



<b><u>Decision Ref:</u></b>	2020-0462
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer appropriate compensation or redress CBI Examination
<b><u>Outcome:</u></b>	Rejected

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

##### **Background**

This complaint relates to two mortgage loan accounts held by the Complainant with the Provider and an overcharge of interest in the amount of €31,216.94 on both mortgage loan accounts.

The Complainant's two mortgage loan accounts are held as follows:

- Mortgage loan ending **3958** was drawn down in **April 2004** in the amount of €70,000. This mortgage loan was secured on the Complainant's private dwelling house and was redeemed in full in **August 2017**.
- Mortgage loan ending **3907** was drawn down in **May 2004** in the amount of €103,415. This mortgage loan is secured on the Complainant's residential investment property and was redeemed in full in **November 2015**.

The Complainant's two 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 the mortgage loan accounts and as such, the mortgage loan accounts were deemed to be impacted under that Examination.

The Provider wrote to the Complainants on **15 December 2017** by way of separate letter in respect of each mortgage loan account advising him of the failure. 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.”*

The Provider’s letters to the Complainant dated **15 December 2017** state that the period of overcharging on mortgage loan account ending **3907** was from **28 November 2008** until **13 November 2015**, when the mortgage loan account was redeemed, and the period of overcharging on mortgage loan account ending **3958** was from **28 November 2008** until **24 August 2017**, when the mortgage loan account was redeemed.

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

	<b>Account ending 3907</b>	<b>Account ending 3958</b>
Redress covering; (a) Total Interest Overpaid. (b) Interest to reflect time value of money.	€17,433.97	€15,343.82
Compensation	€1,743.40	€1,534.38
Independent Professional Advice Payment	€100	€250
<b>Total</b>	<b>€19,277.37</b>	<b>€17,128.20</b>

By way of letters dated **31 January 2018**, the Provider notified the Complainant of an *“additional top up payment”* for independent professional advice payment in the amount of €400 in respect of mortgage loan account ending **3907** and €500 in respect of mortgage loan account ending **3958**.

The Provider did not restore a tracker interest rate to the Complainant's mortgage loan accounts as mortgage loan account ending **3907** had been redeemed in full on **13 November 2015** and mortgage loan account ending **3958** had been redeemed in full on **24 August 2017**.

In summary the total redress and compensation offered by the Provider in respect of both mortgage loan accounts amounted to €37,305.57, which comprised;

1. Redress in the sum of €32,777.79;
2. Compensation in the sum of €3,277.78; and
3. Payment towards the cost of professional advice in the sum of €1,250

The Complainant signed the acceptance forms on **15 February 2018** and the total amount of €37,305.57 was paid by the Provider into the Complainant's nominated bank account.

In **May 2018**, the Complainant appealed the redress and compensation offering to the Independent Appeals Panel. The basis of the Complainant's appeal was the inadequacy of the redress and compensation offering as it does not reflect lost opportunity for capital appreciation.

The Appeals Panel decided on **7 June 2018** not to uphold the Complainant's appeal. In determining the appeal, the Appeals Panel outlined as follows;

*"The Panel carefully considered the information provided by the Customer and the Bank. Below is an outline of the factors of this appeal which had a significant influence over the decision.*

- *The Panel is satisfied in the context of the specific claim as outlined in the Customer's appeal that the Bank's offer of compensation was adequate."*

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

The conduct complained of that is being adjudicated on by this office is that the Provider failed to offer adequate compensation to the Complainant by consequence of the Provider's failure in relation to his mortgage loan accounts ending **3907** and **3958**.

### The Complainant's Case

The Complainant submits that the “[l]evel of [c]ompensation offered” and the “[t]he level of adjustment” does not properly reflect lost opportunity for capital appreciation and investment during the impacted period.

The Complainant outlines that he “lost the opportunity to invest money in [his] PRSA [Personal Retirement Savings Account] during [the] period of overpayment.” He details that had the money that he overpaid on his mortgage been invested in his Personal Retirement Savings Account (“PRSA”), the “historical fund performance indicate[s] [a] yield of +46.09% in [the impacted] period which amounts to €12,827.03.” He details that the Provider has not compensated him for this loss.

The Complainant is seeking for “the complaint to be resolved by increasing [the] level of financial compensation”. In this regard, the Complainant submits that the level of compensation should be increased by €12,827.03.

### The Provider's Case

The Provider outlines that the Complainant drew down mortgage loan account ending **3958** in the amount of €70,000 for a term of 25 years on **29 April 2004** pursuant to Mortgage Loan Offer Letter dated **19 March 2004** which was signed and accepted by the Complainant on **06 April 2004**. The Provider explains that this mortgage loan account was secured on the Complainant's private dwelling house.

The Provider details that the Complainant drew down a second mortgage loan account ending **3907** in the amount of €103,415 for a term of 25 years on **26 May 2004** pursuant to Mortgage Loan Offer Letter dated **25 March 2004** which was signed and accepted by the Complainant on **06 April 2004**. The Provider explains that this mortgage loan account was secured on the Complainant's residential investment property.

The Provider details that both Mortgage Loan Offer Letters provide “for a tracker rate of interest and both mortgage loan accounts drew down on a tracker rate of interest.” The Complainant relies on **Part 4(v)** of the **Special Conditions** attaching to both Mortgage Loan Offer Letters to support this.

The Provider submits that on **24 November 2005**, the Complainant completed and returned two **Mortgage Form Authorisations** (“MFAs”) in respect of the mortgage loan accounts “instructing the Provider to switch both mortgage loan accounts to a fixed rate of interest at 3.65% for a period of 3 years”.

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The Provider details that this was when the Provider's failure occurred as it *"failed to provide [the Complainant] with sufficient clarity as to what would happen at the end of the fixed rate period and the language used by the Provider may have been confusing or misleading."*

The Provider notes that this 3 year fixed interest rate period expired on **28 November 2008** at which time both mortgage loan accounts *"rolled to a Standard Homeloan Variable rate (i.e. not a Tracker interest rate)."*

The Provider explains that the Complainant completed a two further **MFA**s on **14 April 2010** instructing the Provider to apply a fixed rate of interest at 4.950% to both mortgage loan accounts for a period of 3 years. The Provider details that on the expiry of this 3 year fixed interest rate period on **29 April 2013**, the *"mortgage loan accounts reverted to the Standard Homeloan Variable Rate."*

The Provider outlines that the Complainant's mortgage loan accounts ending **3958** and **3907** were included in the Examination because those mortgage loan accounts originated on a tracker rate of interest. The Provider submits that the Examination found that, when the Complainant moved from a tracker rate to the first fixed interest period in **November 2005**, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed interest rate period and the language used by the Provider may have been confusing and misleading.

The Provider does not accept the Complainant's submission that he is at a loss of investment income of €12,827.03 due to his inability to invest monies in his PRSA fund on foot of the overpayment of interest during the impacted period across both mortgage loan accounts. The Provider states that the Complainant's claim *"has not been supported with any credible evidence, and his submission that he would have made payments into his PRSA is a bare assertion."* The Provider outlines that *"the Complainant commenced his PRSA on 1 July 2006, which is before the period of overcharging."* It submits that *"the PRSA was not reasonably contemplated by the parties as the Complainant only commenced it after the drawdown of the mortgage loan accounts."* The Provider is of the view that the Complainant needs to *"demonstrate [that] the monies deducted each month placed him in a position where he would not have been able to make payments into his PRSA."* The Provider states the Complainant *"has not set out a reasonable claim for additional compensation beyond what the Provider has already provided for."*

The Provider details that the Complainant's breakdown of the overpayments does not support his claim for additional compensation but rather *"undermine[s]"* it and suggests that *"the Complainant did not suffer the loss he seeks"*.

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The Provider states that the overcharged amount on average per week was “*modest in the context of [the Complainant’s] income.*” The Provider details that the Complainant “*never sought forbearance or expressed difficulty with making repayments*”. It states that the “*Complainant’s financial position therefore was not as sensitive to the overpayments.*” The Provider submits that “*[i]t is not credible that the Complainant would have ceased payments into his PRSA solely because he was overcharged approximately €50 per week.*”

The Provider contends that if the Complainant did not make payments to his PRSA this was “*because of other personal choices.*” In this regard, the Provider details for example, that the purpose of the second mortgage, mortgage loan account ending **3907** was to allow the Complainant to “*invest in a property and the Provider submits that the priority was this investment rather than a PRSA*”. It submits that the Complainant’s failure to make contributions to the PRSA “*is not supported by the evidence*” and “*there is thus no justification for a further award of compensation.*”

Furthermore, the Provider does not accept the Complainant’s method of calculating his loss. The Provider submits that the amount of €12,827.03 was calculated by “*taking the amount he was overcharged, in the sum of €31,216.94 and calculating 46.09% of this number.*” It outlines that this “*yields a sum of €14,387.88.*” The Provider outlines that the Complainant then deducted the time value of money payment, €1,560.85. The Provider submits that it “*is not clear*” how the rate of 46.09%, which was stated as the “*historical fund performance*” of the Complainant’s PRSA in the impacted period, was calculated. It details that it appears that this percentage is “*found by comparing the unit price of [the Complainant’s] PRSA on 28 November 2008 (1.042) with the unit price as it was on 24 August 2017 (2.261).*” The Provider submits that the “*the percentage increase [in] the price of the PRSA*” was first expressed as a fraction (1.042/2/261) which was then multiplied by 100 to derive a percentage. The Provider contends that this “*method of calculation is incorrect.*” It submits that “*[a]n increase in the unit price does not accurately reflect, or reflect at all, the profit the Complainant missed out on his PRSA but for the overpayments he made.*” It contends that “*[e]ven on its own terms, the percentage cited does not accurately reflect the increase in the price of the PRSA*”. The Provider maintains that “*one cannot quantify such a loss by merely multiplying the percentage increase by the amount overcharged.*”

The Provider submits that the Complainant is seeking to find a “*causative link*” between the Provider’s failure and his loss of opportunity for capital investment in his PRSA. The Provider is of the view that “*it cannot be fairly and reasonably said that the choices of the Complainant resulted from the conduct complained of.*” It submits that “*such consequences are too remote from the tracker question; and cannot fairly or reasonably be said to result from it*”.

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The Provider further highlights that *“[o]n the basis of the information furnished, the Provider cannot accept that the Complainant has established the loss of €12,827.03 resulted from the overcharging on his account or the only reason the Complainant did not invest monies in his PRSA was as a result of this overcharging on his mortgage accounts.”*. The Provider states that it is *“satisfied that the comprehensive scheme and the independent review and adjudication of the Complainant’s Appeal has provided an appropriate and reasonable compensation for the losses suffered by the Complainant.”*

The Provider explains that the Complainant redeemed mortgage loan account ending **3907** on **13 November 2015** and redeemed mortgage loan account ending **3958** on **24 August 2017**, prior to redress and compensation having been paid to the Complainant. It details that in circumstances where both mortgage loan accounts were redeemed prior to the commencement of the Examination, the mortgage loan accounts were not restored to a tracker interest rate.

The Provider explains that the redress payment is equivalent to the overpayments made by the Provider as a result of being on a higher rate of interest. It outlines that the redress amount awarded to the Complainant refers to *“the difference between the rate he was on following the end of the first fixed rate period in 2008.”* It submits that it *“is satisfied the correct ECB rate and margins were correctly applied for the relevant time period when calculating the level of redress.”* The Provider relies on its letters dated **15 December 2017** to the Complainant in respect of each mortgage loan account to support this. As a result, the Provider submits that this element of the redress *“accurately (and therefore adequately) remediates him for the absence of the tracker rate.”* The Provider details that a payment for “time value” of money was also included in the redress offered to the Complainant. It submits that this payment *“reflects the additional financial loss suffered by an impacted account in not having access to the money that was used to pay interest at an incorrect rate”* therefore adequate compensation has already been provided to the Complainant in this regard. The Provider asserts that the *“redress is adequate as the amount given is sufficient to put the Complainant in the position he would have been in had the tracker rate of interest been applied to his mortgage loan accounts at the appropriate times.”*

The Provider details that the compensation amount *“reflects the nature and severity of the impact with reference to a number of factors as a direct result of the Provider[’s] failure”*. The Provider details that the calculation of compensation *“took into account payments for detriment, including but not limited to inconvenience, harm, loss as a result of not having funds available to the Complainant when they should, personal suffering and hardship, caused by the relevant issue.”* It submits that the *“compensation payment is reasonable and fair taking into account the Complainant’s circumstances.”*

The Provider highlights that the Appeals Panel agreed that the Provider's offer of redress and compensation was adequate and that this *"further strengthens the argument that compensation paid was adequate"*. It submits that the *"Complainant has advanced no new grounds which undermine the determination of the Independent Appeals Panel."*

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider failed to offer adequate compensation to the Complainant by consequence of the Provider's failure in relation to his mortgage loan accounts ending **3958** and **3907**.

### **Decision**

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

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

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

A Preliminary Decision was issued to the parties on 24 November 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.



The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress. The total redress payment of €32,777.79 reflects the amount of interest overpaid on both mortgage loan accounts (€31,216.94) and includes a payment of €1,560.85 to reflect the time value of money. The Provider also paid the Complainant €1,250 for the purposes of seeking legal advice and compensation of €3,277.78. The Provider details that the Appeals Panel did not uphold the Complainant's appeal. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider has already provided for and was paid by the Provider to the Complainant.

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

This complaint concerns two mortgage loan accounts held by the Complainant as detailed below;

- Mortgage loan account ending **3958** was drawn down on **29 April 2004** in the amount of €70,000 for a term of 25 years, commencing on a tracker interest rate of ECB+1.30%.
- Mortgage loan account ending **3907** was drawn down on **26 May 2004** in the amount of €103,415 for a term of 25 years, commencing on a tracker interest rate of ECB+1.30%.

On **24 November 2005**, the Complainant signed two **MFAs** where he selected to apply a 3 year fixed interest rate of 3.65% to mortgage loan accounts ending **3958** and **3907**.

The Provider's internal mail dated **24 November 2005**, in respect to both mortgage loan accounts, details as follows;

*"Customer has signed Form of Authorisation at branch today to fix rate for 3 yrs at 3.65% form has been faxed to CRU today and original forwarded in [E]nvopak. Please amend rate."*

It was at this time that the failures that were subsequently identified in **December 2017** as part of the Examination occurred on the Complainant's mortgage loan accounts ending **3907** and **3958**, in that, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed interest rate periods. The Provider found that the language used may have been confusing as to whether a tracker interest rate or a variable interest rate would apply to the Complainant's mortgage loan account at the end of the fixed interest rate periods.

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

**Mortgage Loan account ending 3907**

On **28 November 2008** mortgage loan account ending **3907** defaulted to the Provider's standard home loan variable rate. Between **December 2008** and **April 2010** the standard home loan variable rate fluctuated between 4.66% and 4.95%. The tracker interest rate that should have been applied from **December 2008** was ECB + 1.3%. Between **December 2008** and **April 2010**, the overall tracker rate (ECB + margin) fluctuated between a rate of 2.30% and 3.80%.

The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.3%) had been applied to mortgage account ending **3907** between **December 2008** and **April 2010**, is also represented in the table below;

<b>Mortgage Account ending 3907</b>				
<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
Dec 2008	1.11%	€587.09	€532.23	€54.86
Jan 09	1.61%	€587.09	€509.54	€77.55
Mar 09	1.86%	€575.69	Between €486.43 and €509.54	Between €66.15 and €89.26
April 09	2.11%	€575.69	€475.32	€100.37
May 09 – Mar 10	2.36%	€575.69	€464.64	€111.05
Apr 10	2.65%	€575.69	€464.64	€111.05

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I note that the monthly repayment on **28 November 2008** does not appear to have been included in the impacted period. The mortgage loan account statement for mortgage loan account ending **3907** shows that the interest rate changed to 5.29% on **28 November 2008** however a repayment of €526.14 was made on that date which equates to the monthly repayment amount subject to the previous interest rate of 3.65%. In effect, the monthly repayment made in **November 2008** was the same amount as the repayments in the previous months at an interest rate of 3.65% therefore I accept that the repayment made on **28 November 2008** is not included in the impacted period.

The mortgage loan account statement for mortgage loan account ending **3907** shows that no repayment was made in **February 2009** however two mortgage repayments were paid in **March 2009**. This occurred again in **February 2010**, with two mortgage repayments being paid in **March 2010**.

The Provider's internal email dated **28 July 2009**, in respect of mortgage loan account ending **3907**, details as follows;

*"Please send customer an MFA to go on a 2 yr fixed rate."*

The Provider's internal email dated **01 April 2010**, in respect of mortgage loan account **3907**, details as follows;

*"Can you please post out MFA to switch to 3yr fixed @4.95% as soon as possible."*

The Provider's internal email dated **13 April 2010**, in respect of both mortgage loan accounts, details as follows;

*"No sign of the MFAs that were issued on 6<sup>th</sup> April, any ideas?"*

The Provider's internal email dated **13 April 2010** in respect of both mortgage loan accounts, details as follows;

*"Pls reissue MFA for a 3 yr fixed 4.95% asap. other seem to have got lost in post. Assuming the first lot arrive, can they still be used?"*

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The Provider's internal email dated **14 April 2010**, in respect of mortgage loan account **3907**, details as follows;

*"New forms issued – either set of forms can be sent back [name of employee]"*

On **14 April 2010**, the Complainant signed a Mortgage Form Authorisation ("MFA") in relation to mortgage loan account ending **3907** where he selected to apply a 3 year fixed interest rate of 4.95%. It is unclear as to why the Complainant chose to apply a fixed interest rate to mortgage loan account ending **3907** at this time.

I will now consider mortgage loan account ending **3907** in the period from **May 2010** up to when the mortgage loan account was redeemed in **November 2015**.

On **27 April 2010**, a 3 year fixed interest rate of 4.95% was applied to mortgage loan account ending **3907**. On the expiry of the fixed interest rate period on **29 April 2013**, the Provider's standard home loan variable rate of 5.5% applied to the mortgage loan account until **November 2015**, when mortgage loan account ending **3907** was redeemed. The tracker interest rate that should have been applied from **May 2010** was ECB + 1.3%. Between **May 2010** and **November 2015**, the overall tracker interest rate (ECB + margin) fluctuated between a rate of 1.35% and 2.8%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.3%) had been applied to mortgage account ending **3907** between **May 2010** and **November 2015**, is also represented in the table below;

<b>Mortgage Account ending 3907</b>				
<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
May 2010 –	2.65%	€588.62	€464.64	€123.98

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Mar 2011				
Apr 2011 – June 2011	2.40%	€588.62	€474.47	€114.15
July 2011 – Oct 2011	2.15%	€588.62	€484.32	€104.30
Nov 2011	2.40%	€588.62	€474.51	€114.11
Dec 2011 – June 2012	2.65%	€588.62	€465.11	€123.51
July 2012 – Apr 2013	2.90%	€588.62	€455.87	€132.75
May 2013 – Oct 2013	3.70%	€608.51	€447.18	€161.33
Nov 2013 – May 2014	3.95%	€608.51	€439.02	€169.49
Jun 2014 – Aug 2014	4.05%	€608.51	€435.79	€172.72
Sept 2014 – Oct 2015	4.15%	€608.51	€432.68	€175.83

Mortgage loan account **3907** was redeemed on **13 November 2015** and the Provider issued a letter to the Complainant on that date advising that the mortgage loan account was fully redeemed.

**Mortgage Loan account ending 3958**

On **28 November 2008**, mortgage account ending **3958** defaulted to the Provider's standard home loan variable rate. Between **December 2008** and **April 2010** the standard home loan variable rate fluctuated between 4.665% and 4.95%. The tracker interest rate that should have been applied from **December 2008** was ECB + 1.3%. Between **December 2008** and **April 2010**, the overall tracker interest rate (ECB + margin) fluctuated between a rate of 2.30% and 3.80%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

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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 + 1.3%) had been applied to mortgage account ending **3958** between **November 2008** and **April 2010**, is also represented in the table below;

<b>Mortgage Account ending 3958</b>				
<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
Dec 2008	1.11%	€397.99	€360.81	€37.18
Jan 2009	1.61%	€397.99	€345.42	€52.57
Mar 2009	1.86%	€390.26	Between €329.76 and €345.42	Between €44.84 and €60.05
Apr 2009	2.11%	€390.26	€322.23	€68.03
May 2009 – Mar 2010	2.36%	€390.26	€314.98	€75.28
Apr 2010	2.65%	€390.26	€314.98	€75.28

I note that the monthly repayment on **28 November 2008** does not appear to have been included in the impacted period. The mortgage loan account statement for mortgage loan account ending **3958** shows that the interest rate changed to 5.29% on **28 November 2008** however a repayment of €356.67 was made on that date which equates to the monthly repayment amount subject to the previous interest rate of 3.65%. In effect, the monthly repayment made in **November 2008** was the same amount as the repayments in the previous months at an interest rate of 3.65% therefore I accept that the repayment made on **28 November 2008** is not included in the impacted period.

The mortgage loan account statement for mortgage loan account ending **3958** shows that no repayment was made in **February 2009** however two mortgage repayments were paid in **March 2009**. This occurred again in **February 2010**, with two mortgage repayments being paid in **March 2010**.

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The Provider's internal email dated **28 July 2009**, in respect of mortgage loan account ending **3958**, details as follows;

*"cust wants to take a 2yr fixed rate...please send him an MFA to go on the 2 yr fixed."*

The Provider's internal email dated **01 April 2010**, in respect of mortgage loan account **3958**, details as follows;

*"Can you please send out MFA to switch to fixed rate of 4.95% as soon as possible."*

The Provider's internal email dated **14 April 2010**, in respect of mortgage loan account **3958**, details as follows;

*"MFA re issued – customers have 14 days to return same"*

On **14 April 2010**, the Complainant signed a **MFA** in relation to mortgage loan account ending **3958** where he selected to apply a 3 year fixed interest rate of 4.95%. It is unclear as to why the Complainant chose to apply a fixed interest rate to mortgage loan account ending **3958** at this time.

I will now consider mortgage loan account ending **3958** in the period from **May 2010** to when the mortgage loan account was redeemed in **August 2017**.

On **27 April 2010**, a 3 year fixed interest rate of 4.95% was applied to mortgage loan account ending **3958**. On the expiry of the fixed interest rate period on **29 April 2013**, the Provider's standard home loan variable rate of 5.5% applied to the mortgage loan account until **August 2017**, when mortgage loan account ending **3958** was redeemed. The tracker interest rate that should have been applied from **May 2010** was ECB + 1.3%. Between **May 2010** and **August 2017**, the overall tracker interest rate (ECB + margin) fluctuated between a rate of 1.35% and 2.8%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.3%) had

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been applied to mortgage account ending **3958** between **May 2010** and **August 2017**, is also represented in the table below;

<b>Mortgage Account ending 3958</b>				
<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
May 2010 – Mar 2011	2.65%	€399.03	€314.98	€84.05
Apr 2011 – Jun 2011	2.40%	€399.03	€321.65	€77.38
Jul 2011 – Oct 2011	2.15%	€399.03	€328.33	€70.70
Nov 2011	2.40%	€399.03	€321.68	€77.35
Dec 2011 – Jun 2012	2.65%	€399.03	€315.30	€83.73
Jul 2012 – Apr 2013	2.90%	€399.03	€309.04	€89.99
May 2013 – Oct 2013	3.70%	€412.52	€303.15	€109.37
Nov 2013 – May 2014	3.95%	€412.52	€297.62	€114.90
Jun 2014 – Aug 2014	4.05%	€412.52	€295.43	€117.09
Sept 2014 – Feb 2016	4.15%	€412.52	€293.32	€119.20
Mar 2016 – Aug 2017	4.20%	€412.52	€292.42	€120.10

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The mortgage loan account statement for mortgage loan account ending **3958** shows that no repayment was made in **February 2010** however two mortgage repayments were paid in **March 2010**. This occurred again in **February 2015**, with two mortgage repayments being paid in **March 2015**.

The mortgage loan account ending **3958** was redeemed on **24 August 2017** and the Provider issued a letter to the Complainant on the same date advising that the mortgage loan account was fully redeemed.

The Complainant has submitted a **PRSA Statement of Account** dated **1 January 2016** in evidence which indicates that the Complainant commenced making payments to his PRSA on **01 July 2006**, after both mortgage loan accounts were drawn down. The Complainant contends that he lost the opportunity to invest the monies that he was overcharged on both mortgage loan accounts into his PRSA and the Provider's offer of compensation "*does not properly reflect lost opportunity for capital appreciation.*"

The **PRSA Statement of Account** details as follows;

***"Standard Personal Retirement Savings Account  
Statement of Account for [Complainant]***

***Statement Date: 1 January 2016***

***AVC PRSA Contributor Details***

*Pensions Authority Approval [number redacted]*

*Number*

*Member/Scheme Number [number redacted] Date of birth [redacted]*

*Gender [redacted]*

*Civil status [redacted]*

*Commencement date 01 July 2006 PPS no. [redacted]*

*Normal retirement Age 65 Salary €85,000.00*

*If these details are incorrect or our out of date please contact us.*

***AVC PRSA Contribution Details***

*The following table sets out the contributions received from the date of commencement of your PRSA contract to 31 December 2015:*

	<i>Total</i>
<i>Regular contributions</i>	<b>€7,500.00</b>

***Total Value of Fund at 31 December 2015***

*Your Fund is currently invested as follows:*

<b><i>Fund</i></b>	<b><i>Number of Units</i></b>	<b><i>Price €</i></b>	<b><i>Value of fund</i></b>
<i>Retirement Fund [number redacted]</i>	<i>3,742.660</i>	<i>2.020</i>	<i>*€7,560.17</i>

/Cont'd...

*\*This value is based on unit prices as at the 31 December 2015 and is an indication of the amount which would be available for transfer out of your PRSA. However, this value is not guaranteed and unit prices can change on a daily basis.*

**Contributions have been suspended.**

**This statement should be retained as it may be required by your Inspector of Taxes”**

The Complainant claims a total loss of investment of €12,827.03 and has submitted the below calculation in evidence to demonstrate how he arrived at this amount;

“

- *Total Interest overpaid €31,216.94*
- *Period of overpayment: 28<sup>th</sup> Nov 08 to 24<sup>th</sup> Aug 17*
- *Existing Personal Retirement Savings Account [Account Number]*
- *Historical fund performance of PRSA in period of overpayment is +46.09%*

*Calculation for loss in opportunity for capital investment*

A.  $€31,216.94 \times 46.09\% = €14,387.88$

B. *Interest paid by Bank of Ireland to reflect time value of money = €1,560.85*

**Total amount due (A-B) = €12,827.03”**

In calculating the loss in opportunity for capital investment, the Complainant multiplied the total amount of interest overcharged by the “*Historical fund performance*” percentage of 46.09%. The Complainant has submitted a document titled “**Document No.3**” into evidence which details as follows;

**“RETIREMENT FUND 2033 ONWARDS (6P) PRICE HISTORY**

**SOURCE: [Provider]**

<b>Date</b>	<b>Price –Bid</b>	
24-08-2017	2.261	
28-11-2008	1.042	46.09%

*Warning: These funds may be affected by changes in currency exchange rates*

*Warning: The value of your investment may go down as well as up.*

*Warning: Past performance is not a reliable guide to future performance.*

/Cont’d...

*Warning: If you invest in this product you may lose some or all of the money you invest.*

This document does not appear to be an official statement and it is unclear how the percentage figure of 46.09 has been calculated. The Complainant refers to this percentage figure as the “*Historical fund performance*” of his PRSA “*in the period of overpayment*”.

This suggests that the percentage figure of 46.09 is intended to reflect the return on the Complainant’s PRSA investment from **28 November 2008 to 24 August 2017**.

I am of the view that the percentage of 46.09% does not appear to be the correct percentage to be applied to the Complainant’s calculation. The return on the Complainant’s PRSA investment depends on the amount invested into the PRSA which amounted to €7,560.17 as of **31 December 2015**. It is not clear whether the Complainant made further contributions to his PRSA after this date. The fund performance of the amount that the Complainant maintains should have been invested would have to be calculated and then this would have to be subtracted from the amount actually invested.

On a review of this calculation, the Complainant appears to be indicating that he would have invested the total interest overpaid amount of €31,216.94 into his PRSA. As detailed in the above **PRSA Statement of Account**, the total value of the Complainant’s PRSA fund as of **31 December 2015** was €7,560.17. This amount appears to have accumulated over a period of 9.5 years since **1 July 2006**, which was the date of commencement of the Complainant’s PRSA contract. This equates to the Complainant paying approximately €795.80 per year into his PRSA, however it is not clear whether the Complainant made regular contributions or once off lump sum payments to his PRSA. While I acknowledge that both of the Complainant’s mortgage loan accounts were impacted from **December 2008**, 2.5 years after the Complainant commenced his PRSA contract, a question arises as to whether the Complainant intended on substantially increasing his regular contributions or indeed make a lump sum contribution to his PRSA from **1 January 2016** onwards.

It is to be noted that the Complainant’s annual salary was €85,000 from **2015-2016** and the Complainant was in a position to redeem mortgage loan account ending **3904** in **November 2015** and mortgage loan account ending **3958** in **August 2017**. In taking these matters into consideration, I am of the view that the Complainant has not demonstrated how he was prevented from making further payments to his PRSA during the impacted periods by virtue of the overcharge of interest on his mortgage loan accounts.

The monthly overpayments on the Complainant’s mortgage ranged from €54.86 to €175.83 per month between **December 2008** and **November 2015** in respect of

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mortgage loan account ending **3907**. The monthly overpayments ranged from €37.18 to €120.10 per month between **December 2008** and **August 2017** in respect of mortgage loan account ending **3958**. I appreciate that with the benefit of hindsight the Complainant believes he could have invested that money in his PRSA.

However, the Complainant has not submitted any evidence to support the contention that had these amounts been available to him each month, he would have invested them in his PRSA, and that the monthly overpayments on his mortgage loan accounts were the sole reason he did not make increased contributions or indeed make any contributions to his PRSA at the time.

The Provider has paid compensation of €3,277.78 to the Complainant, together with redress of €32,777.79 (interest overpaid and time value of money payment) and an independent professional advice payment of €1,250. In the circumstances of this complaint I accept the compensation paid by the Provider to be reasonable.

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

### **Conclusion**

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

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



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

16 December 2020

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,  
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

