



<u>Decision Ref:</u>	2020-0424
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to one of three mortgage loan accounts held by the Complainants with the Provider, being mortgage loan account ending **6015**, and an overcharge of interest in the amount of €30,965.50 on that mortgage loan account. The mortgage loan was secured on the Complainants' principal private residence ("Property 1").

The loan amount was €200,730 and the term of the loan was 24 years. The mortgage loan offer was signed by the Complainants on **10 October 2004**. The mortgage loan account was redeemed in full by the Complainants in **August 2017** on foot of the sale of Property 1.

The Complainants' additional mortgage loan accounts which are not the subject of this complaint are detailed below;

- Mortgage loan account ending **6716** was drawn down on **19 February 2013** in the amount of €119,840. This mortgage loan was secured on the Complainants' buy-to let property ("Property 2").
- Mortgage loan account ending **6788** was drawn down on **6 March 2017** in the amount of €340,000. This mortgage loan is secured on the Complainants' current principal private residence ("Property 3").

The Complainants' mortgage loan account that is the subject of this complaint was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination ("the Examination").

The Provider identified that a failure had occurred on the mortgage loan account and that account was deemed to be impacted as part of the Examination.

The Provider wrote to the Complainants on **22 January 2018** advising them of the failure on the mortgage loan account. It 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 an expectation that a tracker rate would be available to you at the end of the fixed period. The language used by us in your documentation may have been confusing as to whether it was a variable interest rate which varied upwards or downwards tracking the ECB Rate or a variable interest rate which varied upwards or downwards at our discretion."

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

"How this failure affected you

As a result of our failure, we can confirm that you were charged an incorrect interest rate between 22 Nov 2010 and 17 Aug 2017."

The Provider made an offer of redress and compensation to the Complainants in its letter dated **22 January 2018**. The offer of €36,515.16 was made by the Provider to the Complainants and comprised of the following;

1. Redress of €32,513.78 covering;
 - Total interest overpaid
 - Interest to reflect the time value of money
2. Compensation of €3,251.38 for the Provider's failure
3. Independent Professional Advice payment of €750

The Complainants signed the **Payment Instruction Form** on **24 January 2018** and the amount of €36,515.16 was paid into the Complainants' nominated bank account.

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In **March 2018**, the Complainants appealed the redress and compensation offering to the Independent Appeals Panel. The Appeals Panel rejected the Complainants' appeal in **April 2018**. In determining the appeal the Panel outlined that;

- *"The Panel carefully considered all the information provided in the Customers appeal.*
- *The Panel was not satisfied that on the balance of probabilities that the loss of the property at [Address redacted] was effectively caused by the Bank's failure.*
- *The Customers did not demonstrate to the Panel that the compensation offered by the Bank was inadequate."*

As the Complainants completed the Provider's internal appeals process, this office was in a position to progress the investigation and adjudication of the complaint.

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

The Complainants' Case

The Complainants state at the outset that they *"pointed out [the Provider's] error in 2011"* and requested that the tracker interest rate be restored on their mortgage loan account however the Provider *"completely fobbed [them] off"*.

The Complainants contend that they were initially informed by the Provider that they *"would know the outcome of the tracker review by the end of 2016"*. The Complainants state that based on this timeline they started making plans for a *"home move"* in **2017**. The Complainants submit that in circumstances where they had still not received the outcome of the Examination in respect of their mortgage loan account in **July 2017**, they *"had no option but to sell"* Property 1.

The Complainants detail that they had been landlords since **2013** when they first rented Property 2, their investment property secured under mortgage loan account ending **6716**. The Complainants state that they had been living in Property 1, however they had planned to *"keep this asset and rent it out"* after trading up to a new family home. The Complainants explain that this *"was dependent on the tracker for this mortgage being restored as otherwise there would be too much of a gap between the rent and the mortgage"*. The Complainants note that there was a difference of €300-€400 per month between the rent and the mortgage when a tracker rate was not applied to mortgage loan account ending **6015**.

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The Complainants submit that *“it was not about affordability in this case, but about an investment making financial sense”*. The Complainants explain that they *“held out”* as long as they could to find out the result of the Examination *“but despite very very many attempts spanning a number of years to get an answer from [the Provider] nothing was forthcoming”* and they were *“left with no choice but to sell”*. The Complainants explain that when *“you are changing your princip[al] primary residence, along with all that goes with this (moving schools, etc.) it is not something that you can drag out endlessly, you need to work to a timeline”*.

The Complainants note that they drew down another mortgage loan with the Provider under mortgage loan account ending **6788** in **March 2017** for the purpose of purchasing Property 3, that is, their new family home. The Complainants state that during their application for this new mortgage loan they did not mention to the Provider that the plan to retain Property 1 as an investment property was *“contingent on the tracker being restored”* because they *“did not want to do anything to jeopardise getting [their] new mortgage”*.

The Complainants ultimately sold Property 1 in **August 2017**. The Complainants contend that they *“would **never** have sold it had our tracker been in place. We have lost out on cheap never to be repeated finance by having to sell this house.”* [Complainants’ emphasis]. In this regard, the Complainants detail *“as an example”* that they *“are paying 5.5% interest on [their] other rental property”* however the *“average interest rate over the last 7 years was approximately 1.50%”* in respect of the tracker mortgage. The Complainants submit that in circumstances where there was ten years left on the term of their mortgage loan account when it was redeemed and *“ignoring the last 3 years as these payments would be slanted towards principle [sic]”*, they maintain that *“that leaves 7 years of cheap finance that [they] believe [they] have lost out on”*. The Complainants submit while *“it is not possible to predict interest rate change”*, based on the details in their *“compensation pack”*, the monetary value of *“a difference between 5.5% and 1.5% is approximately 450 euro per month”*. As such, the Complainants maintain that the amount of additional compensation due to them in this regard is €37,800 ($€450 \times 12 = €5,400$; $€5,400 \times 7 = €37,800$).

The Complainants note that they are not claiming additional compensation on foot of *“any increase in capital value”* that may have occurred if they had sold Property 1 at a later date. By way of example, the Complainants note that *“a neighbouring house (on main road)”* located in the same estate as Property 1 sold for an additional €8,000 three months later, even though the Complainants’ property *“is in a much nicer location in the estate”*.

The Complainants detail that when they redeemed mortgage loan account ending **6015** in **2017** they *“had to pay a penalty fee for exiting a fixed rate”*. The Complainants are of the view that they did not have to pay this *“as the mortgage should not have been a fixed rate”* as such they claim that they are due €574.00 from the Provider. They note that when they requested a quote to break from the fixed rate period on **6 June 2017**, they were informed by the Provider’s representative that €574.00 was the penalty that would apply, however the actual fee paid when the mortgage loan was redeemed in **August 2017** was €354.00. The Complainants submit that they *“are not disputing this figure (354), just pointing out that it is very different from the originally indicated figure (574)”*.

The Complainants further submit that in **October 2017** they had to take out a personal home improvement loan in the amount of €20,000 to finish *“building and renovating”* their new family home, that is Property 3. The Complainants maintain that they would not have needed to take out this personal loan if they *“had received the tracker compensation amount of 36,515”*. The Complainants state that the interest on this loan amounts to €5,566.24 and they are seeking additional compensation in that amount.

The Complainants also assert that they *“suffered a lot of stress relating to uncertainty around financing”* their new family home under mortgage loan account ending **6788** and realising their plan to rent out the mortgaged property the subject of this complaint. The Complainants maintain that the cause of this stress was due to the *“significant delay”* on the part of the Provider *“in letting [them] know if [they] were entitled to redress and compensation and the details of this compensation”*. The Complainants are of the view that they are *“due a figure of 5000 in compensation”*.

The Provider’s Case

The Provider details that the Complainants’ mortgage loan account ending **6015** drew down on **8 December 2004** pursuant to a **Mortgage Loan Offer Letter** dated **5 October 2004**. The Provider refers to **Part 4 -Special Condition (iv)** of the **Mortgage Loan Offer** which provides for a tracker interest rate of no more than ECB + 1.10% for the term of the loan and **General Condition 7(b)** which outlines the treatment of the interest rate at expiry of a fixed rate period.

The Provider explains that the Complainants elected to apply a 5 year fixed interest rate of 3.85% to the mortgage loan account by way of **Mortgage Form of Authorisation** (“MFA”) which was signed and accepted by the Complainants on **16 November 2005**.

Prior to the expiry of this 5 year fixed rate period, the Provider states that it issued a **MFA** to the Complainants dated **22 October 2010** setting out “*what rates were available at that point in time, including a non-tracker variable rate and 3 fixed rate offerings over 2, 3 and 5 years*”. The Provider states that the MFA did not include a tracker interest rate because it had withdrawn tracker rates generally in **late 2008**. It outlines that “*the choices set out in the MFA accorded correctly with what is stated in the General Condition 7 (b)*” of the Mortgage Loan Offer Letter. The Provider notes that the Complainants elected to apply a 2 year fixed rate option to their mortgage loan account by signing and returning the MFA on **8 November 2010**. The Provider explains that upon expiry of that 2 year fixed interest rate period, it issued a **MFA** to the Complainants on **23 October 2012** setting out what rates were available at that time “*including a non-tracker variable rate and 3 fixed rate offerings over 2, 3 and 5 years*”. The Provider notes that the Complainants elected to avail of a 5 year fixed rate by signing and returning the MFA on **13 November 2012**.

The Provider states that the mortgage loan account ending **6015** was redeemed in **August 2017** and was identified as impacted through the Examination as confirmed in the Provider’s letter of **22 January 2018**.

The Provider outlines that it included the Complainants’ mortgage loan account in the Examination because it was formerly on a tracker interest rate. It submits that when the Complainants’ mortgage loan account 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 into either fixed rate that they could move to a tracker rate at the end of the fixed rate periods. 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 mis-selling a fixed rate through positive misrepresentation that a new tracker rate would be provided when it ended.*”

The Provider details that in this instance, the mortgage loan account had been closed and the mortgaged property (Property 1) was sold therefore the Provider was unable to restore a tracker interest rate to the Complainants’ mortgage loan account.

The Provider asserts that the redress payment was calculated to compensate the Complainants for the overpayments in the relevant period when they were paying a higher rate of interest than the tracker rate. The Provider considers that payment to accurately and adequately compensate the Complainants for the absence of a tracker interest rate during the relevant period. The Provider states that it has included a sum for the *“time value of money, in effect interest”* and this is *“the only feasible and accurate way of compensating for the loss of use of money due to overcharging”* and is of the view that therefore this is adequate compensation. The Provider submits that the Appeals Panel’s decision not to uphold the appeal *“strengthens the argument that compensation paid was adequate and no additional compensation is merited.”*

The Provider is of the view that the Complainants have not made out a reasonable claim for additional compensation beyond what the Provider has already provided for. The Provider sets out its justification for this view by considering each claim for additional compensation put forth by the Complainants which is detailed in the following paragraphs.

With regard to the Complainants’ claim for additional compensation of €37,800 to reflect the loss of *“cheap financing”*, the Provider submits that the Complainants chose to dispose of Property 1 in **August 2017** and there is *“no entitlement to carry forward ‘Cheap finance’ on the basis that they previously held a mortgage which was subject to a tracker rate.”* The Provider further notes that the terms of security as set out in the Mortgage Loan Offer Letter provided for a first legal charge over the mortgaged property and mortgage loan account ending **6015** *“does not provide for an open line of credit and the sale of the security property requires the redemption of the mortgage account”*.

The Provider does not accept that the sale of Property 1 was caused by the conduct complained of. It details that in **August 2016** the Complainants submitted an application for a new mortgage (account ending **6788**) with a view to *“trading up their family home”*. It outlines that in **September 2016** the Complainants had gone sale agreed on Property 3 and were proposing to spend an additional €80,000 on renovations. The Provider submits that the Complainants’ new mortgage loan application was presented and assessed on the basis that the Complainants would purchase a new property which was intended to be their new family home and carry out renovations to that property while retaining the mortgaged properties the subject of mortgage loan accounts ending **6015** and **6716**, that is Property 1 and Property 2. The Provider states that the *“application rationale”* considered that the Complainants would continue living in Property 1 until the work on the Complainants’ new family home was completed.

The Provider notes that the Complainants' application was approved and an offer issued to the Complainants in respect of mortgage loan account ending **6788** however this offer was not conditional on the sale of either Property 1 or Property 2. In fact, the Provider submits that the mortgage application deemed the retention of the existing properties the subject of mortgage loan accounts ending **6015** and **6716**, without rental income from the mortgaged property the subject of mortgage loan account ending **6015**, as "*affordable*". In particular, the Provider notes that the Complainants' mortgage loan application under account ending **6788**, which was ultimately approved by the Provider, did not contemplate that the Complainants would only be able to retain Property 1 as a rental property if a tracker interest rate was restored. The Provider further submits that the Complainants "*have offered no evidence to support the contention that the tracker issue was in any way the proximate or even an indirect cause of the Complainants' personal decision to sell [Property 1] as opposed to retaining it in line with their original application.*"

The Provider refers to a telephone call between the Provider and the First Complainant on **30 January 2017** at which time the First Complainant was informed that the Examination was ongoing and not due to conclude until late **2017**. The Provider questions why the Complainants would not have awaited the outcome of the Examination prior to the sale of Property 1 "*unless there was another financial reason to progress the sale of the property at that time*". The Provider asserts that the Complainants "*have offered little more than a bare assertion that the conduct complained of was the reason for the sale*" of the mortgaged property the subject of this complaint. The Provider contends that "*there are any number of factors someone may consider when considering the future of retaining an existing dwelling as an investment property or numerous financial needs that may have influenced the Complainants' decision to divert from their original strategy.*"

The Provider refers to the Complainants' submissions wherein they refer to the Property Price Register which confirms a purchase price of Property 1 of €172,000 on **11 August 2017**. The Provider notes that the Complainants' solicitor's letter dated **18 August 2017** confirms that €121,581.79 was transferred on that day to redeem mortgage loan account ending **6015**, leaving the Complainants with equity after the sale costs. The Provider notes that while the Complainants received approximately €30,000 in equity on foot of the sale of Property 1, they wished to "*hold onto most of this savings*". The Provider submits that the Complainants have not accounted for these funds, and have not confirmed whether there was a need for additional funds and whether that need would still have arisen irrespective of the tracker issue.

In response to the Complainants' claim for additional compensation in the amount of €5,566.24 in respect of interest paid on a €20,000 home improvement loan that the Complainants drew down in **October 2017**, the Provider asserts that, in circumstances where redress and compensation was paid to the Complainants on **30 January 2018**, they could have redeemed this loan "*if their contention is that they would never have needed this personal loan but for the delay in receiving compensation*". The Provider highlights that this personal loan under loan account ending **2839** has yet to be redeemed nor has a lump sum payment been made towards the loan since redress and compensation was paid to the Complainants. The Provider contends therefore that the "*Complainants cannot maintain that they would not have incurred the cost of this loan 'but for' the delay in the payment of compensation.*"

The Provider asserts that on the basis of the equity obtained from the sale of the Property 1 and the Complainants' application for a personal loan to fund home improvements which was made after their new mortgage loan application for account ending **6788**, the Complainants required additional funds, beyond what was originally submitted to the Provider as part of their new mortgage loan application to complete the renovations of their new family home (Property 3).

With regard to the Provider's claim for compensation of €574.00 in respect of the break fee for prematurely exiting the fixed rate in **August 2017**, the Provider details that in **November 2018** the amount of €345.00 was paid to the Complainants, being the fixed rate breakage fee actually incurred on mortgage account ending **6015**. The Provider acknowledges that the fixed rate breakage fee was not included in the initial redress and compensation issued to the Complainants dated **22 January 2018** as the "*Examination with regard to fixed rate breakage fees on impacted accounts had not concluded at that time*" however the Provider notes that the Complainants were due a refund of this breakage fee "*irrespective of this complaint.*"

In response to the Complainants' claim for an additional €5,000 in compensation for stress suffered as a result of the Provider's failure, the Provider submits that this Office "*does not have the power to make an award for stress*". The Provider asserts that "*stress*" is not in the nature of a "*loss, expense or inconvenience*" mentioned in **Section 60(4) (d)** of the **Financial Services and Pensions Ombudsman Act 2017**. The Provider further contends that "*stress and anxiety*" cannot be fairly and reasonably said to be a loss or expense "*sustained by the Complainant as a result of the conduct complained of, (within the meaning of 60(4) (d) of the Financial Services and Pensions Ombudsman Act 2017)*".

The Provider states that it has no record of any contact from the Complainants between **November 2010** and **August 2017** that would have indicated to the Provider that the Complainants were in financial difficulty or that they would have had to sell the mortgaged property the subject of this complaint if the tracker interest rate was not reinstated. The Provider submits that it also has no record of arrears on either of the Complainants' mortgage accounts (ending **6015** and **6716**) but rather their payment record was "*exemplary*". The Provider points out that it was always open to the Complainants "*to seek to renegotiate the terms*" of mortgage account numbers ending **6015** or **6716** in order to "*reduce the repayments by way of term extension for example*".

The Provider is of the view that the redress and compensation paid to date to the Complainants has been "*fair and reasonable*". The Provider submits that it would be unfair and unreasonable to allow for compensation for loss for such a "*remote claim*" and the Provider is of the view that the Complainants have not demonstrated that their decision to sell the mortgaged property the subject of this complaint is linked to the conduct complained of.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has failed to offer adequate redress and compensation in respect of its failure on the Complainants' mortgage loan account.

Decision

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

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

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict.

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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 30 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 made by the Provider before the Complainants entered either fixed rate on their mortgage loan account that they could move to a tracker interest rate at the end of the fixed interest rate periods. 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 account. This failure has been admitted by the Provider in its letters to the Complainants in **January 2018**. I therefore do not see the relevance of the Provider's arguments in relation to breach of contract. I do not find the Provider's approach helpful in the context of seeking to resolve the dispute at hand.

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 €32,513.78 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €1,548.28 to reflect the time value of money. The Provider also paid the Complainants compensation of €3,251.38 and a sum of €750.00 for the purposes of seeking legal advice. The Provider submits that the Appeals Panel did not uphold the Complainants' appeal. The Provider submits that the Complainants have not made out a reasonable claim for additional compensation beyond what the Provider has already paid to the Complainants.

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

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The Complainants' mortgage loan account ending **6015** was drawn down on **8 December 2014**. A **Loan Offer** dated **5 October 2004** issued to the Complainants which detailed as follows;

1. "Amount of Credit Advanced €200,730

2. Period of Agreement 24 Years

3. Number of
Repayment Instalment
Instalments Type
288 Variable at 3.100% ..."

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

"(a) The following Special Conditions apply to the Loan

.....

- (iv) 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 1.10% 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 lender not later than 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, 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 Home Loan Variable Rate."*

General Condition 7 (b) of Part 5- The General Conditions to the **Loan Offer** detail as follows;

"Fixed Interest Rates

- (b) The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice then in either case the interest rate applicable to the Loan will be a variable interest rate".*

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The Complainants signed the **Acceptance and Consents** section of the **Loan Offer** on **10 October 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 tracker interest rate of ECB + 1.10% applied to mortgage loan account ending **6015** from the date of drawdown until the Complainants chose to apply a 5 year fixed interest rate of 3.85% to their mortgage account by signing and accepting a **Mortgage Form of Authorisation (“MFA”)** on **16 November 2005**.

On the expiry of that 5 year fixed interest rate period, the Complainants requested to apply a 2 year fixed rate of 3.75% by way of **MFA** signed and accepted by them on **8 November 2010**, which was applied to their mortgage loan account on **22 November 2010**.

It was at this time that the failure that was subsequently identified and accepted by the Provider in **January 2018** as part of the Examination occurred on the Complainants’ mortgage loan account, in that, the Provider failed to furnish the Complainants with sufficient clarity, when they moved to the fixed rates, as to what would happen at the end of the fixed rate periods. The Provider accepts that the language used may have been confusing as to whether a tracker interest rate or a variable interest rate would apply at the end of the fixed interest rate periods.

It appears from the evidence that the Complainants contacted the Provider by letter dated **27 November 2011** to query their entitlement to a tracker interest rate on their mortgage loan account. Whilst I have not been provided with a copy of this letter, reference is made to a letter dated **27 November 2011** in subsequent correspondence issued by the Provider as such I accept that this letter was sent by the Complainants.

The Provider wrote to the Complainants by letter dated **7 December 2011** which states as follows;

“I am writing to you today in response to your letter dated 27/11/2011. I have investigated your enquiry with our mortgage department and they have confirmed that your mortgage is not entitled to revert to a tracker mortgage as this product was removed in [late] 2008.

If you have any issues with the above then please feel free to contact me on the number listed above.”

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It is most disappointing that the Provider did not recognise its failure on the Complainants' mortgage loan account during its investigation of the Complainants' query as regards reverting to a tracker interest rate in **December 2011**. I am of the view that had the Provider thoroughly and properly investigated the Complainants' query at that stage, it could have identified the failings that it accepted some 6 years later in **January 2018** and significantly reduced the detriment caused to the Complainants. The Provider's letter dated **7 December 2011** is lacking in any engagement or analysis with respect to the specifics of the Complainants' mortgage loan and given the subsequent issues identified in **January 2018**, the scope and depth of "investigation" conducted at this time in relation to the Complainants' mortgage loan account is very questionable.

The fixed interest rate that applied to the Complainants' mortgage loan account ending **6015** between **November 2010** and **November 2012** was 3.75%. Between **November 2010** and **November 2012**, the overall tracker interest rate (ECB + 1.10%) that would have applied to the Complainants' mortgage loan account fluctuated between 1.15% and 1.90%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.10%) had been applied to the mortgage account between **November 2010** and **November 2012**, is also represented in the table below;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual monthly repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
25 Nov 2010 – 25 Mar 2011	1.65%	€1,059.68	€924.56	€135.12
25 Apr 2011 – 25 Jun 2011	1.40%	€1,059.68	€943.33	€116.35
25 Jul 2011 – 25 Oct 2011	1.15%	€1,059.68	€962.62	€97.06
25 Nov 2011	1.40%	€1,059.68	€943.42	€116.26
21 Dec 2011 – 25 Jun 2012	1.65%	€1,059.68	€925.00	€134.68
21 Jul 2012 – 25 Oct 2012	1.65%	€1,059.68	€906.93	€152.78

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The Complainants opted to apply a five year fixed interest rate of 5.29% to their mortgage loan account by way of **MFA** signed and accepted by them on **13 November 2012**. The **mortgage loan statements** show that the fixed rate of 5.29% was applied to the mortgage loan account on **22 November 2012**.

The fixed interest rate applied to the Complainants' mortgage loan from **November 2012** until **August 2017**, at which point the mortgage loan account was redeemed in full on foot of the sale of Property 1. Between **November 2012** and **August 2017**, the overall tracker interest rate (ECB + 1.10%) commenced at 1.85% and gradually reduced to 1.10% over that period of time.

The difference in the interest rate actually charged to the mortgage loan account 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 + 1.10%) had been applied to the mortgage account between **November 2012** and **August 2017**, is also represented in the table below;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual monthly repayments	Monthly repayments if the mortgage was on the tracker rate	Overpayment per month
25 Nov 2012	3.44%	€1,059.68	€906.93	€152.07
28 Dec 2012 – 25 Apr 2013	3.44%	€1181.21	€906.93	€274.28
25 May 2013 – 25 Oct 2013	3.69%	€1181.21	€889.97	€291.24
25 Nov 2013 – 25 May 2014	3.94%	€1181.21	€874.03	€307.18
20 Jun 2014 – 25 Aug 2014	4.04%	€1181.21	€867.74	€313.47
19 Sept 2014 – 25 Feb 2016	4.14%	€1181.21	€861.69	€319.52

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21 Mar 2016 – 17 Aug 2017	4.19%	€1181.21	€859.08	€322.13
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The overcharge on the Complainants' mortgage loan account occurred over approximately a seven year period (**November 2010 – August 2017**).

The First Complainant appears to have contacted an auctioneer in or around **September 2016** in relation to the management of the rental of Property 1. I understand that the Complainants were still residing in Property 1 at the time as their principal private residence.

The auctioneer responded to the First Complainant's query on **14 September 2016** at **12:12** as follows;

"Thank you for considering [Auctioneer Name] for management of your rental property.

As per our telephone conversation this morning, the expected rental income for a 4 bedroom detached house (in good condition & with good furnishing) based in [name of area where secured property is located] is approx €650 - €700.

The fee we charge when initially placing a tenant in a property is half of the first months' rent (plus VAT) ...

After the first month, you are then solely [sic] responsible for the management & upkeep of your property & should address all queries/problems that may arise with your tenant.

However, if you would like [Auctioneer Name] to manage your property on a year by year basis, the fee will be 8% of the annual gross rent plus all costs that may occur in maintaining the property throughout the tenancy...."

The First Complainant responded to the auctioneer by e-mail on the same date at **22:51** as follows;

"The information below looks fine to me.

It will be a few months away before I will be in a position to go ahead with the rental, but good to be prepared in advance.

/Cont'd...

I might get back in touch to get a letter from yourselves showing the projected rent for a house like this..."

The Provider has submitted an undated document titled "**Information Note Extracted from Mortgage Application [ending] 6788**" which details as follows;

" ...

Existing Mortgage Accounts

[Account ending] 6015

[Account ending] 6716

...

Proposal:

- *[The Complainants] wish to trade up their family home for 4 bed detached property at [address of new family home].*
- *[The Complainants] have gone sale agreed for E320k for the property & would like to complete works of E80k for an extension to the kitchen, installation of new kitchen, extension of 2 rear bedrooms & installation of new windows*
- *They are seeking funding of E320k over 28 years @ 3 year fixed rate of 3.10%*
- *The total min expected value of the property on completion of works is estimated to be E400k*

...

Retaining existing Properties

- *Customers have 2 existing mortgages with [the Provider]*
 - *[Mortgage account ending 6015] bal o/s E126,577 – Term remaining of 12yrs this mortgage was taken out on their current PDH in [address of Property 1]. The plan once they move into their new home in [area where new family home is located] is to rent this property in [address of Property 1] at monthly rent attainable of E700 p/m. They have spoken to the local Auctioneer [name of auctioneer] & he has told [First Complainant] that their [sic] is a demand for this type of family home for renting in the area*
 - *I have input the BTL shortfall of E1,084 as a financial commitment....*
 - *[Mortgage loan account ending 6716] bal o/c E106,239 this mortgage is on their BTL property taken out in 2013. This property is currently been rented for E900 p/m & monthly rent of E794.83 is lodged directly into customers joint current account a/c [current account number] on monthly basis minus the fees charged by [...] to manage & collect the rent on a monthly basis....*
- Total demonstrated repayment capacity of E2,641 v E2,509 (monthly mortgage repayment E1,425 + shortfall on BTL E1,084)"*

/Cont'd...

The Provider has also submitted a document titled “**Rationale or Application**” into evidence in relation the Complainants’ application for mortgage loan account ending **6788** in relation to the purchase of their new family home. This document details the following in relation to the Complainants’ funding and existing mortgages with the Provider;

*“funding
10k shares
51k savings [...]
Gift 35k from parents.*

*Existing mortgages with [Provider]
Current PDH- [address of Property 1]- d/d 2004- bal 126.5k v 165k
Value- current repayments 1181pm and rent of 700pm
-rate 5.5% fixed 12 years remaining.
Current BTL- [address of Property 2] –d/d 2013 – bal 106.2k
Val 250k repay 826pm rental 900pm
rate 5.5% variable 17 years remaining.”*

It is evident from the above that the Complainants had the benefit of additional sources of funding in the amount of approximately €96,000 in the form of shares, savings and a gift from parents. I note that a **Loan Offer** issued to the Complainants in respect of mortgage loan account ending **6788** on **16 November 2016** for the amount of €340,000 for the purposes of purchasing their new family home (Property 3). The Loan Offer was signed and accepted by the Complainants on **28 November 2016**. The Complainants subsequently drew down mortgage loan account ending **6788** on **6 March 2017**.

The Provider has submitted an extract from an internal record of a complaint made by the First Complainant on foot of a telephone call with the Provider which was entered into the Provider’s system on **30 January 2017** which details as follows;

“IBC 15:00 [First Complainant] said he applied for a new mortgage and while he was there he was advised that his current mtge would be included in Examination as it was on a Tracker at one point. He wanted update, advised him that examination is ongoing and not due to be concluded until well into 2017, he said he was told last year that it would finish end of 2016, apologised and advised him that it is an extensive examination and we had anticipated that it would end in 2016 also. He asked where his acct was in the queue and if it could be moved up the queue, advised him that impacted customers would be contacted and if he were on a FR with this mtge there would be no charge for breaking out of it. He said if he knew the outcome in relation to this acct it would help him in financing his new mortgage.”

/Cont’d...

While the Provider has not furnished this office with the recording of this telephone call the content of the contemporaneous note of the telephone call, as outlined above, is not in dispute between the parties. The above note indicates that the Complainants were made aware in **January 2017** that the Examination was not due to conclude until late **2017**. I note that the First Complainant indicated to the Provider's representative during the above telephone call that that the outcome of the Examination would assist the Complainants in deciding how to best finance the mortgage for their new family home. At that stage, the Complainants had already been granted loan approval in the amount of €340,000 for the purposes of trading up their family home but had not yet drawn down the new mortgage loan.

The Complainants' solicitor wrote to the Provider on **2 May 2017** enclosing a **Letter of Authority** signed by the Complainants on **27 April 2017**. The **Letter of Authority** signed by the Complainants on **27 April 2017** details as follows;

"We [the Complainants] both [of address of Property 1] hereby irrevocably authorise the firm of [the Complainants' solicitors] to act on our behalf in respect of the sale of our house and we hereby authorise [the Complainants' solicitors] to take up our Title Deeds on Accountable Receipt for the purpose of the sale of the property."

The letter from the Complainants' solicitor to the Provider dated **2 May 2017** details as follows;

"Loan Ref. XXXX6015

...

We act on behalf of our clients in the sale of the above property. We are pleased to attach our client's authority to take up their title documents on accountable trust receipt."

It is clear that by **April 2017**, the Complainants had made a decision to, and instructed their solicitor to begin the process of selling the mortgaged property the subject of this complaint (Property 1), and what was the Complainants' principal private residence at the time. The Complainants made the decision to sell Property 1 with the knowledge that their new mortgage loan account ending **6788** to fund their new family home had already been drawn down in **March 2017**.

I understand from e-mail correspondence submitted by the Complainants in evidence that the First Complainant made enquiries of the mortgage advisor in the Provider's branch of the "tracker review" concerning mortgage loan account ending **6015** in or around **11 May 2017**.

/Cont'd...

The Provider does not appear to have furnished this office with the complete e-mail exchange in this regard. This is disappointing and unhelpful. As a result, it is unclear as to how exactly the mortgage advisor of the Provider's branch responded to the First Complainant at the time. However it appears that she was to get in touch with a colleague from the Provider's tracker mortgage examination review team.

The Complainants' solicitor wrote to the Provider on **18 August 2017** following the sale of the Property 1 as follows;

"Your Ref: XXXX6015

...

On Friday the 18th of August last we electronically transferred a sum of €121,581.79 to the above account to fully redeem the outstanding Mortgage..."

I note from the **mortgage loan statements** that mortgage loan account ending **6015** was redeemed in full by the Complainants on **21 August 2017** on foot of the sale of Property 1.

I note that the Complainants state that they had planned to move out of Property 1 and purchase a new family home while still retaining Property 1 as a rental property. The Complainants did not inform the Provider that the plan to rent out Property 1 was dependent on the tracker interest rate of ECB + 1.10% being restored on mortgage loan account ending **6015**. The Complainants have submitted that the reason for this was that they *"did not want to do anything to jeopardise getting [their] new mortgage"*. Given the Provider was satisfied in approving the new mortgage loan on foot of the affordability assessment as outlined above, which factored in the retention of Property 1 and Property 2 as rental properties, I accept that the Complainants did not have to disclose their reasoning as to how they planned on maintaining Property 1 as a rental property. The Complainants contend that they had no option but to sell Property 1 in **August 2017** because of the Provider's continued failure to restore the tracker interest rate on mortgage loan account ending **6015**. I understand that the Complainants wanted to ultimately establish whether retaining Property 1 made *"financial sense"* and I accept that knowing whether the tracker interest rate was going to be restored or not was relevant to the Complainants in making this decision.

Having considered the evidence it appears that the projected rental income from Property 1 was not sufficient to cover the monthly mortgage repayments of €1,181.21 while the mortgage loan was on the fixed interest rate of 5.29% which was due to apply to the mortgage loan account until **September 2017**.

/Cont'd...

As set out in column 4 in the table above, the Complainants' mortgage loan repayments in respect of mortgage loan account ending **6015** in **November 2016**, at which time the Provider approved the Complainants' new mortgage loan, would have been €859.08 if the mortgage loan account was operating on a tracker interest rate. The mortgage loan repayments would have remained at approximately this level if a tracker interest rate was applied up to **August 2017**, at which stage the loan was redeemed. Therefore, the projected rental income of "€650 - €700" would not have been sufficient to service the mortgage loan repayments even if the Complainants' retained Property 1 and it was on the tracker interest rate at the time. However, it is unclear that the "gap" between the rent and the mortgage would have been much smaller if the correct rate of interest had applied.

The Complainants submit that they have lost out on "*cheap financing*" because they "*had to sell*" Property 1 and are seeking €37,800 in additional compensation in this regard.

I note that they have calculated the amount of compensation sought by multiplying the difference between the tracker interest rate which should have been applied to their mortgage loan account during the impacted period and the 5.5% fixed interest rate which their investment property (Property 3) is operating on under mortgage loan account **6716**.

Part 5 of the **General Conditions** of the **Loan Offer** dated **5 October 2004** in respect of mortgage loan account ending **6015** states as follows;

"The 'Lender's Security' is (i) a first legal mortgage or charge over the Property described in Part 2. (ii) the legal assignment of a mortgage protection policy for the term of the Loan, which will repay the whole of the Loan if the Borrower dies before the Loan is repaid (the 'Life Policy') and/ or (iii) if applicable, the legal assignment of an endowment policy (the 'Endowment policy') which provides for a death benefit and an estimated maturity value in an amount sufficient to repay the Loan, and (iv) any additional security in the Special Conditions in Part 4."

Furthermore, the **Acceptance and Consent** attaching to the Loan Offer signed by the Complainants on **10 October 2004** states as follows;

"2. I hereby consent irrevocably to (i) any future transfer, assignment or other disposal howsoever arising of the legal or equitable benefit of the Loan, any and all security held therefore and all of the Lender's interests and rights arising thereunder whether as part of any loan transfer and securitisation scheme or otherwise howsoever arising;

/Cont'd...

and (ii) the creation by the Lender of any mortgage, charge, security interest or encumbrance howsoever arising whether legal or equitable over the Loan, any and all security held therefor and all of the Lender's interests and rights arising thereunder whether as part of any collateralisation scheme or otherwise however arising."

Having considered the mortgage loan documentation, it is clear that the Provider held a first legal charge over the mortgaged property the subject of mortgage loan account ending **6015**. Therefore, in order for the Complainants to be in a position to discharge their liabilities to the Provider, on the sale of Property 1, the mortgage loan would have to be redeemed in full. The Complainants appear to be of the view that as there was 10 years left on the term of the mortgage loan when the mortgage loan account was redeemed, they lost out on *"7 years of cheap finance...ignoring the last 3 years as these payments would be slanted towards principle"*. I am of the view that the Complainants logic is somewhat flawed as regards their entitlement for additional compensation in this respect.

I am of the view that the Complainants made the decision to sell Property 1 of their own accord, albeit without being fully informed by the Provider as to whether a tracker interest rate would be restored on mortgage loan account ending **6015**. However, at no point did the Provider advise the Complainants that it was necessary to sell Property 1. It is important for the Complainants to understand that because the sale of the mortgaged property resulted in the redemption of the mortgage loan in full, it followed that the mortgage loan account had to be closed as there was ultimately no property left to finance and no interest to be paid.

With respect to the fixed interest breakage fee paid by the Complainants, I note that the fee was not included in the redress and compensation offered to the Complainants by letter dated **22 January 2018**. The Provider has submitted that the *"Examination with regard to fixed rate breakage fees on impacted accounts had not concluded at that time"*.

The Complainants initially sought compensation in this regard in the amount of €574.00 on the basis of information received from the Provider by e-mail on **6 June 2017**. A copy of the e-mail has been provided in evidence and states as follows as regards clearing mortgage loan account ending **6015**;

"...if you were to clear it today, the penalty that would apply would be €574. As I said this could change daily. Let me know when sale is nearly closing and we can check the figures again then."

It appears that this fee reduced at the time of redeeming the mortgage loan account as I note from the **mortgage loan statements** that a “Switch Fee” of €345.00 was debited to mortgage loan account ending **6015** on **22 August 2017**.

During the course of this complaint, the Provider issued a letter to the Complainants dated **20 November 2018** which states as follows;

In the Redress and Compensation pack we sent to you on 22/01/2018 we outlined what we owed you because of our tracker mortgage failure.

We’re writing now to let you know that we want to top up that amount because of an error in our calculations, and to explain how this happened.

You were previously charged a fee because you ended your fixed mortgage rate period early. Had you been on a tracker rather than a fixed rate, this fee would not have featured. Please accept our apologies for this. We are now refunding the amount shown below.

<i>Refunded fixed rate breakage fee</i>	<i>€345.00</i>
<i>Refund of interest accrued on fixed rate breakage fee</i>	<i>€0.00”</i>

I note that the Complainants are not disputing the amount of the fixed rate breakage fee, rather they are querying the difference between what was quoted in **June 2017** and what was actually charged in **August 2017**. The Provider has submitted that the fixed rate period was due to expire in **November 2017** “which gives rise to the reduction between June and August”.

I have not been provided with any evidence to suggest that the figures provided by the Provider were incorrect. In any event, the Complainants paid a fixed rate breakage fee of €345.00 and that is the amount that was refunded to them, therefore I am satisfied that this element of the complaint does not warrant any further direction from this office.

The Complainants are also seeking additional compensation in the amount of €5,566.24 to cover interest paid on a “home improvement loan” which they contend they would not have required if they “had received the tracker compensation amount of 36,515”.

I note from the evidence that the Provider’s internal notes dated **28 September 2017** in relation to Complainants’ application for a home improvement loan state as follows;

*“Home Improvements, 84 mths, monthly repayments
NDI surplus E1323*

/Cont’d...

Customers are currently finishing renovations to a property the (sic) bought earlier this year, the loan funds are for furniture/tiling etc – non structural

...

Recently sold another property approx. 30k equity, however, customers wish to hold onto most of this savings”

I understand that the “[r]ecently sold” property to which the Provider is referring to in its internal notes is Property 1 being the mortgaged property the subject of this complaint.

A screenshot of the **Property Services Regulatory Authority records** has been provided in evidence which outlines the following information in relation to the sale of Property 1;

<i>“Date of Sale</i>	<i>Price</i>
<i>11/08/2017</i>	<i>€172,000”</i>

The **mortgage loan statements** show that a full redemption payment of €121,581.79 was made to the mortgage loan account ending **6015** on **21 August 2017**. Therefore, the Complainants had €50,418.21 equity in the mortgaged property at the time of the sale.

The Provider issued a **Credit Agreement** for a variable rate personal loan to the Complainants on **29 September 2017**. The credit agreement details as follows;

1. *“Amount of credit advanced* : *€20,000.00*
2. *Period of Agreement* : *84 months*
3. *Number of repayment instalments* : *84*
4. *Amount of each instalment* : *€304.36*
5. *Total Amount repayable* : *€25,566.24*
6. *Cost of this credit (5 minus 1)* : *€5,566.24*
7. *APR* : *7.5% Variable”*

The home improvement loan was drawn down by the Complainants on **6 October 2017**.

The Complainants are of the view that they were required to take out this home improvement loan because of the delay in receiving compensation on foot of the Provider’s failures in respect of mortgage loan account ending **6015**.

/Cont’d...

The evidence shows that the Complainants had funds available to them from the sale of Property 1 in **August 2017** to carry out any home improvements to their new family home however the Provider's internal notes indicate that the Complainants wanted to retain the funds from the sale as savings. While I appreciate that the Complainants were free to use such funds in whatever manner they so wished, I accept that in circumstances where the Complainants had additional funds available to them, it is reasonable to conclude that the necessity for the personal loan in **October 2017** was not as a direct result of a delay in receiving redress and compensation from the Provider. In addition, it was open to the Complainants to redeem the personal loan after receiving the redress and compensation from the Provider in **January 2018**, however they did not seek to do so and therefore the interest on that loan has continued to accrue. Further, the Complainants refer to a telephone call with the Provider on **24 November 2017** wherein the First Complainant noted that *"he had some bills relating to [his] new house that [he] needed to pay"* and he was planning to use the compensation from the Examination to pay such bills, otherwise he *"would have to cash in [his] Life insurance policy"*. I have been provided with a note of the Complainants' recollection of this telephone call. The Provider has not furnished any record of this call. However I have no reason to doubt that the Complainants' recollection and the content of the call is not in dispute. The Complainants' note suggests that even after the Complainants drew down the personal loan, they were still short on funds to pay for the renovations to their new family home.

Therefore, it is reasonable to conclude that the Complainants still required additional finance in the form of a personal loan irrespective of whether they received redress and compensation from the Provider.

The Complainants are seeking further compensation of €5,000 for the *"great stress"* and *"great inconvenience"* they suffered as a result of the Provider's failure on their mortgage loan account. The Complainants have submitted that they suffered *"a lot of stress relating to uncertainty around financing [their] new house and how to reali[s]e [their] plan of renting [address of Property 1]"*. I agree with the Complainants' submissions that they were *"unable to get a clear answer from the Bank"* with respect to the outcome of the Examination until they were informed of the redress and compensation owed to them for the Provider's failure on their account by letter dated **22 January 2018**. While I appreciate that the Provider did not advise the Complainants that there was any requirement to divert from their original plan (in retaining Property 1 and Property 2 as rental properties) after the drawdown of their new mortgage loan account, the Complainants were obviously concerned whether Property 1 remained a financially sound investment in the absence of a tracker interest rate being restored to their mortgage loan account.

/Cont'd...

The Complainants ultimately decided to take the step to voluntarily sell the mortgaged property the subject of mortgage loan account ending **6015** in **August 2017** without being fully informed as to whether a tracker rate would be restored. I have no doubt that this decision was not taken lightly by the Complainants at the time. I believe it is of considerable significance that the Complainants had requested the Provider to investigate whether a tracker interest rate should be restored on mortgage loan account ending **6015** as far back as **November 2011**. The Provider responded in **December 2011** noting that after investigating the Complainants' query, they were not entitled to a tracker interest rate on their mortgage loan account. However just over six years later, the Provider informed the Complainants that they in fact were entitled to a tracker interest rate and were offered €36,515.16 in redress and compensation for the Provider's failures. It is most unhelpful that this only came to light after the Complainants sold Property 1 in **August 2017**. It is important for the Provider to recognise that had the Complainants been armed with the knowledge, at an earlier stage, that a tracker interest rate should have applied to mortgage loan account ending **6015** since **22 November 2010**, the Complainants could have been in a position whereby they could have made an accurate financial plan as to how to deal with their overall liabilities. The Complainants were denied the opportunity of making a fully informed decision by the Provider's conduct.

The Complainants have submitted that after the Provider informed them that their mortgage loan account was impacted by the Examination, *"there was mis-information and delays in getting the details"*.

I note that the Complainants submit that they were informed on **19 December 2017** on foot of a telephone call with the Provider that the compensation package *"was posted on the 15th December"* however on **9 January 2018**, the Complainants were informed by way of telephone call that the *"compensation package was not posted on the 15th December, that this was a mistake, and that it would be posted soon"*. A redress and compensation letter ultimately issued on **22 January 2018** to the Complainants. I have been provided with a note of the Complainants' recollection of these telephone calls. Again, the Provider has furnished no record of these calls. However I have no reason to doubt the Complainants' recollection as being true and accurate and it is not in dispute. While I appreciate that the Complainants' frustration with the length of time it took for the investigation to be completed on their mortgage loan account and the delay in the Provider posting out the *"compensation package"*, especially considering they appear to have been told the compensation package would issue before Christmas, I accept that the scope of the Examination in accordance with the requirements set out by the Central Bank of Ireland may have necessitated the time taken to complete the exercise.

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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 (7 years), the impact such overcharging had on the Complainants, in particular, their ability to make informed decisions, I am of the view that the level of compensation offered of €3,251.38 is not sufficient or reasonable to compensate the Complainants for the inconvenience suffered by the Complainants during the impacted period. I note the Provider's statement that I do not have the power to "*make an award for stress*". The Provider also states that it does not believe that the Complainants have "*demonstrated that inconvenience is attributable to the conduct complained of i.e. too remote*". I am at a total loss to know how the Provider can have considered the evidence in this complaint and come to the conclusion that its conduct has not caused any inconvenience to the Complainants.

The Complainants raised the tracker issue with the Provider as early as **November 2011** and received a response at the time that there was no entitlement to a tracker mortgage rate of interest on the mortgage loan account. Yet subsequent to a further investigation that was ongoing for from **December 2015**, the Provider was not in a position to provide a definitive response on the matter to the Complainants until **January 2018**. I have no doubt that had the Provider properly investigated the Complainants' query in **November 2011** and restored the tracker mortgage on mortgage loan account ending **6015**, it could have significantly reduced the inconvenience caused to the Complainants and the Complainants could have been in a position to make a fully informed decision in respect of the sale of Property 1. This shows a serious lack of understanding on the part of the Provider as to the impact of its conduct on the Complainants and is most disappointing.

Therefore, I partially uphold this complaint and direct that pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Provider pay a sum of €8,000 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 €8,000 is inclusive of the €3,251.38 compensation already paid to the Complainants for the Provider's failure.

For the reasons outlined in this Decision, I partially 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 partially upheld, on the grounds prescribed in **Section 60(2)(b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €8,000 in respect of the loss, expense and inconvenience the Complainants have suffered. For the avoidance of doubt, the total sum of compensation of €8,000 is inclusive of the €3,251.38 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.

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

23 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.