



<u>Decision Ref:</u>	2021-0021
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage Application of interest rate Failure to provide correct information Failure to provide calculations
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan held by the Complainants with the Provider. The mortgage loan is secured on the Complainants' private dwelling house.

The **Loan Offer** dated **7 March 2007** outlined that the loan amount was €315,000 and the term of the loan was 35 years. The mortgage loan comprised two sub-accounts;

- The loan amount for mortgage loan sub-account ending **7865/1** was €152,245. The **Loan Offer Letter** dated **7 March 2007** outlined the loan type as "*Staff 3% Fixed Interest only*".
- The loan amount for mortgage loan sub-account ending **7865/2** was €162,755. The **Loan Offer Letter** dated **7 March 2007** outlined the loan type as "*ECB + 0.95% 100% Interest only*".

The interest rate currently applicable to both accounts is a tracker interest rate of ECB + 0.75%.

The Complainants' Case

The Complainants entered into an Alternative Repayment Arrangement (ARA) with the Provider in **April 2014**.

They outline that as part of this they were *"granted a reduced interest rate of 1% for 3 years from April 2014. This was approved in March 2014."* They detail that they received a letter confirming the details of the ARA from the Provider which *"stated in the first paragraph that [they] would revert to a tracker of 1.4%, as well as later in the letter it mentions a tracker of 3.85% if [the Complainants] default on the arrangement."*

The Complainants submit that *"[the Provider] have stated that the 1.4% tracker rate was a typing error and not a product offered. What was meant to be typed in? All banks have an obligation to state the rate applicable and the margin which even in the typing error was not imputed, What is [the Provider's] explanation for this and how have they complied with the CCMA and CPC code in this point?"*

The Complainants have retained a copy of the Alternative Repayment Arrangement letter that they received from the Provider in **2014**. However they submit that the Provider's inability to locate this letter in its records is a *"clear breach"* of the Consumer Protection Code.

The Complainants submit that when the ARA expired in **2017** their mortgage loan was *"changed to a staff rate with no notification"*. They detail that they were not notified of their new repayment or the interest rate change in **April 2017** *"which is in breach of the CCMA and CPC code of keeping a customer informed."* They state that the First Complainant subsequently contacted the Provider to query the rate change and was informed that the mortgage was on a staff fixed rate of 3%. He submits *"considering I am no longer staff this [was] surprising. I was also told there was no record of the [ARA] letter ... I was then told that you would never put a rate on a letter as you wouldn't know, this is wrong as you can see the letter specifies this."*

The Complainants submit that the Provider wrote to the Complainants by letter dated **12 May 2017** to advise the Complainants that the alternative repayment arrangement was coming to an end and what their new repayment would be. They state however that they did not receive this letter until **23 June 2017**. They would like an explanation as to why this letter was not received by them until *"6 weeks after it issued"*.

The Complainants submit that they sought to have the interest rate amended to the tracker interest rate of 1.4% in **2017**. They outline that the First Complainant *"was told on phone calls numerous times that it will be sorted in a few days ... I was also rang by a senior manager to "Calm" the situation as I used to work with them which is not appropriate and*

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a conflict of interest. I have been told that my request was sent internally to the wrong team a couple of times. I [was] told that that the product code does not exist for the rate of 1.4% and they are trying to get one.” The Complainants state that they “struggle to see how investigating an[d] applying an interest rate took over 5 months”.

The Complainants submit that they initially accepted the Provider’s offer to resolve the matter in **October 2017** by applying a tracker interest rate of ECB + 1.35% to both mortgage loan sub-accounts in addition to a compensation offer of €3,500. However they subsequently indicated to the Provider in **October 2017** that they believed the complaint was not resolved on the basis that they were entitled to a tracker interest rate margin of ECB + 0.75% on the basis that they had availed of a named product of the Provider on their current account.

The Complainants submit “*[the Provider] state that they put the account on a 1.35% rate which is [to our] benefit, considering this was still the wrong rate, how do [the Provider] deem that [the Complainants] have benefited? Furthermore – why did [the Provider] in the course of their investigation not identify that they were applying the wrong rate.*” They detail that their “*contract stated 0.75 above tracker and it was only after [the Complainants] raised this that [they] were put on it. It took a year to resolve this.*”

In **February 2018** the Provider subsequently amended the Complainants’ mortgage sub-accounts to the tracker interest rate of ECB + 0.75% and backdated its application to the date of expiry of the ARA in **April 2017**.

The Complainants further submit that their Irish Credit Bureau (ICB) rating was negatively affected by the Provider’s reporting of the Alternative Repayment Arrangement. They detail that as a result of this, “*A loan with [the First Complainant’s] employer was declined because of [the Provider’s] incorrect update of [their] credit rating. [The Complainant] was unaware of this which caused embarrassment and working in a bank at a senior level elevated that embarrassment*”.

The Complainants detail that their monthly mortgage loan repayments “*changed 10 times since April 2017 and [they] have only had 1 notification of same*”. They state that this is “*against CPC requirements of 30 day’s notice.*”

The Complainants outline that their monthly mortgage loan repayments were lower when their sub-accounts were operating on a fixed interest rate of 1.00% when the ARA was in place between **2014** and **2017**, even though the interest rate applicable to both sub-accounts is currently 0.75%. They are “*concerned that [the Provider has] made calculations off the wrong mortgage balance*” and they want to know the following;

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*“The balance each month that the calculation was made
The term remaining each month the calculation was made
The interest rate each month applied to the calculation”*

In this regard they outline as follows;

“In April 2017 as per the provider’s response, [the] repayment was E898.46 of which E69.89 was TRS, this was on an interest rate of 1%

In May 2018 when all rates were fixed [the] repayment was E866.76 of which E37.86 was TRS, this was on an interest rate of 0.75%

This TRS reduction provides the difference between the overall repayments, I fully understand that the TRS reduces when my interest rate reduces. The difference in the repayment is 31.70 which explains the reduction if I was still on the 1% interest rate.

My point remains that my interest rate is now .25% lower [than] it was but my repayment(ignoring TRS) remains almost identical to when I was on 1%(828.57 in April 2017 @ 1%, 828,90 in May 2018 @ 0.75%) This would indicate that [the Provider] have either processed an adjustment on the wrong balance or that the rate has been applied incorrectly.”

The Complainants state that the Provider has failed to furnish them with the following;

- (a) Copies of each 30-day notification of a change in interest rates;
- (b) Calculations for their monthly repayments from **April 2017** to date;
- (c) Calculations for the interest rate adjustments on their account;
- (d) Confirmation of the interest rates that applied to their account;
- (e) Confirmation of their authorisation to change the interest rates;
- (f) Confirmation of what their repayments should be;
- (g) Clarification on why their repayments were lower when they were on a fixed rate of 1% than they are now on a rate of 0.75%;
- (h) The reason why their ICB rating was affected.

The Complainants state that they dealt with more than *“9 different complaint handlers”* during the course of the investigation of their complaint by the Provider. They outline that they *“appreciate people go on leave but it doesn’t reflect good complaint handling procedures as they did not have someone to cover when [the complaint handlers were] on leave.”*

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The Complainants outline that dealing with the matter has “taken a severe toll on [their] health” and they “have been unable to focus on family outings as [they] never knew what [their] repayment was”.

They assert that they “have in no way benefited considering [they] spent a year writing 6 letters, over 100 hours on the phone and numerous nights sifting through documentation.” They submit that the “compensation offer is not reflective of the continued mistakes and incompetence on behalf of [the Provider]”.

The Provider’s Case

The Provider outlines that the Complainants’ mortgage comprised 2 sub-accounts. The interest rate currently applicable to both sub-accounts is a tracker interest rate of ECB + 0.75%.

The Provider details that the **Loan Offer** dated **3 March 2007** for mortgage sub-account ending **7865/1** detailed that in the event that the Complainants’ employment with the Provider ceased, the interest rate applicable on the account would be the Provider’s variable home loan rate or such other rate as the Provider may decide. It relies on **Condition 4** of the **Specific Loan Offer Conditions** in support of this.

The Provider outlines the history of the rate changes on the mortgage sub-accounts from **2012**, as follows;

	Mortgage sub account ending 7865/1	Mortgage sub account ending 7865/2
1 September 2012	3.00%	3.85%
28 March 2014	1.00%	1.00%
3 May 2017	3.00%	3.65%
15 September 2017	ECB + 1.35%	ECB + 1.35%
25 February 2018	ECB + 0.75%	ECB + 0.75%

The Provider submits that the rate applicable from **1 September 2012** was a staff rate of 3.00% on sub-account ending **7865/1** and a standard variable rate of 3.85% on sub-account ending **7865/2**.

The Provider states that the rate of 1.00% from **28 March 2014** was agreed with the Complainants when they both ceased to be employed with the Provider. It submits that at that time, an Alternative Repayment Arrangement (ARA) was agreed which provided that

the interest rate of 1.00% would apply to both mortgage loan sub-accounts from **28 March 2014** to **28 April 2017**.

The Provider submits that the Alternative Repayment Arrangement letter issued to the Complainants in **2014** stated that on the expiry of the ARA a tracker interest rate of 1.4% would be applied to both mortgage loan sub-accounts. It details that this was *“a typing error as the Tracker Rate of 1.4% referred to in the letter, was never a product offered by the Bank.”* The Provider submits that it has been unable to locate, in its records, a copy of the letter that the Complainants have provided to this office. It states that *“It may be the case that as this Alternative Repayment Arrangement was agreed as an exception to policy, the confirmation letter was created manually rather than system generated as would usually be the case.”*

The Provider submits that the ARA was due to expire on the Complainants' mortgage loan sub-accounts in **April 2017**, however *“there was a delay in expiring the Alternative Repayments Arrangement and it was not expired until May 2017.”* On **3 May 2017**, the staff rate of 3% was applied to sub-account ending **7865/1** and a standard variable rate of 3.65% applied to sub-account ending **7865/2**. The Provider outlines that the Complainants were informed of the rate change in a letter dated **12 May 2017**. It states that *“This is a typical arrangement letter issued to customers following expiry of an Alternative Repayment Arrangement, and a breakdown of the interest rate is not specified in our expiry letters. It is usual practice to confirm the customers normal monthly repayment going forward following expiry of an Alternative Repayment Arrangement.”*

The Provider submits that in an effort to resolve the complaint, it applied a tracker interest rate of ECB + 1.35% to the mortgage loan sub-accounts on **15 September 2017** which was backdated to **April 2017**. It states that this was the *“Tracker Rate closest to 1.4% which was in the Bank's suite of products at that time ... This is the reason why the account was reverted to a rate lower than what had been originally agreed in the Alternative Repayment Arrangement letter issued to the Complainants in 2014. This has been to the Complainants' benefit.”*

The Provider outlines that a tracker interest rate of ECB + 0.75% was subsequently applied to the mortgage following a query from the First Complainant during a telephone call with the Provider on **19 October 2017** when the First Complainant stated that he believed a tracker interest rate of ECB + 0.75% was applicable to the sub-accounts as the Complainants held a particular current account product with the Provider. The Provider states that *“Regrettably the investigation and application of the ECB + 0.75% took longer than the Bank would have liked. However, the outcome of the investigation was that the Complainant was advised that the tracker interest rate of ECB + 0.75% would be applied to the account due to them holding a [Named Product] account with the Bank.”* The tracker

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rate of ECB + 0.75% was applied to the sub-accounts on **25 February 2018** and was backdated to **April 2017**.

The Provider further submits that *“during the course of this investigation it has come to light that that the rate that should have applied to the Complainants’ account [ending] 7865/2 at that time was ECB + 0.95% and not ECB + 0.75%. Furthermore the rate of ECB + 0.75% should not have been applied to account [ending] 7865/1 as this account was on a 3% staff fixed rate prior to the Alternative Repayment Arrangement and as per the terms and conditions of the loan offer issued to the Complainants dated 07/03/2007. Account [ending] 7865/2 drew down on ECB + 0.95% as per the Terms and Conditions of the loan offer issued on 07/03/2007 and this was the account that the discounted [Named Product] rate was applicable to.”* The Provider submits that *“In the interest of resolving this complaint and as the Complainants have benefitted from the application of a tracker rate to both sub accounts, the Bank will not be removing the Tracker Rate of ECB + 0.75% from either account.”*

In relation to the Complainants’ request to see the 30-day notifications sent to them regarding their mortgage loan and their authorisations to change the interest rate, the Provider details that *“the interest rates applied to the mortgage account were applied following investigation of the Complainants complaint. These changes were notified to the complainants by letters dated 19/10/2017 & 28/02/2018.”*

In response to the Complainants’ submission that they have been requesting calculations for their monthly mortgage repayments since **April 2017**, the Provider submits that the First Complainant requested calculations for their normal monthly repayment on **16 February 2018** and its records show that it received a written response from the First Complainant to its letter dated **28 February 2018**. The Provider outlines that it is *“unable to locate a written response to this request.”* It details that *“The monthly mortgage loan repayment is calculated based on the total mortgage balance outstanding, the interest rate applicable to the loan and the remaining term. However, it is not appropriate for the Bank to disclose full details of our calculations as this information is commercially sensitive.”*

The Provider further submits that *“the answer above also applies for the calculations requested in relation to the interest rate adjustments. It is not appropriate for the Bank to disclose full details of our calculations as this information is commercially sensitive.”* The Provider outlines that *“interest on the account is calculated daily and applied to the account monthly. The formula to calculate interest is $\text{balance} \times \text{rate} / \text{days in the year}$. Any interest adjustments that were applied to the account would have been worked out by taking the actual interest charged on [the] account for the month, working out what interest should have been charged on the lower rate and subtracting the two figures.”*

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The Provider outlines in relation to TRS that *“The total repayment due on the Complainants’ mortgage increased in May 2017 following expiry of the Alternative Repayment Arrangement on the account ... The amount of the repayment due decreased in October 2017, following the rate of ECB + 1.4% being applied to the Complainants mortgage account ... The amount of the repayment decreased again in March 2018 following the rate of ECB + 0.75% being applied to the Complainants mortgage account.”* It submits that *“TRS has varied greatly over the period of April 2017 – date, with the highest rate of TRS of €207.32 applied in June 2017 and €37.86 since April 2018, a variance of €169.46.”* It outlines that the TRS continues to vary on the account due to *“fluctuations of the normal monthly repayments falling due on the account.”* The Provider details that the application of TRS to a borrower’s account is outside the control of the Provider and that the Complainants should contact Revenue if they have any queries in relation to the TRS being applied to their account.

The Provider submits that it is required to issue a report to the Irish Credit Bureau (ICB) which accurately reflects the transactions that have occurred on an account. It states that in the Complainants’ case it was obliged to report to the ICB when they did not make full monthly repayments, including when they had an Alternative Repayment Arrangement in place. The Provider outlines however that its letter to the Complainants outlining the details of the ARA in **2014** stated as follows;

“We will update your Irish Credit Bureau record to reflect that you are in an alternative repayment arrangement with us. This will not affect your credit rating.”

The Provider states that it *“accepts that this wording was misleading as it did not fully explain how [it] would report the Alternative Repayment Arrangement at that time.”* It details that in line with the ICB’s profile indicators, the Complainants’ payment profile was updated correctly at the time to show “M” for the months in which there was an Alternative Repayment Arrangement in place on the account i.e. between **April 2014** and **March 2017** inclusive. The Provider further states that the First Complainant *“worked in the Bank for over 10 years and the Bank would be of the view that the Complainant would have been aware of the impact the Alternative Repayment Arrangement would have had on their Irish Credit Bureau report.”*

The Provider states that it *“cannot speculate as to how another Financial Provider may use and/or interpret the Irish Credit Bureau’s own data/payment profiles. Having said that, in the interests of trying to resolve the matter amicably and in acknowledgement of the misleading wording in the Alternative Repayment Arrangement letter, the Bank agreed to amend the payment profile on the Complainants’ account [ending] 7865 to ... reflect all payments were up to date in our letter to the Complainant dated 07/03/2018”.*

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The Provider submits that in its view the Provider has *“communicated openly and honestly with the Complainants”* in relation to their complaint. It states that it *“accepts that we were not always in a position to provide an update to the Complainant as quickly as he would have liked. However, as advised, due to the complexity of the complaint points raised ... updates were provided to the First Named Complainant where possible. The Bank accepts that there have been a number of oversights and service issues when dealing with this matter ... Fundamentally the issues identified with the Complainant’s mortgage rate have been to the Complainants benefit and the Bank has not sought to reverse this.”* It states that redress of €3,500 was previously offered and paid to the Complainants for the issues identified. The Provider submits that its records show that this amount was credited to the Complainants’ current account on **13 October 2017** and transferred out of that account to another bank account on the same date, indicating that the Complainants were aware that the redress payment had been made.

The Provider submits that the Complainants were assigned a case handler to their complaint, however a case handler may not always be available to speak with a customer when they call, and messages will be taken and passed to the assigned case handler. It states that following the issue of the Final Resolution letter on **19 October 2017** the First Complainant was unhappy with the resolution to his complaint and escalated his complaint through the *“Executive”* of the Provider and was liaising with another representative of the Provider. It states that due to the complexity of the complaint the matter was then passed to a specialist team and another case handler was assigned to the complaint.

The Provider details that in its Final Resolution letter of **19 October 2017** an interest rate adjustment and refund was completed. For sub-account ending **7865/1** the interest rate adjustment was €1,157.41 and the refund was €548.88 and for sub-account ending **7865/2** the interest rate adjustment was €648.22 and the refund was €389.20. The Provider details however that due to a Provider oversight these transactions were *“keyed twice”*, firstly on **22 September 2017** and again on **29 September 2017**, which resulted in a *“benefit”* to the Complainants of an additional refund of €938.08 which the Provider has not sought to recover, and an increased reduction of interest due on the account due to the additional interest rate adjustment of €1,805.63. It states that this reduced the overall mortgage balance by €1,805.63, resulting in lower mortgage repayments for the Complainants.

The Provider further submits that when the rate of ECB + 0.75% was applied this resulted in a further refund being completed on the account of €226.38 on **14 February 2018** which comprised €177.20 on sub account ending **7865/1** and €49.18 on sub account ending **7865/2**.

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It states that there was no interest adjustment due, given the “double” interest rate adjustment completed in **September 2017** “as this more than covered any interest rate adjustment required when applying the rate of ECB + 0.75%.”

The Provider submits that “it has come to light that we provided inaccurate information in our submission dated 29 November 2018. The Bank would like to clarify that there is no underpayment on the account and that the repayments that are in place on the account are correct. We sincerely apologise to your office and to the Complainants for any inconvenience caused by this error. We wish to reiterate in addition to the €3,500 already paid to the Complainants in respect of this complaint the Banks offer of €850 remains open to the Complainants”.

The Complaints for Adjudication

The complaint for adjudication is that the Provider has not furnished to the Complainants as requested:

- (a) Copies of each 30-day notification of a change in interest rates;
- (b) Calculations for their monthly repayments from April 2017 to date;
- (c) Calculations for the interest rate adjustments on their account;
- (d) Confirmation of the interest rates that applied to their account;
- (e) Confirmation of their authorisation to change the interest rates;
- (f) Confirmation of what their repayments should be;
- (g) Clarification on why their repayments were lower when they were on a fixed rate of 1% than they are now on a rate of 0.75%;
- (h) The reason why their ICB rating was affected.

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. 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 **8 September 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.

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

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

- Email from the Complainants to this office dated **28 September 2020**
- Letter from the Provider to this office dated **13 October 2020**
- Email from the Complainants to this office dated **4 November 2020**
- Letter from the Provider to this office dated **16 November 2020**

Copies of the above submissions were exchanged between the parties.

Following consideration of these additional submissions and all of the submissions and evidence furnished by both parties to this office, I set out below my final determination.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider between **2014** and **2018**.

The Provider issued a **Loan Offer** dated **7 March 2007** to the Complainants for mortgage loan account ending **7865** which detailed as follows;

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"IMPORTANT INFORMATION AS AT 07/03/2007

1. Amount of credit advanced :€315,000.00
2. Period of Agreement :€35 years"

The **Loan Offer Letter** dated **7 March 2007** for sub account ending **7865/1** detailed as follows;

<u>"Repayment Details</u>	<u>Loan Account 1</u>
Loan Type	: [Provider] Staff 3% Fixed Interest only
Loan Amount	: €152,254.00
Interest Rate	: 3%
Interest Type	: Fixed
Term	: 35 years
Monthly Loan Repayment	: €380.61 until 07/03/2009 : €606.11 until 07/03/2042"

The **Specific Loan Offer Conditions** detail as follows;

"The interest rate of 3% is fixed for the term of the loan or until [the Complainants] ceases employment with [the Provider]. In the case of ceasing employment with [the provider] the outstanding balance of the loan sanctioned hereby and all additional loans which may have been provided and any other sums due by the Borrowers to the Bank on any account together with accrued interest thereon shall become immediately due and payable to the bank and the interest rate applicable on the Borrowers account / accounts shall immediately revert to the [Provider's] Variable Home Loan rate or such other rate as the Bank may decide."

The **Loan Offer Letter** dated **7 March 2007** for sub account ending **7865/2** detailed as follows;

<u>"Repayment Details</u>	<u>Loan Account 2</u>
Loan Type	: [Product name] Flex Tracker ECB + 0.95% 100% Interest only
Loan Amount	: €162,755.00
Interest Rate	: 4.45%
Interest Type	: Variable
Term	: 35 years

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Monthly Loan Repayment : €603.55 until 07/03/2009
: €784.75 until 07/03/2042”

The Complainants’ signed acceptance of the Loan Offer has not been provided in evidence, however it does not appear to be in dispute between the parties that the Complainants accepted the Loan Offers dated **7 March 2007**.

The Complainants wrote to the Provider by letter stamped received on **19 January 2009** which detailed as follows;

“Can you please switch the account on the staff rate of 3% to a variable rate with immediate effect.”

This rate change was implemented by way of **Change Agreement** signed by the Complainants on **26 February 2009**, which detailed as follows;

<i>“Loan A/c</i>	<i>Product Name</i>	<i>Interest Rate %</i>	<i>Repayment Method</i>	<i>Mortgage Loan Term</i>	<i>Loan Amount</i>	<i>Effective Date</i>
<i>Loan A/c 1</i> <i>February</i>	<i>Lifetime SVR+0.10%</i>	<i>4.20</i>	<i>Interest Only</i>	<i>33 Yrs</i> <i>1 Mth</i>	<i>€154,336.02</i>	<i>24</i> <i>2009</i>
<i>Loan A/c 2</i> <i>February</i>	<i>Fixed 5.05% Until</i> <i>30/06/11 SVR</i>	<i>5.05</i>	<i>Capital & Interest</i>	<i>33 Yrs</i> <i>1 Mth</i>	<i>€166,570.57</i>	<i>24</i> <i>2009”</i>

The Complainants wrote to the Provider by letter stamped received on **30 July 2009**, which detailed as follows;

“Can you please switch the sub account which is on a variable rate at the moment to the staff rate of 3% with immediate effect.

Please find attached a payslip from [the Complainants] confirming that we are both staff members.”

This rate change was implemented by way of **Change Agreement** signed by the Complainants on **14 August 2009** which detailed as follows;

<i>“Loan A/c</i>	<i>Product Name</i>	<i>Interest Rate %</i>	<i>Repayment Method</i>	<i>Mortgage Loan Term</i>	<i>Loan Amount</i>	<i>Effective Date</i>
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Loan A/c 1 *Lifetime Fixed 3%* 3.00 *Capital &* 32 Yrs €153,886.56 12
August 2009

Interest 8 Mths

Loan A/c 2 *Fixed 5.05% Until* 5.05 *Capital &* 32 Yrs €166,467.46 12
August 2009"

30/06/11 SVR Interest 8 Mths

A **Rate Change Letter of Authority** for mortgage loan sub-account ending **7865/2** was signed by the Complainants on **19 September 2011** in which they elected to apply the following interest rate to the account;

"Discounted Variable with [Named Product] discount SVR -0.65% >80% LTV (APR 4.4%) This rate is only available to [Named Product] account holders"

The **Rate Change Letter of Authority** detailed as follows;

"To avail of the Discounted Variable under 80% LTV, the Discounted Variable with [Named Product] discount under 80% LTV or the Discounted Variable with [Named Product] under 80% LTV, your current LTV must be under 80%.

...

Discounted Variable with [Named Product] discount products and Discounted Variable with [Named Product] discount products are only available to [Named Product] and [Named Product] Current Account Holders respectively.

..."

The Provider wrote to the Complainants by letter dated **27 September 2011** which stated as follows;

"I refer to your recent request to alter the terms of your mortgage account. In this connection, I acknowledge that your product switch took place today. The following table details your new repayment amount(s) and the date on which we will collect your new repayment.

<i>Loan Account No.</i>	<i>New Payment</i>	<i>Payment Date</i>	<i>Product</i>	<i>Repayment Type</i>
<i>Loan A/c 1</i>	<i>€658.09</i>	<i>19/10/2011</i>	<i>Lifetime Fixed 3%</i>	<i>Capital and Interest</i>

Loan A/c 2	€498.84	19/10/2011	Lifetime SVR -0.65%	Capital and Interest
Total Repayment*	€1,156.93"			

The Provider has furnished in evidence a **timeline of events** which outlines as follows;

<i>"Date</i>	<i>Time</i>	<i>Inbound/outbound</i>	<i>Notes</i>
27/03/2014	N/A	N/A	<i>Alternative Repayment Arrangement approved by the Bank</i>
29/03/2014	N/A	N/A	<i>Alternative Repayment Arrangement applied to the account</i>
April 2014	<i>Outbound</i>	<i>Outbound</i>	<i>ARA Letter Issued"</i>

It is most disappointing that the Provider has not retained a copy of the Alternative Repayment Arrangement letter issued to the Complainants in **March 2014**. It appears that the Provider is suggesting that the reason for this may be because the *"Alternative Repayment Arrangement was agreed as an exception to policy, the confirmation letter was created manually rather than system generated"*.

Provision 11.5 and 11.6, Chapter 11 of the Consumer Protection Code 2012 (which was effective from **01 January 2012**) outlines as follows;

- "11.5 A regulated entity must maintain up-to-date consumer records containing at least the following*
- a) a copy of all documents required for consumer identification and profile;*
 - b) the consumer's contact details;*
 - c) all information and documents prepared in compliance with this Code;*
 - d) details of products and services provided to the consumer;*
 - e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
 - f) all documents or applications completed or signed by the consumer;*
 - g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
 - h) all other relevant information [and documentation] concerning the consumer.*

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- 11.6 *A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.*

The Complainants' mortgage loan was incepted in **2007** for a term of **35 years** and the letter purportedly issued in **April 2014**. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. It appears that the mortgage loan account remains presently active with the Provider. It is unclear to me why this documentation has not been retained by the Provider. This is most disappointing. It is important for the Provider to understand that the manner in which a document is generated is not relevant to the Provider's obligation to retain a copy of that document.

The Complainants have provided in evidence a copy of the **Alternative Repayment Arrangement letter** from the Provider to the Complainants. The letter is undated and outlines as follows;

"We agreed an arrangement for you to pay your mortgage, and have now put that arrangement in place for you.

Under this arrangement you will pay a monthly repayment of €696.00. The interest rate on your mortgage has been reduced to 1% fixed for 3 years which will revert to Tracker rate of 1.4% at the end of that term. If you default on this arrangement, we will change your mortgage to Tracker rate of 3.85% and will apply the interest that you would have been charged, if this arrangement had not been put in place.

The details of your arrangement are as follows:

- *Your fixed monthly repayment during this arrangement:* €696.00
- *You will pay this each month for:* 36 month(s)
- *The date this arrangement starts:* 28/04/2014
- *The date it ends:* 28/03/2017

The new monthly repayment is a fixed amount based on what you can currently afford, as set out in your Standard Financial Statement.

Under this arrangement, you will be paying a reduced amount of interest during the term of this arrangement. As the interest rate we charge you has been reduced,

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while you are in the arrangement, more of your monthly repayment will go towards repaying your existing arrears (if any), and the mortgage balance. The term of your mortgage will not be affected by this arrangement, and when the arrangement ends your account will be changed to Tracker rate of 3.85%.

Your overall cost of credit will decrease as a result of the arrangement, as the existing interest rate charged to your mortgage is reduced to 1%.

Please note that:

- *We will review your financial circumstances with you during this arrangement. We reserve the right to change your mortgage to Tracker rate of 3.85% product if your financial circumstances improve during this term.*
- *If you qualify for TRS and you accept this arrangement, your TRS will be affected. If you need more information about specific impacted on your TRS, please contact the Revenue Commissioners on their TRS Helpline Number XXXX XXXXX*
- *We will update your Irish Credit Bureau record to reflect that you are in an alternative repayment arrangement with us. This will not affect your credit rating.”*

The Provider has submitted in evidence an extract from an “Internal Document” relating to the Alternative Repayment Arrangement. The document furnished is partly illegible but appears to detail as follows;

“On expiry of this economic concession arrangement your mortgage will revert to your original rate (as per mortgage contract) [illegible] rate it should have rolled onto [illegible] you were on a fixed rate. As a result your mortgage repayments will increase. This arrangement may have an impact on your credit rating.”

It does not appear to me from the evidence that the “Internal Document” above was furnished to the Complainants. In any event I do not propose to take this internal document into consideration in circumstances where its content, does not correlate with the information that was provided to the Complainants in the Alternative Repayment Arrangement letter regarding both the interest rate that the mortgage loan sub-accounts would revert to on the expiry of the alternative repayment arrangement, and the impact on the Complainants’ credit rating. This disparity between the documents is disappointing.

The Provider has submitted that “there was a delay in expiring the Alternative Repayment Arrangement and it was not expired until May 2017.” It is disappointing that the Provider has not provided any explanation as to why there was a delay in expiring the arrangement. Nonetheless this matter does not appear to be in dispute between the parties.

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The Provider's internal note dated **3 May 2017** details as follows;

*"Economic Concession expired.
Account reverted to previous Interest Rate."*

I note from the evidence that on **3 May 2017** the mortgage sub-account ending **7865/1** reverted to the staff fixed interest rate of 3.00% and the mortgage sub-account ending **7865/2** reverted to the standard variable rate of 3.65%.

The Provider wrote to the Complainants by letter dated **12 May 2017** which detailed as follows;

"We wrote to you recently in relation to the imminent expiry of the alternative repayment arrangement on your mortgage account. As you have not notified us of any ongoing financial difficulties or sought our assistance to discuss alternative repayment options, the terms of your mortgage following the expiry of this arrangement will therefore revert to:

- *Your new monthly repayment* €1068.61*
- *The date the new payment starts* 28/05/2017

**For customers in receipt of Tax Relief at Source (TRS):*

In the event of a change in the amount of TRS we receive from the Irish Revenue, the above monthly repayment may change to take account of this. If you are unsure whether a change in TRS will affect your monthly repayment, please contact us."

The Complainants have submitted that the Provider's letter dated **12 May 2017** "was not received until mid-June". The Provider in its **Final Response Letter** to the Complainants dated **19 October 2017**, stated as follows;

"I can confirm that the expiry letter should have issued to you before the end of your arrangement in March 2017. This would have advised you the expected amount of the next payment due on your account for April 2017. I can confirm that due to an administrative delay this letter was not issued to you until 19 June 2017. It is evident from the above that you were not issued the relevant correspondence regarding your mortgage account as you should have been.

Please accept my sincere apologies for this delay and for any inconvenience this may have caused you."

Provision 6.6 and Provision 6.7 of the Consumer Protection Code 2012 states as follows;

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“6.6 A **regulated entity** must notify affected **personal consumers** on paper or on another **durable medium** of any change in the interest rate on a loan. This notification must include:

- a) the date from which the new rate applies;
- b) details of the old and new rate;
- c) the revised repayment amount; and
- d) an invitation for the **personal consumer** to contact the lender if he or she anticipates difficulties meeting the higher repayments.

In the case of a mortgage where a revised repayment arrangement has been put in place in accordance with the Code of Conduct for Mortgage Arrears, the notification must clearly indicate the revised repayment amount required in Part c) that applies to the revised repayment arrangement.

6.7 A **regulated entity** must provide the notification required under Provision 6.6 to a **personal consumer** at least 30 days in advance of any change in the interest rate, except in the following circumstances:

- a) in the case of a **tracker interest rate**, the **regulated entity** must provide the notification required under Provision 6.6 as soon as possible, and no later than **10 business days** after the **regulated entity** becomes aware of a change in the underlying rate being tracked; or
- b) for loans other than mortgage loans, where the following conditions are satisfied, the **regulated entity** does not need to provide the notification required under Provision 6.6:
 - i) the change in the interest rate is caused by a change in a reference rate which changes on a daily or weekly basis;
 - ii) the new reference rate is made publicly available by appropriate means; and
 - iii) information concerning the new reference rate is kept available on the premises of the **regulated entity**.”

The Provider by its own admission, did not issue the expiry letter dated **12 May 2017** to the Complainants until **19 June 2017** due to an “*administrative delay*”. The rate change had been applied to the Complainants’ mortgage loan sub-accounts on **3 May 2017**. The Provider therefore did not comply with its obligations under **Provision 6.6** and **6.7** of the **Consumer Protection Code 2012**.

The Provider's internal systems notes dated **18 May 2017** details as follows;

- *"mr called re arrg had in place with flex team for 3yrs, now expired however mr querying int rate as was ex staff member and account on staff 3% rate, mr adv on flex letter shows once arrg expired would revert onto tracker rate of 1.4% however this has not happened, spoke to [Redacted] who adv flex would not mention on arrng letters what the rate would be once arrg expired as unsure what the rates would be at that time and no record of letter on file, [Redacted] asked for customer to forward copy of letter to be investigated, mr took address and number for asu complaints team"*
- *"Inbound call taken from [First Complainant] advised he is an ex-staff member left the business back in 2014 and restructured his mortgage ... Was told and has received a letter being told he would be put on a tracker mortgage with an interest rate of 1.4%, but is currently on 3% staff interest rate. He did not receive a letter advising him what payments were reverting back to ... advised will log complaint."*

Recordings of telephone calls between the Complainants and the Provider have been provided in evidence. I have considered the content of these calls. A telephone call took place between the parties on **9 June 2017**. I have considered the Provider's internal systems note of the same date. I accept that it is an accurate account of the conversation and it details as follows;

"I confirmed with the customer that the complaint was being investigated and the letter in question regarding the account reverting to a tracker rate had been received ... The customer has advised that he attempted to book a holiday and was unable to do so because an increased amount was taken from his account to service his payment. He had to spend more on this holiday as a result. The customer confirmed he wants clarity as to why he was not notified of payments changing."

Further telephone calls took place between the parties on **19 June 2017**. I have considered the content of the telephone calls, which have been provided in evidence and I have considered the Provider's internal systems notes of the same date.

I accept that they are an accurate account of the conversations and detail as follows;

"Inbound call from customer. Advised customer that we have not amended his tracker interest rate as requested and that account will need to be reviewed by another department. Customer unhappy wit[h] this and requested a callback from manager."

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I note that further telephone calls took place between the parties on **20 June 2017, 21 June 2017, 23 June 2017, 26 June 2017, 27 June 2017** and **29 June 2017** wherein the Provider advised the Complainant that the matter had not been resolved yet.

A further telephone call took place between the parties on **5 July 2017**. The Provider's internal systems note of the same date details as follows;

"I confirmed that the complaint is actively being worked and I am looking to get the product code unlocked for the 1.4% interest rate."

I note that further telephone calls took place between the parties on **6 July 2017** and **13 July 2017** wherein the Provider advised the Complainant that the matter had not been resolved yet.

A further telephone call took place between the parties on **21 July 2017**. The Provider's internal systems note of the same date details as follows;

"I confirmed that I currently do not have an update to provide him with at present and I am currently still working on getting the 1.4% applied to the account and that this had been escalated to a manager."

I note that further telephone calls took place between the parties on **28 July 2017** and **31 July 2017** wherein the Provider advised the Complainant that the matter had not been resolved yet.

A further telephone call took place between the parties on **1 August 2017**. I have considered the Provider's internal systems note of the same date. I accept that it is an accurate account of the conversation and details as follows;

"I advised [First Complainant] he has our assurance we are doing everything we can to progress the complaint and that it is with a specialist team who are investigating. I agreed this is not the update he is looking for and apologised it is taking so long for the outcome."

A further telephone call took place between the parties on **8 August 2017**. I have considered the Provider's internal systems note of the same date. I accept that it is an accurate account of the conversation and details as follows;

"I confirmed with the customer that I have received an update this morning with confirmation that the 1.4% tracker interest rate is not a product offered by [the Provider]. Confirmation was given that I am now looking for confirmation of the

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next steps to resolve this i.e. should a lesser interest rate? ... The customer also looked for clarity on the following:

The customer has confirmed that as part of his [Named Product] account he is entitled to 0.75% tracker rate above the base rate on his product. The customer is looking to find out what margin he will be offered seen as the 1.4% is not a product that [the Provider] has offered.

The customer is looking for confirmation in writing that the CBI have been informed of this complaint being over 40 business days old.

The customer is looking for notification that a CPC has been logged in relation to his payment amount differing every month (for 4 months) and no prior notification has been given regarding this. This is a breach of CPC and so 4 separate CPCs are required?"

A further telephone call took place between the parties on **21 August 2017**. I have considered the Provider's internal systems note of the same date. I accept that it is an accurate account of the conversation and details as follows;

"I confirmed that I am looking to get a rate of 1.35% (tracker) applied to the account and I am waiting on confirmation of the specific product code applicable for the customers circs that is to be applied to the account."

I note that further telephone calls took place between the parties on **28 August 2017, 29 August 2017, 4 September 2017, 5 September 2017, 11 September 2017** and **12 September 2017**, wherein the Provider advised the Complainant that the matter had not been resolved yet.

A further telephone call took place between the parties on **18 September 2017**. I have considered the content of the telephone call, which has been provided in evidence and I have considered the Provider's internal systems note of the same date. I accept that it is an accurate account of the conversation and details as follows;

"I confirmed with [First Complainant] that I had confirmation that the rate had been applied to the account and I an [sic] currently waiting on the back date being completed to ensure that there has been no negative impact to the account."

I note from the evidence that the Complainants verbally accepted the Provider's compensation offer of €3,500 during a telephone conversation between the First Complainant and the Provider's representative on **13 October 2017** and on the same day,

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the compensation payment of €3,500 was credited to the Complainants' account ending **0089**. At that time the Provider's Final Response letter had not been issued to the Complainants.

The Complainants submit as follows in their post Preliminary Decision submission dated **28 September 2020**;

"While this is correct, it does not mention the mail [the First Complainant] sent to [the Provider's employee] following this rescinding the offer, yes the money was transferred to another institution (I bank with [third party Provider-]) but this is not an acceptance as i clearly state on my mail."

The Provider issued its **Final Response Letter** to the Complainants on **19 October 2017** which stated as follows;

"When you logged this complaint with [the Provider] you provided me a copy of the letter sent to you when you entered into the Economic Concession arrangement in April 2014 for 36 with a reduced interest rate of 1%. This letter confirms that on expiry of this arrangement your mortgage account would revert to a Tracker Interest Rate of 1.4%. As discussed with [the First Complainant], this information provided in the letter was incorrect and likely resulted from a typing error. I can confirm that [the Provider] have never offered a Tracker Rate product of 1.4%. Nevertheless, I wish to offer my sincere apologies for this error and for any lack in clarity it caused.

Your arrangement expired in March 2017, on expiry of any arrangement the mortgage account should revert to the interest rate that was applied to the account prior to the arrangement. In this case the mortgage account was changed back to a rate of 3%; this was the staff rate in place when the arrangement was applied to your account in April 2014. I hope that this provides clarity on the matter.

As discussed during my calls with [the First Complainant], I can confirm that I have arranged for a Tracker Rate of 1.35% to be applied to your mortgage account and backdated to April 2017 to ensure that your account has not been negatively impacted. As part of this correction an interest credit has been made to your mortgage to cover any additional interest you had been charged from April 2017 – September 2017. This can be broken down as €1,157.49 being credited to sub account one and €648.22 being credited to sub account two. On top of this I have

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also arranged for the overpaid amount of €938.08 to be refunded back to you to also cover this period. [The First Complainant] confirmed during our call on 13 October 2017 that this had been received.

...

I appreciate that you have taken time in raising this complaint with us and I am grateful for the patience you have shown in allowing us to address matters. I have considered redress in relation to this complaint and have deemed it necessary in order to provide you with a fair outcome. I offered €3,500.00 in relation to this complaint. This can be broken down as €3,000.00 for the time, distress and inconvenience and €500.00 for any costs involved in raising this complaint and any potential telephone calls.

As discussed during our call on 13 October 2017 [the First Complainant] confirmed acceptance of my offer as a satisfactory resolution to your complaint. As agreed I have taken the necessary action to credit your [account ending 0089] with €3,500.00 I am pleased to confirm that this payment has been credited to your mortgage account on 13 October 2017."

The First Complainant subsequently phoned the Provider on **19 October 2017** and again on **25 October 2017** to query the margin above ECB that had been applied to the mortgage loan account.

The Provider's representative emailed the First Complainant at **13:53PM** on **25 October 2017** as follows;

"I understand you have raised a query with our complaints team in relation to Mortgage interest rates.

Can I please ask you confirm exactly what you are querying or what clarification you require and I will arrange for a response to be issued to you."

The Provider's representative sent a further email at **14:21PM** on the same date;

"Feel free to get back to me if you wish to raise a complaint in relation to the interest rate on your Mortgage Account and I can have it dealt with.

I'll pass this email to [the Provider's representative] for awareness purposes as she dealt with your last complaint."

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The First Complainant emailed the Provider's representative at **14:40PM** on **25 October 2017** as follows;

"I asked in relation to the tracker applied to my account, what is the margin above ECB?"

The Provider's representative responded with the following by email on the same date at **14:42PM**;

"My understanding is the margin above ECB on the Account is 1.35% - is this sufficient for your records?"

Do you want me to get this confirmed in writing by our Mortgage Operations Team?"

The First Complainant responded by email at **15:02PM** on the same date as follows;

"Thanks for confirming. This was my worry as my loan documentation dictates a different margin from this. Its an extremely high margin typically reserved for BTL customers from memory.

I'll review my loan documentation later but it definitely isn't the below. I'm also a [Provider Product] account holder which entitles me to a discounted rate.

...

I thought we finally had this sorted but looks unlikely now."

The First Complainant emailed the Provider's representative again on **25 October 2017** at **19:11PM** as follows;

"I'd like to know how this margin was decided? My original loan documents entitle me to .95% above ECB but I have been given 1.35% (Was 1.4%). I have attached the original loan doc for reference.

Also why did it take so long to confirm this margin, I have asked for this since May, It seemed staff didn't even know what I was looking for. Are the complaints staff Qualified as in APA?

I am still to receive the final resolution letter but it was confirmed it was issued on the 19th so I'd expect it in the coming days.

...

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In summary I have had it with [the Provider], I have lost trust and confidence in a bank that I worked in for [number] years. We accepted the offer compensation in good faith that the complaint was fully resolved. To be clear the compensation offer and the amount received is not completion of this complaint. We are no longer satisfied with the complaint resolution (Considering it's not resolved).

I have spent over 28 hours on the phone to date on this complaint and at this stage do not want any more phone calls. Certain health conditions I have are now flaring up as a result of the stress and sleepness (sic) nights worrying about what repayments or excuses I'm going to be given next. In fact I was at the doctor today and he indicated stress needs to be reduced.

...

I would like to meet with a [Provider] rep (Or yourself) by the 2nd November with a definite timeline on resolution to this mess. I'm not being unreasonable in this request, I have been more than accommodating and understanding in the complexity but its now gone too far."

The Provider wrote to the Complainants on **27 October 2017** detailing as follows;

"I am writing in response to your recent dealing with my colleague [the Provider's representative] on 25th October 2017 in relation to the above account.

Please be advised we will reactivate your complaint and conduct a further review to ensure all your complaint points are investigated fully.

I will revert to you with my findings in due course and this will constitute [the Provider's] Final Resolution to the matter."

In its post Preliminary Decision submission dated **13 October 2020**, the Provider details as follows;

"The Complainant's accepted the offer of compensation prior to sending the email. On receipt of the email, the complaint was reactivated on 27 October 2015, as acknowledged by letter of same date ... To clarify, the complaint was reactivated after additional complaint points were raised notwithstanding acceptance of the offer of redress, that being the Complainants' assertion that they were entitled to a discounted tracker rate due to the current account product they held with the Bank. At no point did the Complainants offer to return the redress paid to them on 13 October 2017; nor did the Bank request this of the Complainants."

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In the Complainants' post Preliminary Decision submission of **4 November 2020** they submitted as follows;

"The provider continues to state that I "Accepted" their compensation. Factually the email to [the Provider's representative] proves I did not."

As outlined above, the evidence shows that the compensation payment of €3,500 was verbally accepted by the First Complainant during his telephone conversation with the Provider on **13 October 2017** and the payment was transferred to the Complainants' bank account on the same day. However it is clear that the First Complainant subsequently raised additional concerns regarding the tracker interest rate margin that was applied to the mortgage account and he emailed the Provider's representative on **25 October 2017** to outline that he was no longer of the view that the Complainants' complaint had been satisfactorily resolved. On that basis, the complaint was reactivated by the Provider. I note that the compensation payment of €3,500 was not returned by the Complainants and the Provider initiated a further investigation as requested in relation to the additional concerns raised by the Complainants.

I do not consider that the issue of whether or not the Complainants accepted this compensation payment, has any bearing on the conduct that is being complained of, in circumstances where the Provider is not disputing that the offer of €3,500 that was paid to the Complainants in **October 2017** ultimately did not resolve the complaint, in circumstances where the Complainants were dissatisfied with the margin above ECB that was applied to their mortgage loan account at that time.

The Provider issued a further **Final Response Letter** to the Complainants on **28 February 2018** which stated as follows;

"On further investigation of your account we can confirm that the rate of ECB + 0.75% should be applied to your mortgage, and we have since backdated this rate to April 2017. This is when the Economic Concession expired on your mortgage.

...

*I have considered redress in relation to this complaint and have deemed it necessary in order to provide you with a fair outcome. Further to our original offer of €3,500.00, which was credited to your [account ending **0089**] with €3,500.00 on 13 October 2017, I would like to offer you further redress of €500.00 for any costs involved in raising this complaint and any potential telephone calls. "*

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In my Preliminary Decision issued to the parties on **8 September 2020** I outlined that, having considered the documentary evidence before me, it is not clear to me how the Provider reached the conclusion that the Complainants were entitled to the tracker interest rate of ECB + 0.75% on both mortgage loan sub-accounts in circumstances where the mortgage loan sub-account ending **7865/2** was originally drawn down on a tracker interest rate of ECB + 0.95%, and the mortgage sub-account ending **7865/1** was originally drawn down on the staff rate of 3.00%, as provided for in the Loan Offer dated **3 March 2007**. It does not appear from the evidence before me that there was any contractual entitlement to a tracker interest rate of ECB + 0.75% on either mortgage sub-account at any point in time.

The Complainants responded to the Provider by undated letter which detailed as follows;

“In response to your letter of the 28th February, I am disappointed to see that you have only answered 1 of 9 points raised. It reflects [the Provider’s] continued incompetence to answer basic question[s] 10 months on.

For clarity the points raised were

- *Tracker Rate Margin – This is answered in your letter*
- *I asked for copies of the required 30 day notification of a change of rates on my accounts – not received*
- *I asked for the calculations on my monthly repayments from April 2017 to present – not received*
- *I asked for confirmation of any interest adjustments on my accounts since then – not received*
- *I asked for confirmation of the interest rates that applied to my account – not received*
- *I asked for confirmation of the authorisations from myself and my wife to change the rates – not received*
- *I have still received no confirmation of what my repayments should be*
- *I have asked why when I was on a fixed rate of 1% my repayments were €696 and now on a 0.75% rate my repayments are c€820 – it doesn’t make sense.*
- *Why the SARs request took 8 months*
- *Why the SARs request is missing all calls relating to my mortgage for the past 10 years.*

Furthermore in the arrangement letter in April 2017 it clearly states this would not affect my ICB. It has now transpired that it has, ANOTHER mistake by [the Provider].

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In the letter clarifying the ICB you did not once state it was done by [the Provider] in error. Also you stated you correctly reported the ICB as an M, which is not correct as the letter stated it would not affect it. I have now been declined for a loan by my own employer which is embarrassing and although you try to cover your tracks in your correction letter by saying its down to multiple reasons. The only reason I was declined was due to the ICB.”

The Provider wrote to the Complainants by letter dated **7 March 2018** as follows;

“It is important to clarify that the Bank is required to issue a report to the Irish Credit Bureau (“ICB”), which accurately reflects the transactions that have occurred on an account. In the interests of transparency I should note that the Irish Credit Bureau’s Profile Indicator states:

- ✓ = Payments up-to-date.
- M = Moratorium – Lender and borrower agree to suspend all of, or part of the payment for this period.

In your particular case we were obliged to report to the ICB that you were in an approved monthly repayment plan where you were making a reduced monthly payment. The [Provider] are unable to speculate how another Financial Provider may use and/or interpret the Irish Credit Bureau’s own data/payment profiles.

...

Having discussed the matter with you recently, although we were obliged to report accurately, it is evident that you have been impacted, and we will therefore amend the payment profile on mortgage account ending 7865 from M to ✓ (for the last 24 months). ”

The Provider has acknowledged that the Alternative Repayment Arrangement letter issued to the Complainants in **April 2014** that the arrangement would “*not affect [the Complainants] credit rating*” was misleading, in that, it failed to fully explain how the arrangement would be reported in their ICB record. I note that the Provider has since amended the Complainants’ payment profile to reflect all payments being up to date.

The Complainants have furnished in evidence a letter from the third party Provider to the Complainants dated **5 March 2018** which states as follows;

“We’re sorry to tell you that your application [number] has not been successful on this occasion.

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We considered your application carefully and used an automated system to help us make the decision. The reason behind our decision is that we do not see clear evidence from how you are operating your accounts that you will be able to repay the amount you have asked for.”

In the Complainants’ post Preliminary Decision submission dated **28 September 2020** they outline as follows;

“To be clear of any doubt, we are all aware that when a loan is applied for, a credit history search, review of bank accounts and debt is completed, [the First Complainant] had no debts other than [the Complainants’] mortgage, a current account with no excesses, unpaid's or arrears on it, savings of >5,000, a salary far in excess of what was being applied for. All my loans for 15 years are fully up to date. My NDI is far in excess of acceptable levels. [The First Complainant] work[s] for the bank and they clearly called out that it the decline (sic) was due to this marker on my ICB, I have requested a copy of this call but it is subject to the 40 days GDPR timeline. This will prove without any doubt that [the Provider’s] incorrect update of my ICB was to blame. Furthermore when this was corrected by [the Provider] my loan ... subsequently approved, with the only change being the amendment to the ICB.”

It remains the case that the evidence before me does not support the Complainants’ submission that their ICB record was the primary reason for the refusal of credit from another lender in **2018**. I note that the Complainants have been unable to provide any additional evidence in support of this submission.

The Complainants have asserted that the Provider failed to furnish them with “Copies of each 30-day notification of a change in interest rates”. As set out above, I agree that the Provider failed to comply with **Provisions 6.6 and 6.7** of the **Consumer Protection Code 2012** with respect to its failure to issue the expiry letter dated **12 May 2017** until **19 June 2017**. However I accept that it was not possible to inform the Complainants 30 days in advance of the interest rate changes applied to the accounts on **15 September 2017** and **25 February 2018** in circumstances where such rates were applied in response to complaints made by the Complainants about the interest rates. The Provider applied those rates once the investigation of the complaints had concluded and as a resolution to those complaints.

The Complainants submit that their interest rate is 0.25% lower than when their mortgage loan sub-accounts were operating on a fixed interest rate of 1%, however their repayments “remain almost identical”.

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I note that the Provider's internal record dated **19 April 2018** states as follows;

"After thorough investigation, findings say that there have been fluctuations in TRS amount from the month of January 2018 which caused the repayments to increase... Whereas in the month of February 2018, interest rate changes took place and repayments got a dip in the mortgage effective from March 2018. There has been a TRs decrease even for the month of March 2018 which made the repayments look a little higher than the December 2017 repayments... The interest was adjusted as per request and repayments were recalculated based on the TRS available while applying the rate."

It appears that the Complainants were on a fixed repayment amount of €696.00 on the mortgage loan sub-accounts during the period of the Alternative Repayment Arrangement from **April 2014** to **May 2017**. Consequently the monthly repayment amount due to be paid by the Complainants was not altered by the retrospective application of the tracker interest rate of ECB + 0.75% to the accounts from **May 2017**. I have not been provided with details evidencing the manner in which the fixed repayment amount was apportioned between the capital balance and the interest payable during the 3 year period.

However it appears to me that the monthly repayments would have increased from **May 2017** onwards when the Complainants' fixed repayment arrangement ended and full capital and interest repayments were recommenced.

In the Complainants' post Preliminary Decision submission of **28 September 2020** they outline as follows;

"To be clear of any ambiguity, the alternative repayment arrangement was a reduction in the interest rate applied to the mortgage of 1%, this had a TRS credit of 73.17 throughout the term of this and a payment of 696.00 which was a total payment due amount of 769.17 per month whilst on this interest rate.

When this rolled off, I appreciate the repayments increased as they put me on higher rates. The key point here is that that repayments increasing are not explained by TRS, given the fact that my TRS credit in November 2018 whilst on the 0.75% is 37.86 and a payment of 828.90 totalling a payment due amount of 866.76,

To be clear the below table illustrates this, this clearly shows that the TRS fluctuations does not explain the repayment amounts.

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<i>Interest Rate</i>	<i>Payment</i>	<i>TRS</i>	<i>Total</i>	<i>Difference</i>
1.00%	696	73.17	769.17	
0.75%	828.9	37.86	866.76	97.59
			Unexplained Difference	-97.59

The above reason is exactly why I have asked how the adjustments on my account were made as i firmly believe this is the cause in the above difference. To date I have not received this."

In the Provider's post Preliminary Decision submission of **13 October 2020**, it outlined as follows;

"The formula used is = PMT(rate/12, term, balance). It is important to note that the normal monthly repayments are calculated as per the formula outlined above. As the months pass the term is less, meaning a customer has a shorter time in which to repay the amount outstanding.

The Bank has reviewed this account in detail during the course of this investigation and is satisfied that the normal monthly repayments that fell due on the account ... are correct.

*The Bank also confirmed the calculation for the interest adjustment as follows: The formula to calculate daily interest is balance*rate/days in the year. Any interest adjustments that were applied to the account would have been worked out by taking the actual interest charged on account for the month, working out what interest should have been charged on the lower rate and subtracting the two figures."*

In the Complainants' post Preliminary Decision submission of **4 November 2020** they submitted as follows;

"[The Provider] previously stated that [we were] also underpaying [our] mortgage and then in a subsequent letter reneged on that position, further evidence of incompetence on the calculate of [our] mortgage.

[Our] additional repayments will be circa €31k (27yrs remaining by the 97.59 difference) extra over the term of the mortgage, can the provider evidence where [we were] informed of this increased cost of credit? It is not in any of the letters confirming the arrangement."

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The Provider submitted as follows in its post Preliminary Decision submission dated **16 November 2020**;

“as outlined in the ARA letter issued to the Complainants when the 36 month Alternative Repayment Arrangement was put in place in 2014, the overall cost of credit decreased during the term of the ARA; this is because the interest rate was reduced to 1% during the course of the ARA, meaning less interest was charged on the mortgage account during this time.

Prior to the ARA being put in place the normal monthly repayment was €1,229.01. This was comprised of normal monthly repayment of €1,079.03 (€749.75 Sub Account 1 + €329.28 Sub Account 2) + TRS of €149.98 (€99.26 Sub Account 1 + €50.81 Sub Account 2)

Once the ARA expired, the interest rate payable was 3% on Sub account 1 and 3.65% on Sub account 2 and the revised repayment was calculated. Which was then amended to ECB + 1.35% and then ECB + 0.75% on both accounts.

We are satisfied that we have explained in our previous submissions how the repayments and adjustments have been calculated, including the impact the reduction in the amount of TRS received is having on the Complainants’ normal monthly repayments, which are currently €866.86. This is comprised of a normal monthly repayment of €854.95 (€612.74 Sub account 1 + €242.21 Sub Account 2) + TRS of €11.94 (€8.54 Sub Account 1 + €3.37 Sub Account 2)”

Having considered the post Preliminary Decision submissions it appears to me that the Provider has furnished the Complainant with details of how the normal monthly repayments are calculated and how the daily interest is calculated. It is not the function of this office to conduct an audit in order to certify whether the correct TRS was always applied to the accounts. It is however open to the Complainants to seek independent financial/tax advice in relation to the manner in which the TRS has been calculated, if they wish to do so.

Having considered this complaint and the documentation furnished in evidence I note that there have been significant inaccuracies and shortcomings in information and the content of documentation furnished to the Complainants with respect to their mortgage loan accounts. It has not always been at the standard expected of the Provider. The lack of clarity by the Provider in its communications to the Complainants is concerning. I am very disappointed that the Provider did not accurately represent the position with respect to the proposed application of the tracker interest rate on the mortgage accounts to the

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Complainants at the end of the Alternative Repayment Arrangement. This inconsistency has created significant confusion and inconvenience.

The **General Principles** in **Chapter 2 of the Consumer Protection Code 2012 (the "CPC 2012")**, which were in effect from **01 January 2012**, outline as follows;

"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

...

(2) acts with due skill, care and diligence in the best interests of its customers"

I am of the view that the Provider did not act in accordance with **Provision 2 of Chapter 2** of the **CPC 2012**. The Provider did not act with due skill, care and diligence in responding to the Complainants' complaint and ensuring that it accurately represented the position to the Complainants. It is important that all information furnished by the Provider to the Complainants is clear and accurate. Furthermore, as outlined above the Provider has failed to retain documentation when it is required to do so under the **CPC 2012**.

I consider it entirely unacceptable that after a lengthy and drawn out investigation which commenced in **May 2017**, the Provider first identified that the Complainants were entitled to the tracker interest rate of ECB + 1.40% in **October 2018** and subsequently identified, that the Complainants were, in fact, entitled to the tracker interest rate of ECB + 0.75% in **February 2018**, only to subsequently establish a different position and outcome during the investigation of this complaint by this office in **November 2018**, following the issue by this office of a Summary of Complaint, Schedule of Questions and Schedule of Evidence Required. I would expect that the Provider would have fully and thoroughly engaged with the Complainants' mortgage loan and the facts and details pertinent to that loan prior to issuing its final response to the Complainants. It is most disappointing that the Provider does not appear to have done so.

In my Preliminary Decision I accepted that, nonetheless, there is a significant benefit to the Complainants, in that, the Complainants have been given the benefit of the application of the tracker interest rate of ECB + 0.75% on both mortgage sub-accounts despite no evidence supporting an entitlement to this advantageous rate.

In the Complainants' post Preliminary Decision submission dated **28 September 2020** the First Complainant has stated as follows;

"I avail of a "[named Provider product] Account" which entitles m[e] to reduced mortgage rates. (0.95% for >80 LTV and 0.75% for <80 LTV), (can be seen at

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[Provider website]) so the above assumption is factually incorrect as I am entitled to this rate, albeit when my LTV is <80%."

In the above email the Complainants have provided a hyperlink to the Provider's named Provider product website which requires account holders to input their login details. It remains the case that no evidence has been provided to me which supports the Complainants' submission that they had an entitlement to the tracker interest rate of ECB + 0.75%, nor have I been provided with evidence of the Complainants' Loan to Value (LTV) ratio. Based on the evidence before me, I do not accept that the Complainants have a contractual or other entitlement to the tracker interest rate of ECB + a margin of 0.75%. In any event, this does not appear to me to have any bearing on the complaint in circumstances where the tracker rate of ECB + 0.75% has been applied to both mortgage sub-accounts and the Provider has confirmed that it will not be removing the tracker rate of ECB + 0.75% from the accounts.

I note that the Provider has already paid the Complainants the sum of €3,500. The Provider has also amended the Complainants' ICB profile and has agreed to pay a further €850 to the Complainants.


I understand that the offer of the further €850 compensation remains open to the Complainants to accept. In the circumstances of this particular matter I accept that total compensation of €4,350 is reasonable.

In these circumstances and for the reasons set out in this Decision, I do not uphold the 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.



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FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

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26 January 2021

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.