.
- At the end of the discounted period the mortgage account “reverted” to a standard variable rate on **7 July 2005**.
- The Complainants availed of a tracker interest rate of ECB + 1.30% by way of MFA signed and accepted by them on **19 June 2005**. This instruction was implemented on **16 September 2005**. The Provider states “*It should be noted that there was no obligation, contractual or otherwise, to make a tracker interest rate available to the Complainant*”.
- At the Complainants’ request the Provider issued an MFA to them by letter dated **11 May 2006** setting out fixed rate options on this mortgage account. The Complainants selected a rate of 4.59% fixed until **31 May 2010** and returned the MFA signed and accepted on **16 May 2006**. This instruction was implemented on **17 May 2006**.
- Prior to the end of the 5 year fixed rate period, the Provider issued an MFA to the Complainants on **30 April 2010** setting out what rates were available at that time which did not include the option of a tracker rate. The Provider states that in its view the “*choices set out in the MFA accorded correctly with what is stated in General Condition 7(b)*” of the Offer Letter. It states that the Complainants selected a further fixed rate of 3.70% fixed until **18 May 2012**.
- Prior to the end of the 2 year fixed rate period, the Provider sent an MFA to the Complainants on **18 April 2012**. In the absence of a reply the account rolled to a variable interest rate on **6 February 2012**.
- The mortgage loan account was moved to a tracker rate of ECB + 1.30% on **29 September 2017**.

Mortgage loan account ending 094

- This account drew down on **26 April 2005** pursuant to an Offer Letter dated **13 April 2005** which provided for a tracker variable rate of ECB + 1.55% as set out in **Part 4 – The Special Conditions (a)(vi)**.
- At the Complainants’ request the Provider issued an MFA by letter dated **11 May 2006** setting out fixed rate options available on the account. The Complainants selected a rate of 4.59% fixed until **31 May 2010** and returned the MFA signed and accepted on **16 May 2006**. This instruction was implemented on **17 May 2006**.

- Prior to the end of the 5 year fixed interest rate period the Provider issued the Complainants an MFA by letter dated **30 April 2010** setting out what options were available at the time, which did not include a tracker rate. In the absence of a response the account *“rolled to the default standard variable rate in accordance with General Condition 7(b)”*.
- The Complainants contacted the Provider on **24 September 2010** requesting details of rate options available to them and the Provider issued an MFA on that date setting out fixed rate options. The Complainants signed the MFA on **3 October 2010** selecting a 2 year fixed rate and this was implemented on **5 October 2010**.
- At the end of the fixed rate the mortgage account rolled to a variable interest rate and remained on that rate until **24 August 2015**.
- The mortgage account was moved to a tracker rate of ECB + 1.55% on **24 November 2017**.

Mortgage loan account ending 486

- This account drew down on **21 June 2005** pursuant to an Offer Letter dated **8 April 2005** which provided for a 12 month discount tracker variable rate, thereafter switching to a tracker rate of ECB + 1.30% as set out in **Part 4 – The Special Condition(a)(iv)**.
- At the Complainants’ request, prior to the expiry of the initial discount period the Provider issued an MFA by letter dated **11 May 2006** setting out fixed rate options on this account as set out above. The Provider states that *“if the Complainants had not requested details of fixed rates on 11 May 2006, the Provider would have issued rate options open to the Complainants including the tracker option of ECB + 1.3% provided for in the special condition above”*.
- The Complainants selected a rate of 4.59% fixed until **31 May 2010** and returned the MFA signed and accepted on **16 May 2006** which was implemented on **17 May 2006**.
- Prior to the expiry of the 5 year fixed interest rate period, the Provider issued an MFA to the Complainants by letter dated **30 April 2010** setting out the rates available at that time, which did not include a tracker rate. The Complainants availed of a further fixed rate of 3.70% fixed until **18 May 2012**.
- Prior to the end of that 2 year fixed rate period the Provider issued an MFA to the Complainants by letter dated **18 April 2012**. In the absence of any reply the account rolled to a variable interest rate on **18 May 2012** *“in accordance with general condition 7 (b)”* of the Offer Letter.
- The account remained on a standard variable rate between **2012** and **24 August 2015**. The Complainants availed of a 3 year fixed rate by MFA dated **14 August 2005**, signed and accepted on **18 August 2015**.

- The Provider details that the account was moved to a tracker rate of ECB + 1.30% on **24 November 2017**.

The Provider has outlined the following interactions with the Complainants in relation to forbearance on the mortgage loan accounts;

- The Complainants wrote to the Provider on **4 May 2005** requesting the amalgamation of repayments on their three BTL mortgage loan accounts ending **489, 129** and **094**. They instructed the Provider to apply a maturity date of **31 March 2024** and requested an interest only arrangement for 3 years on the basis that these 3 accounts were now residential investment mortgages. The Provider issued the Complainants a MFA to give effect to this request on **1 June 2005**, which was signed and accepted by the Complainants on **9 June 2005**.
- In **November 2007** the Complainants provided instructions to revert accounts ending **489, 129** and **094** to full capital and interest repayments, reversing the effect of the MFA.
- The Complainants requested and availed of a further 6 month interest only period for mortgage accounts ending **129** and **094** by MFA signed and accepted on **22 June 2010**.
- The Complainants availed of a further 9 month interest only period for accounts ending **129** and **094** by MFA dated **1 February 2012** which they signed and accepted on **6 February 2012**. The Provider submits that it is of the view that the Complainants' requests for forbearance were dealt with *"sympathetically and positively in that they were afforded interest only in relation to mortgage loan accounts [ending] 129 and [ending] 094 for a period of 9 months in February 2012 to allow them to obtain a new tenant for their residential investment property"*. It states that it assessed the Complainants' mortgages on their private dwelling home (PDH) as affordable.
- The Provider submits that it then engaged with the Complainants over a number of months in relation to the Complainants' intention to make an application for forbearance, before the Complainants then confirmed they were not progressing that application in **October 2012**. It states that the Provider offered the Complainants capitalisation of the arrears in **October 2012** which they declined.
- The Provider details that the Complainants made a further forbearance application in **March 2013** which was declined on the basis of an overall affordability if their short term debt was restructured.

The Provider refers to its regulatory obligations to communicate with the Complainants under the **Code of Conduct on Mortgage Arrears ("CCMA")** and the **Consumer Protection Code**. It states that it was required to correspond and communicate with the Complainants and to fully appraise them of potential options and consequences in relation to arrears.

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The Provider outlines that it included the Complainants' mortgage loan accounts in the Examination because they were previously on a tracker interest rate. The Provider submits that when the mortgage loan accounts moved to a fixed rate from a tracker rate, the Provider failed to *"provide them with sufficient clarity as to what would happen at the end of that fixed rate"* and the language used by the Provider may have been *"confusing or misleading"*.

The Provider submits that it *"has not breached any contract"* with the Complainants and that there was no positive representation made by the Provider before the Complainants entered the fixed rates that they could move to a tracker rate at the end of the fixed rate period. The Provider outlines that the failure on its part was to *"identify any type of variable rate that would apply at the end of the fixed rate period"* and the Provider submits that this *"is significantly less serious as a shortcoming in terms of conduct than 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 details that it has *"restored"* all of the Complainants' mortgage loan accounts to the applicable tracker rates of interest. 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 when the Complainants were paying higher rates than the tracker rates"*. The Provider submits that the Appeals Panel awarded an additional sum of €10,000 in compensation and this *"strengthens the argument that compensation paid was at least adequate"*.

The Provider states it is *"nebulous and incorrect"* for the Complainants to allege that the mortgage loan accounts was first *"affected"* in **May 2006**. It submits that the Complainants requested fixed rates in **2006** when the accounts were all on tracker rates. It outlines that its records show that the Complainants contacted the Provider on **11 May 2006** to request details of rate options and fixed rate options were issued. The Provider details that by **May 2006** the Complainants had received notifications of increases in the tracker rate in **June 2005, December 2005 and March 2006**.

It submits that *"The Complainants made their own decision to convert their loans to fixed rates reducing the exposure to changes in the ECB rate and fluctuations. In that regard it should be noted that the ECB base rate continued to increase and the fixed rate availed of"*

in May 2006 offered better value than the tracker rate for a period of time between 2006 and 2008.”

The Provider states that it *“does not understand the reference to Family Income Supplement”*. It submits that the Family Income Supplement (FIS) *“is administered by the Department of Social Protection and the Provider has no part or particular knowledge of the scheme”*. The Provider states it understands that the FIS (now known as Working Family Payment) is confirmed as *“a weekly tax-free payment for families, including one-parent families, at work on a low pay”*. It outlines that *“FIS provided financial support to families on low pay and the qualifying criteria is that the average family income falls below the amounts specified. The Provider cannot reconcile how the tracker rate issue or the conduct complained of can be connected in any way to the Complainants family income falling below a minimum standard.”*

The Provider states that it *“does not understand the Complainants’ contention that they had to cash in part of their pension or the basis on which access to pension funds was available to them.”* It submits that the Complainants *“have not made any case for the payment of additional compensation and have offered nothing more than mere assertion that the reason for their actions was caused by the tracker rate issue or would have been avoided if the tracker issue had not occurred.”*

In response to the Complainants’ submission that they had to transfer to a more expensive pre-paid electricity supply, the Provider submits that *“The Complainants have provided confirmations that their family income was significantly decreased arising from a number of factors. In the Provider’s view, it cannot be fairly and reasonably said that the choice of electricity provider in any way results from the conduct complained of”*. The Provider submits such consequence *“is too remote from the question of the tracker and dependent on any number of factors someone may consider when making that decision”*.

The Provider submits that the Complainants *“took a number of personal loans and credit cards which had consequences on their financial circumstances. The Provider advised the Complainants to restructure their short term debt in order to appropriately prioritise repayments. The Complainants failed to make any arrangements as can be seen between SFS assessed in 2012 and the SFS assessed in 2013 ... It cannot fairly and reasonably be said that the Complainants’ decision to borrow short term loans resulted from the conduct complained [of]”*.

The Provider submits that the Complainants *“have provided no evidence to suggest that their financial difficulties can only be attributed to the lack of availability of tracker rates on their mortgage accounts. It is clear to the Provider that the short term debt entered into by the Complainants was as a result of personal factors outside of the Mortgage Loan*

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Accounts and the requirement to restructure these debts cannot fairly and reasonably be said to result from the overpayments of interest on their mortgage loan accounts.”

The Provider submits in relation to the alleged strain on the Complainants’ marriage and family life, that the Complainants *“have offered nothing more than mere assertion and it cannot be fairly and reasonably attributed to the tracker issue as the sole reason.”* The Provider submits that the FSPO does not have the power to order a reward *“for such things as pain and stress”* as these are not in the nature of a *“loss, expense or inconvenience”* mentioned in Section 60(4)(d). The Provider submits that *“the point made by the Provider in the previous points on remoteness, and on the evidence of the overall financial indebtedness not related to the question of tracker rates are also relevant to this point.”*

In relation to the First Complainant’s medical treatment, the Provider submits that the FSPO *“does not have the power to make an award for personal injury and consequently, no power to compensate for medical expenses. In any event, medical expenses could not arise as a result of anything to do with a tracker rate.”*

The Complaints for Adjudication

The complaints for adjudication are that;

- A. 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 accounts.
- B. The Provider has not applied the tracker interest rate from the correct point in time (**2006**) to the mortgage loan accounts.

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.

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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 13 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.

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 compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan accounts. This failure has been admitted by the Provider in its letters to the Complainants in **December 2017**.

The Provider has detailed that the redress and compensation offered and paid to the Complainants is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress. The redress payment of €51,126.69 reflects the amount of interest overpaid on the mortgage loan accounts and includes a payment of €2,434.60 to reflect the time value of money. The Provider also paid the Complainant €3,000 for the purposes of seeking legal advice and compensation of €5,936.03. The Provider submits that the Appeals Panel added a further sum of €10,000 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 and was paid by the Provider to the Complainants.

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

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At the outset I will set out the particulars of the Loan Offers relating to the three mortgage loan accounts which are the subject of this complaint.

A **Loan Offer** dated **8 June 2004** issued to the Complainants in respect of the mortgage account ending **129** which detailed as follows;

1. "Amount of Credit Advanced €25,000
2. Period of Agreement 20 Years
3. Number of
Repayment Instalment
Instalments Type
 12 Variable at 2.690%
 228 Variable at 3.550%"

Part 4 – The Special Conditions to the **Loan Offer**, detail as follows:

"The interest rate applicable to the loan has been discounted by 0.86% per annum on the amount of the Loan for a period of 12 months from the date of drawdown of the Loan. At the end of the said discount period the reduction shall cease and the interest rate applicable to the Loan shall revert to the then prevailing Home Loan variable rate. The rate set out in this special condition is the discount which would apply if the Loan were drawn down today. There is no guarantee that this discount will be available when the loan is in fact drawn down. The actual discount that will apply shall be the discount then offered by the Lender at the date of drawdown."

The Complainants signed the Acceptance and Consent on **13 June 2004** on the following terms;

"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."

A **Loan Offer** dated **13 April 2005** issued to the Complainants in respect of the mortgage account ending **094** which detailed as follows;

1. "Amount of Credit Advanced €63,500
2. Period of Agreement 20 Years

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3. Number of	
Repayment	Instalment
<u>Instalments</u>	<u>Type</u>
240	Variable at 3.550%”

Part 4 – The Special Conditions to the Loan Offer, detail as follows:

“The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.55% above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the loan. Variation in interest rates shall be implemented by [illegible] close of business on the 5th working day following a change in the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rates in accordance with General Condition 6(b) of this Offer Letter in the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Investment Variable Rate.”

The Complainants signed the Acceptance and Consent on **14 April 2005** on same terms as set out with respect of the mortgage account ending **129**.

A **Loan Offer** dated **8 April 2005** issued to the Complainants in respect of the mortgage account ending **486** which detailed as follows;

1. “Amount of Credit Advanced	€270,000
2. Period of Agreement	30 Years
3. Number of	
Repayment	Instalment
<u>Instalments</u>	<u>Type</u>
12	Variable at 2.500%
348	Variable at 3.300%”

Part 4 – The Special Conditions to the Loan Offer, detail as follows:

“Subject to part (b) of this condition, the interest rate applicable to the loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.3% above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the loan. Variation in interest rates shall be implemented by the Society not later than

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close of business on the 5th working day following a change in the Repo Rate by the European Central Bank. Notification shall be given to the borrower of any variation in interest rate in accordance with General Condition 6(b) of this Offer Letter.

In the event that, at any time, the Repo Rate is certified by the Society to be unavailable for any reason the interest rate applicable shall be the Society's prevailing Homeloan variable rate. (b) For the first 12 months from the date of draw down of the loan the interest rate as outlined in (a) above shall be discounted by 0.8% and shall be no more than 0.5% above the Repo rate and shall be subject to the terms and conditions outlined in (a) above. At the end of the said 12 month discount period the interest rate applicable to the loan shall revert to the rate as outlined in (a) above i.e. not more than 1.3% above the Repo rate. The discount set out in this special condition is the discount which would apply if the loan were drawn down today. There is no guarantee that this discount will be available when the loan is in fact drawn down. The actual discount that will apply shall be the discount then offered by the Society at the date of drawdown."

The Complainants signed the Acceptance and Consent on **16 May 2005** on the same terms as set out respect of the mortgage account ending **129**

The evidence shows that on **4 May 2005** the Complainants wrote to the Provider, as follows;

"RE: [Provider] Mortgage Account No: XXXX489, XXXX129 & XXXX094

...

We wish to amalgamate the repayments on the above 3 accounts into one monthly direct debit. We would also like to have the 3 accounts mature on the same date, therefore please change the maturity date to 31st March 2024 on all accounts.

Finally, as the property is now an investment property we would like to change these three mortgages to Interest Only for 3 years with immediate effect (ie in time for May 2005 repayment)"

In the interests of clarity, the mortgage loan account ending **489** does not form part of this complaint and is the subject of a linked complaint to this office.

By letter to the Complainants dated **1 June 2005** the Provider detailed as follows;

"I wish to confirm that the direct debit on the above mortgage accounts have been combined. Your maturity date on each account has been amended to 30/03/2024.

/Cont'd...

We refer to your recent request to convert your mortgage account, as above, to an interest only loan for a period of 3 years ... To enable us to amend the account to interest only please return the requested documentation.”

On **9 June 2005** the Complainants completed and signed a **Mortgage Form Authorisation (“MFA”)** to convert the three mortgage loan accounts ending **129** and **094** to interest only for a period of 3 years.

On **19 June 2005**, the Complainants signed a **MFA** to apply the *“Tracker Variable ECB + 1.30%”* to mortgage loan account ending **129**.

The **mortgage loan statements** show that the tracker interest rate applying to the Complainants’ three mortgage loan accounts from **2005** increased on a number of occasions before the fixed interest rate of 4.59% was applied to all 3 mortgage loans (accounts ending **129**, **094** and **486**) in **May 2006**. This is illustrated in the following table:

Mortgage loan account ending 129			
Date	ECB Base Rate	Margin	Total Tracker Interest Rate
07 Jul 2005	2.25%	1.30%	3.55%
14 Sept 2005	2.00%	1.30%	3.30%
5 Dec 2005	2.25%	1.30%	3.55%
08 Mar 2006	2.50%	1.30%	3.80%
Mortgage loan account ending 094			
Date	ECB Base Rate	Margin	Total Tracker Interest Rate
05 Dec 2005	2.25%	1.55%	3.80%
08 Mar 2006	2.50%	1.55%	4.05%
Mortgage loan account ending 486			
Date	ECB Base Rate	Margin	Total Tracker Interest Rate
05 Dec 2005	1.45%	1.30%	2.75%
08 Mar 2006	1.70%	1.30%	3.00%

On **16 May 2006**, the Complainants signed three **MFA**s to apply a rate of 4.590% *“Fixed to 31 May 2010”* to each of the three mortgage loan accounts ending **129**, **486** and **094**.

I note the Complainants have submitted that *“It is irrelevant whether or not we requested a rate change [in 2006], our point is that it was not explained to us properly or with*

/Cont’d...

sufficient clarity, that this action would prevent us from returning to a tracker rate at the end of the fixed rate period.”

I do not accept that this is relevant.

The evidence shows that the Complainants of their own volition elected to complete the **Mortgage Form of Authorisations** seeking the application of the fixed interest rate of 4.59% to the mortgage loans. This instruction to apply the fixed interest rate was actioned by the Provider on receipt of the MFAs signed by the Complainants in **May 2006**.

Therefore, I do not accept that the Complainants are entitled to redress and compensation on the three mortgage loan accounts for the fixed interest rate period between **May 2006** and **May 2010**.

On **15 November 2007** the Complainants wrote to the Provider in respect of the mortgage loan accounts ending **129** and **094**, as follows;

“we would like to change the above 3 mortgage accounts from interest only to annuity/repayment with immediate effect.”

I note from the **mortgage loan statements** that on the following occasions the first direct debits that were presented were returned unpaid and had to be represented for payment by the Provider. The repayments were successfully made when the debits were represented for payment on the following occasions;

- In **December 2009** on mortgage loan accounts ending **129** and **094**
- In **January 2010** on mortgage loan account ending **129**
- In **February 2010** on mortgage loan account ending **129** and **094**
- In **March 2010** on mortgage loan account ending **129** and **094**

On **8 May 2010**, the Complainants signed two **Mortgage Form Authorisations** to apply a rate of 3.700% *“Fixed to 18/05/2012”* to mortgage loan account ending **129** and **486**. A **Mortgage Form Authorisation** was not completed in respect of mortgage loan account ending **094** at that time, however the **mortgage loan statements** show that the account rolled off the fixed rate of 4.59% onto the variable rate of 3.30% on **31 May 2010**.

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 accounts, 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 accepts that the language used may have been confusing or misleading.

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On **22 June 2010**, the Complainants also signed a **Mortgage Form Authorisation** to convert the three mortgage loan accounts ending **489, 129** and **094** to interest only for a period of 6 months.

On **3 October 2010**, the Complainants signed a **Mortgage Form Authorisation** to apply a rate of 4.050% "2 Year Fixed (PDH)" to mortgage loan account ending **094**.

The **mortgage loan statements** show that throughout between **June 2010** and **December 2010**) the Complainants made the following payments on each mortgage account;

	A/C 129 (Interest Only)	A/C 094 (Interest Only)	A/C 486 (Capital and Interest)
June 2010	€66.75	€155.58	€1,252.88
Jul 2010	€66.75	€155.58	€1,252.88
Aug 2010	€66.75	€171.76	€1,252.88
Sept 2010	€66.75	€171.76	€1,252.88
Oct 2010	€66.75	€190.50	€1,252.88
Nov 2010	€66.75	€190.50	€1,256.31
Dec 2011	€66.75	€190.50	€1,256.31

The difference in the interest rate actually charged to the mortgage loans ending **129** and **486** (3.70%) and the interest rate that should have been charged is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan accounts ending **129** and **486** between **June 2010** and **December 2010**, is also represented in the table below;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month		
				Account ending 129	Account ending 486	Total
June 2010	3.70%	2.30%	1.40%	€25.31	€178.83	€204.14

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Jul 2010	3.70%	2.30%	1.40%	€25.31	€178.83	€204.14
Aug 2010	3.70%	2.30%	1.40%	€25.31	€178.83	€204.14
Sept 2010	3.70%	2.30%	1.40%	€25.31	€178.83	€204.14
Oct 2010	3.70%	2.30%	1.40%	€25.31	€178.83	€204.14
Nov 2010	3.70%	2.30%	1.40%	€25.31	€182.26	€207.57
Dec 2010	3.70%	2.30%	1.40%	€25.31	€182.26	€207.57

The difference in interest on the rate charged and interest that would have been charged on the tracker interest rate of 2.55% (ECB + 1.55%) on the mortgage loan account ending **094** between **June 2010** and **December 2010**, is demonstrated in column 4 of the table below.

The monthly overpayment made by the Complainants on mortgage loan account ending **094** between **June 2010** and **December 2010**, is also represented in the table below;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month
				A/C 094
June 2010	3.30%	2.55%	0.75%	€35.34
Jul 2010	3.30%	2.55%	0.75%	€35.34
Aug 2010	3.65%	2.55%	1.10%	€51.52
Sept 2010	3.65%	2.55%	1.10%	€51.52
Oct 2010	4.05%	2.55%	1.50%	€70.26
Nov 2010	3.30%	2.55%	1.50%	€70.26
Dec 2010	3.30%	4.05%	1.50%	€70.26

I note that the Complainants were making significant overpayments. As is evidenced in the tables above, the total overpayments on the three mortgage loan accounts were approximately €239.00 per month in **June 2010**, rising to approximately €278.00 in **December 2010**.

The **mortgage loan statements** show that when the interest only period expired on mortgage loan accounts ending **129** and **094** in **January 2011**, the three mortgage loan accounts reverted to capital and interest payments as follows;

	<i>A/C 129</i>	<i>A/C 094</i>	<i>A/C 486</i>
Jan 2011 – Jan 2012	€171.91	€459.03	€1,256.31

I note that the Provider wrote to the Complainants by letter dated **12 September 2011** to detail that the most recent repayment of €1,256.31 on mortgage account ending **486** was not paid by the Complainants and that the mortgage loan account was in arrears of €1,256.31.

The difference in the interest rate actually charged to the mortgage loans ending **129** and **486** (3.70%) and the interest rate that should have been charged between **January 2011** and **January 2012**, is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan accounts ending **129** and **486** between **January 2011** and **January 2012**, is also represented in the table below;

Date	Rate Charged (Fixed)	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month		
				<i>AC 129</i>	<i>AC 486</i>	<i>Total</i>
January 2011	3.70%	2.30%	1.40%	€14.32	€182.26	€196.58
February 2011	3.70%	2.30%	1.40%	€14.32	€182.26	€196.58
March 2011	3.70%	2.30%	1.40%	€14.32	€182.26	€196.58
April 2011	3.70%	2.55%	1.15%	€11.74	€182.26	€194.00
May 2011	3.70%	2.55%	1.15%	€11.74	€148.74	€160.48
June 2011	3.70%	2.55%	1.15%	€11.74	€194.40	€206.14
July 2011	3.70%	2.80%	1.15%	€9.31	€194.40	€203.71
Aug 2011	3.70%	2.80%	0.90%	€9.31	€164.38	€173.69
Sept 2011	3.70%	2.80%	0.90%	€9.31	€164.38	€173.69
Oct 2011	3.70%	2.80%	0.90%	€9.31	€164.38	€173.69
Nov 2011	3.70%	2.55%	1.15%	€9.31	€447.49	€456.80

/Cont'd...

Dec 2011	3.70%	2.30%	1.40%	€9.31	€447.41	€456.72
Jan 2012	3.70%	2.30%	0.90%	€14.02	€506.20	€520.22

The difference in interest on the rate charged and interest that would have been charged on the tracker interest rate of 2.55% (ECB + 1.55%) on the mortgage loan account ending **094** between **January 2011** and **January 2012** is represented in is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan account ending **094** between **January 2011** and **January 2012**, is also represented in the table below;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month
				<i>A/C 094</i>
Jan 2011	4.05%	2.55%	1.50%	€40.52
Feb 2011	4.05%	2.55%	1.50%	€40.52
Mar 2011	4.05%	2.55%	1.50%	€40.52
April 2011	4.05%	2.80%	1.25%	€33.65
May 2011	4.05%	2.80%	1.25%	€33.65
June 2011	4.05%	2.80%	1.25%	€33.65
July 2011	4.05%	3.05%	1.00%	€27.23
Aug 2011	4.05%	3.05%	1.00%	€27.23
Sept 2011	4.05%	3.05%	1.00%	€27.23
Oct 2011	4.05%	3.05%	1.00%	€27.23
Nov 2011	4.05%	2.80%	1.25%	€27.23
Dec 2011	4.05%	2.55%	1.50%	€27.23
Jan 2012	4.05%	2.55%	1.50%	€39.66

As is evidenced in the tables above, the Complainants' total overpayments across the three mortgage loans were approximately €237.00 per month in **January 2011**, rising to approximately €560.00 in **January 2012**.

A **Standard Financial Statement ("SFS")** was completed and signed by the Complainants in respect of the three mortgage loan accounts on **1 December 2011**. The SFS recorded the "reason for review/arrears" as "Tenant moved out". The **Financial Statement Summary**, recorded the following;

"Total Monthly Income	5904.3
Less Total Monthly Expenditure	2572.6

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Sub Total	3331.7
Less Mortgage Repayments Due	1482
Less Other Monthly Debt Due	2161
Total Surplus/Deficit	-311.3

In response to the question **“Please provide details of any steps you propose to take to reduce your monthly expenditure and the savings you expect to achieve”** the Complainants have written **“Applications pending to FIS and also for medical card”**.

I also note from the **Current Monthly Debt Payments** section that the Complainants had short term debt in the form of two Credit Union loans and 3 credit cards which accounted for €1,023.00 of their total monthly debt payment of €2,161.00.

An internal Provider document dated **2 December 2011** has been furnished in evidence which details as follows;

“Branch Recommendation:

[BTL] property is not rented at present & accordingly customer are looking to cut down on their outgoings by way of 12 months interest only on both the pdh and rip mortgages. They have always conducted their finances in a satisfactory manner here and accordingly I support their request.

...

Other relevant information:

Customers have also requested that all mortgages be paid over 11 months – omitting January each year”

The Provider’s internal note dated **27 January 2012** details as follows;

“REQUEST: 12 mnth I/O on PDH & RIP. Put Mtgs over 11 months instead omitting Jan each year. REASON FOR ARREARS: Tenant moved out. REPAYMENT RECORD: In arrs since Dec 2011 on RIPs. PREV APPROVAL HISTORY: 6 mnth I/O on RIP acs from June 2010 by Credit. No forbearance on PDH ... RIP ([Redacted]) is not rented at present ... RECOMMENDATION: 9 mnth I/O on RIPs from Dec 2011 to give cust time to get tenants.”

The Provider’s internal note dated **1 February 2012** details as follows;

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"I said that 9 mnth I/O was approved but we cant put the payments over 11 months(January being omitted). I said he needs to speak directly to CRU. He said when customer calls in, he will inform customer of this."

On **6 February 2012**, the Complainants signed two **Mortgage Form Authorisations** to convert the mortgage loan accounts ending **094** and **129** to interest only for a period of 9 months.

The Provider's internal note dated **22 February 2012** details as follows;

"Wanted to advise customer that Forbearance was approved on RIP only & this will save E698pm. Cust can afford to meet PDH repayments as per SFS with forbearance on RIP."

I accept that the Complainants were overpaying significant amounts on their mortgage loan accounts on a monthly basis at the time forbearance was sought in **December 2011**. I also accept that because the Complainants were making overpayments on the mortgage loans at the time, meant that the Complainants did not have an accurate picture of their finances at the time that the rental income ceased. However, the evidence shows this forbearance period was requested primarily due to the fact that the Complainants had no rental income on their BTL property at the time.

I note that the Provider wrote to the Complainants on the following occasions;

- By letter dated **11 May 2012** to detail that the most recent repayment on mortgage account ending **486** was not paid by the Complainants and the mortgage loan account was in arrears of €1,256.31.
- By letter dated **23 July 2012** to detail that the most recent repayment on mortgage account ending **486** was not paid by the Complainants and the mortgage loan account was in arrears of €2,603.94.

The Complainants wrote to the Provider by letter dated **30 July 2012**, as follows;

*"Mortgage a/c
XXXX489 / XXXX129 / XXXX094*

...

I am replying to your correspondence which informed me that the current interest only arrangement for my accounts will cease on 16th Sept 2012.

We wish to apply for an extension of this arrangement for a minimum of 6 months longer.

/Cont'd...

This is to allow us to secure tenants for the property. We currently have two interested parties and I am in the process of renovating the property with a view to letting it."

The Provider wrote to the Complainants on **3 October 2012** in relation to mortgage loan account ending **486** detailing as follows;

"Mortgage Account No.(s) XXXX486 Current Outstanding Arrears €2603.94

...

Our Arrears Support Unit (ASU) has completed its assessment of your case, and has determined that Capitalising the Arrears of €2603.94 is the most appropriate option for you in your current circumstances.

...

Under the terms of this arrangement the arrears balance is added to the outstanding balance of your mortgage and your repayments are recalculated to discharge the mortgage over the remaining term.

At today's values your new repayment will be €1378.87 per monthly."

The Provider wrote to the Complainants again on **9 October 2012** in relation to mortgage loan account ending **486**, as follows;

"Further to our telephone conversation, we confirm that you have agreed to pay a contribution to arrears in addition to your standard repayment, to clear the arrears on your mortgage account above.

Under the terms of this arrangement you will pay €217.00 per month over 12 months commencing 01/11/2012 in addition to your standard mortgage repayment. This will bring your total mortgage repayment to €1,518.97 per month based on your current interest rate. This is subject to ongoing review. The original mortgage term remains unchanged."

I note that the Complainants have submitted in evidence a letter from the Prize Bond Company Limited dated **10 December 2012** which details as follows;

"Dear [First Complainant],

We confirm that Bond(s) value €1000.00, registered in your name(s), have been repaid and as requested the funds have been transferred to your Bank account."

/Cont'd...

The Provider wrote to the Complainants again by letter dated **10 December 2012** to detail that the **December 2012** repayment (mortgage account ending **486**) was not paid by the Complainants and the mortgage loan account was in arrears of €3,755.02.

The Provider wrote to the Complainants again by letter dated **31 December 2012** to detail that the mortgage loan account ending **486** remained in arrears of €3,755.02.

The **mortgage loan statements** show that during the period between **February 2012** and **January 2013** the Complainants made the following payments on each mortgage account;

	<i>A/C 129</i>	<i>A/C 094</i>	<i>A/C 486</i>
February 2012	€63.05	€180.69	€1,256.31
March 2012	€63.05	€180.69	€1,256.31
April 2012	€63.05	€180.69	€1,256.31
May 2012	€68.99	€180.69	€1,256.31
June 2012	€68.99	€180.69	€1,301.97
July 2012	€68.99	€180.69	€1,301.97
August 2012	€68.99	€180.69	€1,301.97
September 2012	€184.50	€483.00	€1,301.97
October 2012	€189.49	€495.28	€1,301.97
November 2012	€189.49	€495.28	€1,585.08
December 2012	€189.49	€495.28	€1,585.08
January 2013	€189.49	€495.28	€1,585.08

The difference in the interest rate actually charged to the mortgage loans ending **129** and **486** and the interest rate that should have been charged between **February 2012** and **October 2012**, is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan accounts ending **129** and **486**, between **February 2012** and **October 2012**, is also represented in the table below;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month		
				<i>AC 129</i>	<i>AC 486</i>	<i>Total</i>
Feb 2012	3.70%	2.30%	1.40%	€24.23	€177.43	€201.66
Mar 2012	3.70%	2.30%	1.40%	€24.23	€177.43	€201.66

/Cont'd...

Apr 2012	3.70%	2.30%	1.40%	€24.23	€177.43	€201.66
May 2012	4.05%	2.30%	2.65%	€30.17	€177.43	€207.60
Jun 2012	4.05%	2.30%	2.65%	€30.17	€233.09	€263.26
Jul 2012	4.05%	2.05%	2.65%	€34.26	€251.33	€285.59
Aug 2012	4.05%	2.05%	2.65%	€34.26	€251.33	€285.59
Sept 2012	4.05%	2.05%	2.65%	€20.02	€251.33	€271.35
Oct 2012	4.55%	2.05%	2.50%	€25.01	€251.33	€276.34
Nov 2012	4.55%	2.05%	2.50%	€25.01	€317.44	€342.45
Dec 2012	4.55%	2.05%	2.50%	€25.01	€317.44	€342.45
Jan 2013	4.55%	2.05%	2.50%	€25.01	€317.44	€342.45

The difference in interest on the rate charged and interest that would have been charged on the tracker interest rate of ECB + 1.55% on the mortgage loan account ending **094** between **February 2012** and **January 2013** is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan account ending **094**, between **February 2012** and **January 2013**, is also represented in the table below;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month
				<i>A/C 094</i>
Feb 2012	4.05%	2.55%	1.50%	€67.57
Mar 2012	4.05%	2.55%	1.50%	€67.57
Apr 2012	4.05%	2.55%	1.50%	€67.57
May 2012	4.05%	2.55%	1.50%	€67.57
Jun 2012	4.05%	2.55%	1.50%	€67.57
Jul 2012	4.05%	2.30%	1.75%	€78.73
Aug 2012	4.05%	2.30%	1.75%	€78.73
Sept 2012	4.05%	2.30%	1.75%	€46.49
Oct 2012	4.55%	2.30%	1.75%	€58.77
Nov 2012	4.55%	2.30%	1.75%	€58.77
Dec 2012	4.55%	2.30%	1.75%	€58.77
Jan 2013	4.55%	2.30%	1.75%	€58.77

As is evidenced in the tables above, the Complainants' overpayments across all three mortgage loans were approximately €270.00 per month in **February 2012**, rising to approximately €401.00 in **January 2013**.

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A **Standard Financial Statement** (“SFS”) was completed and signed by the Complainants in respect of the three mortgage loan accounts on **1 February 2013**. The SFS recorded the “reason for review/arrears” as “loan / mortgage overcommitment”. The **Financial Statement Summary**, recorded the following;

<i>“Total Monthly Income</i>	<i>6575.38</i>
<i>Less Total Monthly Expenditure</i>	<i>3519.79</i>
<i>Sub Total</i>	<i>3055.59</i>
<i>Less Mortgage Repayments Due</i>	<i>1786.55</i>
<i>Less Other Monthly Debt Due</i>	<i>2158.38</i>
<i>Total Surplus/Deficit</i>	<i>-889.34”</i>

I also note from the **Current Monthly Debt Payments** section that the Complainants had short term debt in the form of Credit Union loans and credit cards which accounted for €1,525.00 of their total monthly debt payment of €2,158.38.

The Provider’s **Branch SFS Checklist** has been provided in evidence and details as follows;

“Summary of discussion with customer(s)

[First Complainant] is employed by [Redacted] as a Supervisor and [Second Complainant] has her own business as a [Redacted] and will forward financial accounts for [Second Complainant] ... They have their PDH at [Address redacted]. [BTL property] was originally the PDH and they could not sell it and they now have it rented. They have previously had interest only on the [BTL] property and that has now expired and customers were to pay off the arrears but found it impossible to do so. Petrol expenses very high as [First Complainant] travelling between [Redacted] and [Redacted] every day ... There are a number of expenses around the 2nd property which they are finding very challenging – repairs etc. Rental income from the [BTL] property is e590 and they are paying out E1223.38 monthly. They also have very large short term debt and would have no problem talking to the credit unions to get debt restructured. Customers getting more into arrears and they have used up all their savings. Customers looking for int only on the [BTL] property and prepared to go back to the Credit Unions and renegotiate.

...

Branch Recommendation and Rationale

Supporting application but would also see merit here in Split mortgage as this is more a long term problem than short term.”

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The Provider's internal notes dated **5 March 2013** details as follows;

"As the clients have already had 13 months previous forbearance I recommend i/o for 6 months on BTL mortgage to allow clients restructure their STD. Clients must considerably reduce their STD repayments during this time. No further forbearance will be provided if the clients to [sic] not prioritise their mortgage repayments. Nam to advise customers of same. If the clients meet full repayments on their PDH mortgage we can cap arrears in 6 months time

...

Reviewed declining FB request in this instance as cust have continued to prioritise [sic] their std ahead of the mtg reps. Previous facility granted in Marc[h] 2013 & cust were adv to restrure [sic] their std which has not materialised. On the basis of affordability of std restructured am decline FB"

The Provider wrote to the Complainants by letters dated **7 March 2013** in relation to the Complainants' five mortgage loan accounts ending **486, 046, 489, 129** and **094**. The letters detailed as follows;

"I am writing in response to your recent request for an alternative repayment option for your mortgage(s) above. 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 there is sufficient repayment capacity to allow you to continue to meet the full repayments on your mortgage at this time.

..."

The Provider wrote to the Complainants again on the following dates;

- On **10 May 2013** and **11 June 2013** respectively to detail that the most recent repayment (mortgage account ending **486**) was not paid by the Complainants and the mortgage loan account was in arrears of €4,906.10.
- On **8 August 2013** to detail that the most recent repayment on mortgage accounts ending **129** and **094** were not paid by the Complainants and the mortgage loan accounts were in arrears of €189.49 (account ending **129**) and €495.28 (account ending **094**) respectively.

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- On **25 September 2013** to detail that the most recent repayment on mortgage account ending **486** was not paid by the Complainants and the mortgage loan account was in arrears of €4,904.18.

The Provider wrote to the Complainants by letter dated **29 November 2013** in relation to mortgage loan account ending **486**, as follows;

“Our Arrears Support Unit (ASU) has carefully assessed your mortgage loan to see if there is an alternative repayment arrangement to suit your individual circumstances.

...

We have determined that the most appropriate repayment arrangement option for you in your current circumstances is to allow you to capitalise your arrears. Based on the amount of arrears stated above, your current rate of interest and length of time remaining on the mortgage loan(s), we estimate your new repayment amount will be €1,385.13 per month. The enclosed Agreement to Amend Mortgage Loan Offer Letter (“the Form”) sets out the full details of the alternative repayment arrangement.”

The Complainants signed an **Agreement to amend your Mortgage Loan Offer Letter** dated **29 November 2013** with respect to mortgage account ending **486** on **13 December 2013**, which outlined as follows;

*“The Principal Amount you owe under the Mortgage Loan: €228,229.10
The Total Amount of arrears you owe under the Mortgage Loan: €3,534.18*

...

SECTION A: WHAT THIS FORM DOES

1. Alternative Repayment Arrangement (“A.R.A.”)

Capitalisation of Arrears

What this A.R.A means

1.1. If you accept this form you agree that:

- (a) We will capitalise the arrears on your Mortgage Loan;*
- (b) You will pay the revised repayments on your Mortgage Loan.*

...

1.4. The new repayment amount is estimated to be €1,385.13 each month.”

/Cont’d...

The difference in the interest rate actually charged to the mortgage loans ending **129** and **486** and the interest rate that should have been charged, between **February 2013** and **December 2013**, is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan accounts ending **129** and **486**, between **February 2013** and **December 2013**, is also represented in the table below;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month		
				AC 129	AC 486	Total
Feb 2013	4.55%	2.05%	2.50%	€25.01	€317.44	€342.45
Mar 2013	4.55%	2.05%	2.50%	€25.01	€317.44	€342.45
Apr 2013	4.55%	2.05%	2.50%	€25.01	€317.44	€342.45
May 2013	4.55%	1.80%	2.75%	€27.28	€317.44	€342.45
Jun 2013	4.55%	1.80%	2.75%	€27.28	€317.44	€342.45
Jul 2013	4.55%	1.80%	2.75%	€27.28	€343.08	€370.36
Aug 2013	4.55%	1.80%	2.75%	€27.28	€344.35	€371.63
Sept 2013	4.55%	1.80%	2.75%	€27.28	€343.08	€370.36
Oct 2013	4.55%	1.80%	2.75%	€27.28	€344.35	€371.63
Nov 2013	4.55%	1.55%	3.00%	€29.29	€344.35	€373.64
Dec 2013	4.55%	1.55%	3.00%	€29.29	€369.34	€398.63

The difference in interest on the rate charged and interest that would have been charged on the tracker interest rate of ECB + 1.55% on the mortgage loan account ending **094**, between **February 2013** and **December 2013**, is represented in is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan accounts ending **094**, between **February 2013** and **December 2013**, is also represented in the table below;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month
				A/C 094
Feb 2013	4.55%	2.30%	2.25%	€58.77

/Cont'd...

Mar 2013	4.55%	2.30%	2.25%	€58.77
Apr 2013	4.55%	2.30%	2.25%	€58.77
May 2013	4.55%	2.05%	2.50%	€64.78
Jun 2013	4.55%	2.05%	2.50%	€64.78
Jul 2013	4.55%	2.05%	2.50%	€64.78
Aug 2013	4.55%	2.05%	2.50%	€64.78
Sept 2013	4.55%	2.05%	2.50%	€64.78
Oct 2013	4.55%	2.05%	2.50%	€64.78
Nov 2013	4.55%	1.80%	2.75%	€70.11
Dec 2013	4.55%	1.80%	2.75%	€70.11

Taking the evidence before me into consideration, it appears that the restructure that took place in **December 2013** would have been necessary regardless of the error of the Provider in overcharging interest on the Complainants' mortgage loan account from **May 2010**. The contemporaneous evidence, as outlined above, shows that the Complainants had found themselves in the position where they had agreed a number of short term arrangements with the Provider in order to clear the arrears on the accounts. The purpose of the short term arrangements was also to assist to Complainants to make repayments on the mortgage loan accounts, in circumstances where, their rental income was reduced for a period, they were carrying out renovations on the rental property and they had built up significant short term debt. The evidence in the form of the **Standard Financial Statements** completed in **December 2011** and **February 2013** shows that the Complainants' cumulative income throughout the period was between €5,904.30 and €6,575.38 per month and total monthly expenditure of between €6,215.60 and €7,464.72. These factors had a direct impact on the funds that the Complainants had available to them to service their mortgage loans during this time period.

The difference in the interest rate actually charged to the mortgage loans ending **129** and **486** and the interest rate that should have been charged, between **January 2014** and **December 2015**, is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan accounts ending **129** and **486**, between **January 2014** and **December 2015**, is also represented in the table below;

Date	Rate Charged	Rate that would have been	Difference in Rate	Overpayment per month
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		charged (Tracker)				
				AC 129	AC 486	Total
Jan 2014	4.55%	1.55%	3.00%	€29.29	€371.84	€401.13
Feb 2014	4.55%	1.55%	3.00%	€29.29	€371.84	€401.13
Mar 2014	4.55%	1.55%	3.00%	€29.29	€371.84	€401.13
Apr 2014	4.55%	1.55%	3.00%	€29.29	€371.84	€401.13
May 2014	4.55%	1.55%	3.00%	€29.29	€371.84	€401.13
Jun 2014	4.55%	1.45%	3.10%	€30.09	€371.84	€401.13
Jul 2014	4.55%	1.45%	3.10%	€30.09	€382.27	€412.36
Aug 2014	4.55%	1.45%	3.10%	€30.09	€382.27	€412.36
Sept 2014	4.55%	1.35%	3.20%	€30.84	€382.27	€412.36
Oct 2014	4.55%	1.35%	3.20%	€30.84	€392.19	€423.03
Nov 2014	4.55%	1.35%	3.20%	€30.84	€392.19	€423.03
Dec 2014	4.55%	1.35%	3.20%	€31.87	€390.83	€422.70
Jan 2015	4.55%	1.35%	3.20%	€31.87	€390.83	€422.70
Feb 2015	4.55%	1.35%	3.20%	€31.87	€390.83	€422.70
Mar 2015	4.55%	1.35%	3.20%	€31.87	€390.83	€422.70
Apr 2015	4.55%	1.35%	3.20%	€31.87	€390.83	€422.70
May 2015	4.55%	1.35%	3.20%	€31.87	€390.83	€422.70
Jun 2015	4.55%	1.35%	3.20%	€31.87	€390.62	€422.49
Jul 2015	4.55%	1.35%	3.20%	€31.83	€390.66	€422.49
Aug 2015	4.55%	1.35%	3.20%	€31.83	€390.66	€422.49
Sept 2015	4.55%	1.35%	3.20%	€31.83	€283.84	€315.67
Oct 2015	4.55%	1.35%	3.20%	€31.83	€283.84	€315.67
Nov 2015	4.55%	1.35%	3.20%	€31.83	€283.84	€315.67
Dec 2015	4.55%	1.35%	3.20%	€31.83	€283.84	€315.67

The difference in interest on the rate charged and interest that would have been charged on the tracker interest rate of ECB + 1.55% on the mortgage loan account ending **094**, between **January 2014** and **December 2015**, is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan account ending **094**, between **January 2014** and **December 2015**, is also represented in the table below;

Date	Rate Charged	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month

/Cont'd...

				A/C 094
Jan 2014	4.55%	1.80%	2.75%	€58.77
Feb 2014	4.55%	1.80%	2.75%	€58.77
Mar 2014	4.55%	1.80%	2.75%	€58.77
Apr 2014	4.55%	1.80%	2.75%	€70.11
May 2014	4.55%	1.80%	2.75%	€70.11
Jun 2014	4.55%	1.70%	2.85%	€72.23
Jul 2014	4.55%	1.70%	2.85%	€72.23
Aug 2014	4.55%	1.70%	2.85%	€72.23
Sept 2014	4.55%	1.60%	2.95%	€74.23
Oct 2014	4.55%	1.60%	2.95%	€74.23
Nov 2014	4.55%	1.60%	2.95%	-
Dec 2014	4.55%	1.60%	2.95%	€78.06
Jan 2015	4.55%	1.60%	2.95%	€78.06
Feb 2015	4.55%	1.60%	2.95%	€78.06
Mar 2015	4.55%	1.60%	2.95%	€78.06
Apr 2015	4.55%	1.60%	2.95%	€78.06
May 2015	4.55%	1.60%	2.95%	€78.06
Jun 2015	4.55%	1.60%	2.95%	€78.06
Jul 2015	4.55%	1.60%	2.95%	€77.98
Aug 2015	4.55%	1.60%	2.95%	€77.98
Sept 2015	4.55%	1.60%	2.95%	€77.98
Oct 2015	4.55%	1.60%	2.95%	€77.98
Nov 2015	4.55%	1.60%	2.95%	€77.98
Dec 2015	4.55%	1.60%	2.95%	€77.98

As is evidenced in the tables above, the Complainants' total overpayments across the three mortgage loans were approximately €460.00 per month in **January 2014**, decreasing slightly to approximately €394.00 in **December 2015**.

I note that the Complainants contacted the Provider on **8 August 2015** to query why they had not been offered a tracker rate on their mortgage loan account ending **486, 129** and **094**.

The Provider responded by letter dated **25 November 2015** in which it detailed as follows in relation to mortgage loan account ending **486**;

"the bank's view is that you have no entitlement to a tracker rate on this account".

/Cont'd...

The Provider wrote to the Complainants again by letters dated **9 February 2016** to detail that the most recent repayment on mortgage accounts ending **094** and **129** were not paid by the Complainants and the mortgage loan account was in arrears of €494.31 (account ending **094**) and €189.97 (account ending **129**) respectively.

The Provider wrote to the Complainants by letter dated **10 February 2016** in relation to mortgage loan account ending **094**, as follows;

“...we confirm that you have agreed to pay an extra amount, on top of your standard mortgage repayment, towards paying off your arrears.

Under the agreed arrangement, you will pay an extra €164.77 a month over three months, starting on 07.03.16 this will bring your total repayment to €663.80 a month, based on your current interest rate.

The term of your mortgage will not change.”

The Provider sent the same letter to the Complainants in respect of mortgage account ending **129** which detailed that *“you will pay an extra €63.32 a month over three months, starting on 07.03.16 this will bring your total repayment to €253.80 a month”*.

The Provider wrote to the Complainants again by letters dated **10 March 2016** to detail that the most recent repayment on mortgage accounts ending **094** and **129** were not paid by the Complainants and the mortgage loan accounts were in arrears of €329.54 (account ending **094**) and €380.45 (account ending **129**) respectively.

The difference in the interest rate actually charged to the mortgage loans ending **129** and **486** (3.70%) and the interest rate that should have been charged, between **January 2016** and **November 2017** is demonstrated in column 4 of the table below.

The monthly overpayments made by the Complainants on mortgage loan accounts ending **129** and **486**, between **January 2016 and November 2017**, is also represented in the table below;

Date	Rate Charged (Fixed)	Rate that would have been charged (Tracker)	Difference in Rate	Overpayment per month		
				AC 129	AC 486	Total

/Cont'd...

Jan 2016	4.55%	1.35%	3.20%	€31.83	€283.84	€315.67
Feb 2016	4.55%	1.35%	3.20%	-	€283.84	-
Mar 2016	4.55%	1.35%	3.20%	€63.94	€283.84	€347.78
Apr 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
May 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Jun 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Jul 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Aug 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Sept 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Oct 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Nov 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Dec 2016	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Jan 2017	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Feb 2017	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Mar 2017	4.55%	1.35%	3.20%	€29.05	€279.49	€308.54
Apr 2017	4.55%	1.30%	3.25%	€29.05	€279.49	€308.54
May 2017	4.55%	1.30%	3.25%	€29.05	€279.49	€308.54
Jun 2017	4.55%	1.30%	3.25%	€29.05	€279.49	€308.54
Jul 2017	4.55%	1.30%	3.25%	€29.05	€279.49	€308.54
Aug 2017	4.55%	1.30%	3.25%	€29.05	€279.49	€308.54
Sept 2017	4.55%	1.30%	3.25%	€29.05	€279.49	€308.54
Oct 2017	4.55%	1.30%	3.25%	€29.05	€279.49	€308.54
Nov 2017	4.55%	1.30%	3.25%	€29.05	€279.49	€308.54

It appears from the mortgage loan statements in respect of account ending **129** that the repayment of €190.48 was returned unpaid on **9 February 2016**. A repayment of €256.80 was also returned unpaid on **7 March 2016**, however a sum of €380.45 was lodged to the account on **14 March 2007**.

I note the amortisation tables, which have been submitted in evidence and show how the mortgage loan would have amortised had the mortgage loan been on the tracker interest rate of ECB + 1.30%, indicate that no repayment was due in **February 2016** and a repayment of €316.51 would have been due in **March 2016**.

The difference in interest on the rate charged and interest that would have been charged on the tracker interest rate of ECB + 1.55% on the mortgage loan account ending **094** between **January 2016** and **November 2017** is demonstrated in column 4 of the table below. The monthly overpayments made by the Complainants on mortgage loan account ending **094**, between **January 2016** and **November 2017**, is also represented in the table below;

/Cont'd...

Date	Rate charged	Rate that would have been charged (Tracker)	Difference in rate	Overpayment per month
				A/C 094
Jan 2016	4.55%	1.60%	2.95%	€77.98
Feb 2016	4.55%	1.60%	2.95%	-
Mar 2016	4.55%	1.60%	2.95%	€77.98
Apr 2016	4.55%	1.55%	3.00%	€74.96
May 2016	4.55%	1.55%	3.00%	€74.96
Jun 2016	4.55%	1.55%	3.00%	€74.96
Jul 2016	4.55%	1.55%	3.00%	€74.96
Aug 2016	4.55%	1.55%	3.00%	€74.96
Sept 2016	4.55%	1.55%	3.00%	€74.96
Oct 2016	4.55%	1.55%	3.00%	€74.96
Nov 2016	4.55%	1.55%	3.00%	€74.96
Dec 2016	4.55%	1.55%	3.00%	€74.96
Jan 2017	4.55%	1.55%	3.00%	€74.96
Feb 2017	4.55%	1.55%	3.00%	€74.96
Mar 2017	4.55%	1.55%	3.00%	€74.96
Apr 2017	4.55%	1.55%	3.00%	€74.96
May 2017	4.55%	1.55%	3.00%	€74.96
Jun 2017	4.55%	1.55%	3.00%	€74.96
Jul 2017	4.55%	1.55%	3.00%	€74.96
Aug 2017	4.55%	1.55%	3.00%	€74.96
Sept 2017	4.55%	1.55%	3.00%	€74.96
Oct 2017	4.55%	1.55%	3.00%	€74.96
Nov 2017	4.55%	1.55%	3.00%	€74.96

It appears from the mortgage loan statements for account ending **094** that the repayment of €499.03 was returned unpaid on **9 February 2016**. A repayment of €663.80 was made in **March 2016**. I note the amortisation tables, which have been submitted in evidence and show how the mortgage loan would have amortised had the mortgage loan been on the tracker interest rate of ECB + 1.55%, indicate that no repayment was due in **February 2016** and a repayment of €585.82 would have been due in **March 2016**.

As is evidenced in the tables above, the Complainants' total overpayments across the three mortgage loan accounts were approximately €394.00 per month in **January 2014**, decreasing slightly to approximately €383.50 in **November 2017**.

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The Complainants have submitted that the Provider “bombardeed” them with written and verbal demands for payment.

Provision 8.6 and **8.8** of the **Consumer Protection Code 2012 (“CPC 2012”)** state as follows;

8.6 “Where an account remains in **arrears** 31 calendar days after the arrears first arose, a **regulated entity** must within three **business days** inform the **personal consumer** and any guarantor of the loan, on paper or on another **durable medium**, of the status of the account. This information must include the following:

- a) the date the account fell into **arrears**;
- b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts);
- c) the amount of the **arrears** to date;
- d) the interest rate applicable to the **arrears**;
- e) details of any **charges** in relation to the **arrears** that may be applied;
- f) the importance of the **personal consumer** engaging with the regulated entity in order to address the **arrears**;
- g) relevant contact points;
- h) the consequences of continued non-payment, including where relevant, sharing of data relating to the **consumer’s arrears** with the Irish Credit Bureau or any other credit reference agency;
- i) if relevant, any impact of the non-payment on other accounts held by the **personal consumer** with that **regulated entity** including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and j) a statement that the **personal consumer** may wish to seek assistance from MABS and contact details for the MABS National Helpline and the link to the MABS website.

...

8.8 Where the **arrears** persist, an updated version of the information required in Provision 8.6 must be provided to the **personal consumer**, on paper or on another **durable medium**, every three months.”

Under **Provision 8** of the **CPC 2012** the Provider is obliged to issue correspondence to customers in arrears. Having considered the evidence, I accept that the Provider issued arrears correspondence to the Complainants in accordance with the arrears it had recorded on the account. However, I appreciate that the Complainants’ overall experience between **May 2006** and **November 2017** and the interactions that they had with the Provider with respect to the arrears on the mortgage loan account were exacerbated and sometimes unnecessary, in circumstances where it has now transpired that the

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Complainants were in fact overpaying on their three mortgage loans on a monthly basis during that same time period.

The contemporaneous evidence shows that in addition to the mortgage payments the Complainants had accumulated short term debts that were not insignificant. In addition, as evidenced in the SFS completed in **December 2011** the Complainants' financial situation was exacerbated by the fact that they were not in receipt of rental income on the BTL property for a period. I also recognise that the overpayments on the Complainants' mortgage loan accounts 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 an overpayment of interest on average of €541.00 per month for a period of 90 months is significant. Throughout the seven and a half 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 accounts. During this time, the Complainants were challenged financially as they were servicing a number of mortgage loans in addition to other short term debt. It cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused additional hardship and great 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 and the evidence that the Complainants had a number of interactions with the Provider during the impacted period with respect to servicing their loans which has been a source of major inconvenience to the Complainants.

I note the Provider's statement that I do not have the power to direct compensation for "*pain and stress*". It also states that I do not have the power to "*make an award for personal injury*". In the interests of clarity and for the avoidance of any doubt, I have the power under **s60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017** to direct compensation for any loss, expense and inconvenience sustained by the Complainants. To me, there is clear evidence of very considerable inconvenience to the Complainants in the circumstances of this complaint.

I note that the Complainant has submitted that his credit rating has been affected by the overcharging on his mortgage loan. The Complainants have provided in evidence a letter from the Provider to the Complainants dated **24 November 2017** which details as follows;

"Thank you for your credit card application.

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We carefully considered your application and applied our normal credit scoring process to the details you provided. Unfortunately, based on this analysis, our criteria does not permit us to offer you a Credit Card at present. I am sure you will understand that the requirements governing Credit Cards are complex, and that we must keep the exact acceptance requirements confidential.”

It appears from the evidence that the Complainants were denied a credit card because of the Complainants' credit score. I have not been furnished with any evidence to the effect that an adverse credit score related to the Complainants' three mortgage loans that are the subject of this complaint (accounts ending **129, 094** and **486**). I note that the Complainants had other debts at the time.

While the Complainants may not be in a position to provide evidence in support of their submission that they were forced to cash in part of their pension or that they had to transfer to a more expensive pre-paid electricity supply arrangement in order to free up short-term funds. There can be no doubt that not having the sums of money, outlined above available, necessitated very difficult decisions by the Complainants.

I note that the Complainants appear to be of the view that if the sums overcharged of €48,692.09 had been available to them they would have invested that sum in an investment that could have had a 16% return. It appears to me that the Complainants are operating on the premise that they would have had the entire sum of €48,692.09 available at the one time, where in reality this sum was accruing on a monthly basis over a seven and a half year period and this lump sum was not available to the Complainants to make any such lump sum investment.

I accept that the sums overcharged on a monthly basis would have placed the Complainants in a better circumstance to deal with their monthly expenses and repayments, however the evidence shows that the sums overcharged were not of such a magnitude that the Complainants overall financial position would have changed to extent that they had significant surplus income available for making large scale investment commitments.

That said, the conduct of the Provider has caused grave inconvenience to the Complainants and I find the Provider's response to this complaint to be completely lacking any understanding of the impact of its actions and totally lacking in empathy.

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

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compensation offered of €15,936.03 is not sufficient or reasonable to compensate the Complainants for the inconvenience suffered by the Complainants during the impacted period.

Furthermore I am of the view that the Provider's response when the Complainants raised the tracker issue with the Provider in **August 2015** was most disappointing. Had the Provider investigated this issue correctly at the time the Complainants made their complaint in **2015** and restored the tracker interest rate at that time as it should have, the retrospective application of the tracker interest rate in **2017** would not have been necessary. I have no doubt that this failure on the Provider's part caused inconvenience to the Complainants.

Therefore, I substantially 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 €22,000 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 €22,000 is inclusive of the €15,936.03 compensation already paid to the Complainants for the Provider's failure.

For the reasons outlined in this Decision, I substantially 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 substantially 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 pay a sum of €22,000 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 €22,000 is inclusive of the €15,936.03 compensation already paid to the Complainants for the Provider's failure. This sum is to be paid 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.

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The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

4 November 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.