



<u>Decision Ref:</u>	2021-0039
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider and an overcharge of interest in the amount of €3,082.30 on that mortgage loan account. The mortgage loan account was secured on the Complainants' principal private residence (the "**mortgaged property**").

The loan amount was for €250,000.00 repayable over a term of 30 years. The mortgage loan account was drawn down on **04 March 2004** pursuant to a Mortgage Loan Offer Letter dated **27 November 2003**. The mortgage loan was redeemed in **June 2011** when the Complainants sold the mortgaged property.

The Complainants' mortgage loan account was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "**Examination**"). The Provider identified that an error had occurred on the mortgage loan account and that mortgage loan account was deemed to be impacted under that Examination.

The Provider issued a letter dated **15 December 2017** to the Complainants advising them of the error that had occurred on their mortgage loan account. The Provider detailed how it "*got things wrong*" as follows;

“In our review, we found that when you moved to a fixed rate from a tracker rate we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate. Because of this, you may have had an expectation that a tracker rate would be available to you at the end of the fixed period.

The language used by us in your documentation may have been confusing as to whether it was a variable interest rate which varied upwards or downwards tracking the ECB Rate or a variable interest rate which varied upwards or downwards at our discretion.”

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

“How this failure affected you

As a result of our failure, we can confirm that you were charged an Incorrect Interest rate between 24 Nov 2008 and 7 Jun 2011”

The Provider made an offer of redress and compensation to the Complainants in its letter dated **15 December 2017**. The offer of €4,136.42 was made by the Provider to the Complainants and comprised of the following;

1. Redress of €3,236.42 covering:
 - Total interest overpaid of €3,082.30
 - Interest to reflect the time value of money of €154.12
2. Compensation of €650.00 for the Provider’s failure.
3. Independent Professional Advice payment of €250.00.

By way of letter dated **31 January 2018**, the Provider informed the Complainants that it intended to “top up” the Complainants payment for independent advice by an extra €500.00 (an increase from €250.00 to €750.00).

In **July 2018**, the Complainants appealed the redress and compensation offering to the Independent Appeals Panel.

On **27 August 2018** the Independent Appeals Panel decided to uphold the Complainants’ appeal and awarded additional compensation of €650.00 to the Complainants. In determining the appeal the Panel outlined as follows;

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- *“The Panel is satisfied that the Customers are not entitled to be compensated for any period after **27 June 2011**.”*

For such an entitlement to arise, under the Appeals Panel Terms of Reference, you were required to have switched your mortgage to a different lender on a like-for-like basis (same balance/same property) where not getting a tracker was a key reason for [their] switch.

- *Nevertheless the Panel acknowledges that your decision-making in 2011 may have been impaired as a result of not being on the tracker rate at the time and accordingly the Appeals Panel has decided to award additional compensation of €650.”*

As the Complainants had completed the Provider’s internal appeals process, and the award that was accepted by the Complainants as part of that appeals process was not in full and final settlement, this office was in a position to progress the investigation and adjudication of the complaint.

The conduct complained of that is being adjudicated on by this office is that the Provider has failed to offer adequate redress and compensation to the Complainants by consequence of the Provider’s failure in relation to their mortgage loan account.

The Complainants’ Case

The Complainants state that had they known that they were entitled to a tracker interest rate at the end of their fixed interest rate period in **November 2008**, they *“would not have sold”* the mortgaged property and taken out a loan with an alternative Provider to purchase a new property in **July 2011**.

The Complainants submit that in **May 2011** they enquired with the Provider about obtaining a new mortgage loan and that *“depending on the value of the mortgage being offered [they] were considering extending the current property or moving”*. The Complainants state that they met with a mortgage advisor of the Provider who told them that *“an initial mortgage offer in principal of €260,000 would be the maximum value the Bank could offer”* which could be *“reduced by €10,000 or €20,000”*. The Complainants explain that they considered their options on foot of this offer in principal and *“decided to look at other properties”*. The Complainants note that in the event that they could not find a suitable property, they decided that they *“would then extend the current property with the top-up [the Provider] w[as] willing to offer”*. The Complainants submit that *“a few days*

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later” the mortgage advisor of the Provider informed them that the Provider’s underwriters had reviewed their mortgage application and the Provider was only in a position to offer a mortgage loan in the amount of €210,000.

The Complainants note that this *“was the exact same value as the current mortgage so the Bank were not offering any additional increases to the existing mortgage so not only could [they] not move [they] could not extend the existing property”*.

The Complainants assert that they did not seek a mortgage loan in the amount of €285,000 prior to the sale of the mortgaged property in **June 2011** and that the document submitted by the Provider in evidence for a loan offer in the amount €285,000 *“is in relation to a different property...which [they] were also considering buying”*.

The Complainants state that they *“decided to sell the house in 2011”* and drew down a new mortgage loan with an alternative Provider on foot of the purchase of their new property. The Complainants explain that they *“were with [the alternative Provider] for 5 years until [they] switched [their] mortgage back to [the Provider]”* and *“since 2011 [they] have paid a considerably higher mortgage rate with [the alternative Provider] and currently with [the Provider]”* than they would be on if they did not sell the mortgaged property and were placed on a tracker interest rate in **November 2008**.

The Complainants submit that the *“increase in interest repayments on new mortgage over the term of the mortgage would be substantial when compared to staying in the property and remaining on the tracker rate”*. The Complainants estimate that the loss of the tracker mortgage in **2011** will cost them approximately €37,158 in additional interest payments from **2011** until the end of the term of their new mortgage loan. The Complainants detail that, based on the interest rates furnished by the Provider, they have demonstrated that, if they did not sell the mortgaged property, the additional interest that they would notionally pay over the remaining term of their original mortgage is *“circa 38,000”*. The Complainants state that *“this amount is not immaterial”* and if they had known that they *“were foregoing a tracker mortgage”* at the time of sale in **2011** then this *“would have been a key factor in [their] decision to sell”*. The Complainants assert that if a tracker interest rate had been applied to their mortgage loan in **2008** at the end of the fixed interest rate period, they *“would have seriously considered the financial impact over the life of the mortgage of selling the house and losing the tracker mortgage when deciding to renovate [their] existing house and remain with [the Provider] or buy a new house and take out a new mortgage with [an alternative Provider]”*. The Complainants contend that by being denied access to the tracker interest rate, their *“decision to sell was impaired”* and could have potentially led to *“future economic hardship”*.

The Complainants state that they “*fully accept*” that the Provider has compensated them for the interest overcharged on their mortgage up to the date on which the mortgage loan account was redeemed on foot of the sale of the mortgaged property in **June 2011**.

However the Complainants submit that the offer of compensation made by the Provider as part of the Examination “*does not reflect the financial impact of [the Provider] not providing accurate financial data at the time [they] were considering whether to remain in the property or to sell the property*” and that “*the compensation offered by [the Provider] did not take into account their misrepresentation and the financial impact it has subsequently had*” for them.

The Complainants highlight in later submissions that they “*are not demanding [their] current mortgage be placed on a tracker rate with [the Provider]*” and they accept that the Provider “*cannot be forced to apply a tracker rate*” to their current mortgage account as the tracker rate should have been applied to their original mortgage loan with the Provider and they have since sold the property over which their original mortgage loan was secured.

In response to the Provider’s reference to the “*gain in value*” in respect of the Complainants’ new property, the Complainants state that any “*notional gain should not be taken into consideration when assessing any additional compensation*”. The Complainants assert that that “*the current gain in value is notional based on the current market value of properties in Ireland*” and based on “*current economic indicators and threats to the economy such as Brexit, property prices in Ireland could be overstated*”. They further state that the value of their current property should be disregarded when considering whether the Provider should pay additional compensation and that they have “*no intention of selling [their] property to realise any gain in value*”.

The Complainants submit that “*the Appeals Panel highlighted that this complaint was outside of their terms of reference and as such they were unable to award any additional compensation other than the standard €650*”.

The Complainants are seeking additional monetary compensation for the Provider’s failure to disclose the correct financial position of the Complainants’ mortgage loan account at the time of sale of the property.

The Provider’s Case

The Provider submits that the Complainants drew down a mortgage in the amount of €250,000 on **04 March 2004** for a term of 30 years under Mortgage Loan Offer Letter

dated **27 November 2003**, signed and accepted by the Complainants on **03 December 2003** (the “Offer Letter”).

The Provider details that the Offer Letter provided for an initial fixed rate of interest at 2.69% for 12 months, thereafter reverting to a standard variable rate of interest. The Provider explains that the Offer Letter did not contain any contractual entitlement on the part of the Complainants to avail of a tracker interest rate during the lifetime of the loan. The Provider relies on **General Condition 7(b)** of the Offer Letter in this regard.

The Provider submits that the Complainants made the following changes to the interest rate applicable to their mortgage loan account;

- The Complainants elected to apply a tracker variable interest rate of ECB + 1.30%, (3.30%) by signing a Mortgage Form of Authorisation (“MFA”) on **15 February 2005**;
- The Complainants elected to apply a fixed interest rate of 3.49% for a period of 3 years by signing a MFA on **16 November 2005**;
- The Complainants signed and accepted a MFA on **17 November 2008** to move to a “H/L Variable LTV>80%<500K VRP5” rate (then priced at 4.79%); and
- The Complainants elected to apply a fixed interest rate of 3.15% for a period of 2 years by signing a MFA on **10 February 2010**.

The Provider details that while the MFA signed on **16 November 2005** stipulated that the “*terms and conditions pertaining to the Offer Letter would remain in force*” it accepts “*that there was insufficient clarity as to what would happen at the end of the fixed period*”. The Provider also accepts “*that the communication could have been better...if it expressed in the November 2005 MFA what rate product would have applied at the end of the 3 year fixed rate period*”. The Provider states that “*if the terms of the mortgage agreement were never amended, the course of the loan would be clear*” in that the Complainants’ mortgage loan account “*would have reverted to a non-tracker standard variable rate*” upon the expiry of the initial fixed interest period in **March 2005**.

The Provider states the Complainants sought a mortgage in the amount of €285,000 in **May 2011** at which time their mortgaged property was at “*sale agreed status*” and “*they were looking to buy a new property with a purchase price of €310,000*”. The Provider submits that this new property “*was in need of modernisation and the Complainants were proposing to use their equity from the existing property towards renovation to the new property*”. The Provider explains that it was “*not satisfied to offer the Complainants a mortgage of €285,000 and was only willing to offer the Complainants a mortgage of €210,000 as their mortgage application did not meet the Provider’s lending criteria in relation to their net disposable income*”.

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The Provider submits that the Complainants were not happy to proceed with a mortgage of €210,000 as they were seeking €285,000 or a lower amount of €260,000. In such circumstances, the Provider explains that this mortgage application did not progress and no alternative offer letter was ever issued to the Complainants.

The Provider submits that it *“has no record”* of any application for a top-up mortgage by the Complainants in **June 2011** and is *“unaware”* of any statement made to the Complainants in **June 2011** informing them that they were not eligible for a top-up loan. The Provider contends that it did not turn the Complainants down or declare them ineligible for a mortgage in **June 2011**, rather it was *“prepared to offer a lower amount than what the Complainants sought”* and that it would appear that the Complainants *“elected and proceeded to take out a mortgage loan with another Financial Services Provider prior to the mortgage loan account with the Provider closing”*. The Provider notes that the Complainants subsequently sold the mortgaged property in **June 2011** for €255,000, redeemed their mortgage loan account in the amount of €209,596.67 and purchased the new property in **July 2011** for €290,000, with a mortgage of €260,000 funded by another provider.

In **February 2017**, the Provider explains that the Complainants applied to switch their mortgage with the other provider in respect of the new property to the Provider. The Provider notes that the Complainants drew down a new mortgage loan account ending **1289** with the Provider in **April 2017** pursuant to a Mortgage Loan Offer Letter dated **22 February 2017** *“which contains no provision whatsoever for the application of a tracker interest rate”*. In this regard, the Provider submits that the Complainants *“made a personal choice to move house and redeem [mortgage loan account ending 6638] and draw down a new mortgage on a new property with another Financial Services Provider, following the refusal by the Provider to offer the required funds to the Complainants”*.

The Provider submits that it included the Complainants’ original mortgage loan account ending **6638** in the Examination because it was formerly on a tracker rate of interest. The Provider states that in its review, it found that *“when the Complainants moved from a tracker rate to a fixed rate of interest, the Provider failed to supply them with sufficient clarity as to what would happen at the end of that fixed rate and the language used by the Provider may have been confusing or misleading”*. The Provider states however that *“it had not breached any contract with the Complainants”* and further *“there was no positive representation made by the Provider before the Complainants entered the fixed rate period that they could move to a new tracker rate at the end of the fixed rate”*.

The Provider details that its failure to not specify the non-tracker nature of the standard variable rate that would apply on expiry of the fixed rate period is *“significantly less serious as a shortcoming in terms of conduct than (say) a breach of contract or mis-selling a fixed rate through positive misrepresentation that a new tracker rate would be provided when it ended”*.

The Provider outlines that it wrote to the Complainants on **15 December 2017** advising them of its failure and made an offer of redress and compensation in the amount of €4,136.42.

The Provider details that *“the redress and compensation offered and accepted by the Complainants was adequate and in line with the Provider’s redress and compensation framework”*. The Provider details that the calculation of the compensation is based on *“the Provider’s understanding of detriment suffered, including but not limited to inconvenience, harm, loss as a result of not having funds available to the Complainants when they should, personal suffering and hardship, caused by the relevant issue”*. The Provider submits that the *“Complainants did not fit into categories of special loss such as repossession and the Appeals Panel did not alter their categorisation within the Examination”*. The Provider contends that the payment offered to the Complainants *“accurately redress the Complainants for the difference in rates and thus restores them to the position they would be in if tracker interest at the appropriate margins had been charged instead in the relevant periods”*. Further, the Provider submits that the payments *“made for compensation and sums for professional advice...exceed the normal contractual measure of damages; and which a court would not have awarded in an action for breach of contract”* and that the redress offered *“represents the extent to which interest was overcharged and includes interest charged on a capital balance that was higher than it would have been but for the tracker issue i.e. the incorrect interest rate”*.

The Provider submits that the Complainants’ claim for additional compensation beyond what the Provider and the Appeals Panel has already provided for is *“neither fair nor reasonable, taking into account that the Complainants appealed the matter to the Appeals Panel, who further awarded €650”*. The Provider further states that *“the compensation reflects the nature and severity of the impact with reference to a number of factors as a direct result of the Provider’s failure and this complaint [to the FSPO] has advanced no new grounds which undermined the determination of the Independent Appeals Panel”*.

The Provider states that it does not accept the Complainants’ assertion that they made the decision to sell the mortgaged property *“solely on the basis that the Provider had not represented to them that they could revert to a tracker rate of interest on the Mortgage Loan Account”* and that *“it seems clear to the Provider that there were many other factors in play”* in the Complainants’ decision to move house and seek a new mortgage to do so.

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The Provider contends that the Complainants' statement that their decision to sell the mortgaged property was based on "*misleading and inaccurate financial data*" provided by the Provider which fundamentally impacted their decision making at the time of the sale is "*not quite accurate*". Rather, the Provider notes that "*the information the Complainants were given when they entered the fixed rate was not sufficient*". The Provider is of the view that the Complainants "*have already been given the significant benefit of any doubt about what they could have reasonably understood about*" the interest rate to apply upon expiry of the 3 year fixed rate entered into in **November 2005**.

The Provider states that the Complainants "*have not demonstrated that they sold the Property and purchased a new home, with a different Financial Services Provider on [a] like-for-like basis (same balance/same property*" and that the "*key influencing factor in their decision to switch*" related to the non-availability of a tracker interest rate. The Provider submits that the Complainants' contention that if they had known they had a tracker interest rate, they would have "*seriously considered the impact of selling the property and the loss of the tracker rate*" falls far short of the requirement that "*the Complainants show the tracker rate of interest was a key factor in the decision to switch*" to an alternative provider.

The Provider further submits that the Complainants' contention to the Appeals Panel that they would have "*seriously considered the impact of selling*" had they known of the tracker interest rate, and their contention to the FSPO that they "*would not have sold the property had they known of the tracker interest rate*" are not consistent. The Provider details that "*it is not clear why there has been a change from what was presented to the Appeals Panel and what was presented to the FSPO*". The Provider states that the "*discrepancy undermines the Complainants claim and reinforces the evidence...showing the removal of a tracker rate was not a key factor in their decision to switch*".

The Provider sets out that, comparatively, the Complainants' new property has increased in value to a greater extent than the mortgaged property. The Provider submits that the "*Complainants evidently 'traded up' when they purchased their new home...and this is reflected in the corresponding rise in the value of the property*" and that by going on "*the Provider's valuation and the data on the sale of properties in a similar location, the decision to sell the [old] property and buy [the new property] has resulted in an equity gain in excess of €200,000 (Valuation of [the new property] property in 2017 v's Mortgage amount €246,000 drawn down) accruing to the Complainants*". The Provider submits that the increase in value in respect of the new property indicates that it is a more desirable house than the mortgaged property, and it was this that motivated the sale of the mortgaged property and the redemption of the Complainants' mortgage loan account.

The Provider further submits that the timing of the purchase must also be considered as *“2011 was an opportune time for buyers who had the resources to purchase a larger property or were considering a move to a more desirable location”* and that the Complainants’ decision was *“a shrewd one and based on an intelligent interpretation of the property market and prevailing prices”*.

The Provider states that the *“tracker rate, and the failure to apply it to the mortgage loan account, played no part or a very small part in their decision to move”* and that it *“cannot, therefore, be said the Provider’s failure played a causal role in the decision”*. The Provider does not accept the Complainants’ claim for further compensation than what has already been awarded by the Provider, and as increased by the Appeals Panel.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has not offered adequate redress and compensation to the Complainants by consequence of the Provider’s failure in relation to their mortgage loan account.

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 28 January 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

At the outset, I note that the Provider has made submissions about its view that there was no breach of contract and no misrepresentation in the sale of a fixed interest rate. I will not be making any determination as to the nature of the Provider's failure as I do not think that this is necessary in the circumstances of this matter.

The issue for decision is whether the Provider has offered adequate redress and compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainants in **December 2017**. I fail to understand why the Provider has made submissions as to the nature of the failure in the circumstances of this complaint. I do not find the Provider's approach in this regard to be helpful in finding a resolution to the complaint under investigation.

The Provider has detailed that the redress and compensation offered to the Complainants is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles of Redress. The redress payment of €3,236.42 reflects the amount of interest overpaid (€3,082.30) and includes a payment of €154.12 to reflect the time value of money. The Provider also paid the Complainants €750.00 for the purposes of seeking independent legal or financial advice, along with compensation of €650.00. The Independent Appeals Panel subsequently awarded a further €650.00 in compensation to the Complainants. The Provider submits that the Complainants have not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel has already provided for.

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

The Complainants' mortgage loan account was drawn down on a fixed interest rate of 2.690% for an initial 12 months on **4 March 2004** for a term of 30 years.

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A Mortgage Loan Offer Letter dated 27 November 2003 (the "Loan Offer") issued to the Complainants which detailed as follows;

- | | |
|--|-------------------------|
| 1. "Amount of Credit advanced: | €250,000 |
| 2. Period of Agreement: | 30 years |
| 3. Number of | Instalment |
| <u>Repayment Instalments</u> | <u>Type</u> |
| 12 | Fixed at.690% |
| 348 | Variable Rate at 3.600% |
| ... | |
| 11. Type of Loan: | Repayment |
| 12. Interest Rate: | 2.69% Fixed |
| ... | |
| 14. Purchase price (or value) of Property" | €270,000" |

Part 5 – The General Conditions of the Loan Offer detail as follows;

"6. Variable Interest Rates

- a) Subject to clause 6 (c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender's discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.
- b) The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1 (c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.
- c) Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).

7. Fixed Interest Rates

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- a) *The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the loan. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. **The fixed rate of Interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.***
- b) *The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Bank does not provide such a further or subsequent fixed rate period or if the Bank offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate..."*

The Complainants signed **Acceptance and Consents** section of the **Loan Offer** on **3 December 2003** on the following terms;

"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the term and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."

The Complainants' mortgage loan account was drawn down on **04 March 2004**.

On **15 February 2005**, the Complainants signed a MFA to apply a tracker interest rate of ECB + 1.3% (3.3%) for the remaining term of the loan. On **16 November 2005**, the Complainants signed a further MFA to apply a 3 year fixed interest rate of 3.490%. The Complainants signed a further MFA on **17 November 2008** where they chose to apply a "*H/L VARIABLE LTV>80%<500K VRP5*" rate to their mortgage loan account. This variable interest rate was applied from **24 November 2008**.

It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainants' mortgage loan account, in that, the Provider failed to provide the Complainants with sufficient clarity as to what would happen at the end of the fixed interest rate period in **November 2008**. The Provider found that the language used may have been confusing or misleading.

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A further MFA was signed by the Complainants on **10 February 2010** to apply a 2 year fixed interest rate of 3.150%. The Complainants subsequently redeemed their mortgage loan in **June 2011** on foot of the sale of the mortgaged property.

The variable interest rate that applied to the mortgage loan between **November 2008** and **February 2010** commenced at 4.79% and varied between 4.04% and 2.54%. A fixed interest rate of 3.15% applied from **March 2010** until **June 2011**. Between **November 2008** and **June 2011**, the overall tracker rate (ECB + 1.30%) commenced at 4.55% and reduced to 2.30% over the time period. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to the mortgage account between **November 2008** and **June 2011**, is also represented in the table below:

Date Range (inclusive)	Difference in Interest rate charged vs the Tracker interest rate	Actual monthly repayments	Monthly repayments if the mortgage was on a Tracker Rate	Overpayment per month
Dec 2008	0.24%	€1,280.05	€1,249.21	€30.84
Jan 2009	0.24%	€1,183.85	€1,153.46	€30.39
Feb 2009- Mar 2009	0.24%	€1,124.51	€1,094.75	€29.76
Apr 2009	0.24%	€1,064.43	€1,035.60	€28.83
May 2009	0.24%	€1,034.93	€1,007.18	€27.75
Jun 2009 – Feb 2010	0.24%	€1,007.13	€979.79	€27.34
Mar 2010 – Apr 2011	0.85%	€1,074.62	€979.79	€94.83
May 2011 – Jun 2011	0.60%	€1,074.62	€1,005.52	€69.10

The monthly overpayments on the Complainants' mortgage loan account ranged from €27.34 to €94.83 across a period of 2.5 years.

The Complainants contend that their decision to sell the mortgaged property in **June 2011** was influenced by the fact that they were denied a tracker interest rate in respect of their

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mortgage loan account and they are seeking additional compensation for the Provider's "misrepresentation" of their mortgage account at the time of the sale. In this regard, I am of the view that it is helpful to consider the interactions between the Complainants and the Provider in the lead up to the sale of the mortgaged property.

The Provider has submitted several letters of correspondence between the Complainants, the Complainants' solicitor and the Provider from **April 2011** to **June 2011** which document the sequence of events leading up to the sale of the mortgaged property.

The Complainants' solicitor issued a letter to the Provider dated **26 April 2011** which details as follows;

"Dear Sirs,

We refer to the above and now enclose herewith our clients' authority duly signed for you to release the Title Deeds on accountable trust receipt for the purpose of preparing contracts for sale.

...

We look forward to receiving Title Deeds in early course.

..."

This letter enclosed a **Quick Electronic Discharge Form** duly signed by the Complainants authorising the Provider to release the title deeds to the mortgaged property.

The letter also enclosed a **Letter of Authorisation** from the Complainants to Provider dated **26 April 2011** detailing as follows;

"

AUTHORISATION

Dear Sirs,

*We, [the Complainants] of [mortgaged property address] **HEREBY AUTHORISE** you to release the Title Deeds to the above property to [Complainants' solicitor] of [Complainants' solicitor's address] on the usual accountable trust receipt.*

Dated this 26th day of April 2011

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The Provider sent the title deeds to the Complainants' solicitor as requested under cover of letter dated **29 April 2011** together with an **Accountable Trust Receipt** for completion. The Complainants' solicitor acknowledged receipt of the title deeds and furnished a completed Accountable Trust Receipt to the Provider by way of letter dated **5 May 2011**.

The Complainants submit that in **May 2011**, they contacted the Provider's branch to request a meeting with a mortgage advisor as they were curious to know how much they could borrow on foot of the First Complainant's new salary and the Second Complainant's reduced salary. The Complainants contend that they approached the Provider for a "*top-up mortgage*" for the purposes of either extending the mortgaged property or moving to a new property. The First Complainant states that he cannot provide evidence of this initial contact to the Provider as the email was sent from his work email address at the time and his employer has since ceased trading. The Provider asserts however that it has no record pertaining to any request by the Complainants for a "*top-up mortgage*" but holds records for a new mortgage loan application in respect of mortgage loan account ending **2396**.

The Provider has submitted an internal note titled "**Info Note for Mortgage Application [ending in 2396]**" in evidence which details as follows;

"...

Current mortgage with [the Provider]. It was drawn down in 2004. Up to date and I can find no record of any unpaid. A sale agreed has been reached on this property of E255K the couple will make E21K from the sale of this house.

...

Requested mortgage E285K. Leaving them with residual E21825 to put towards cosmetic changes on property".

The Provider has also submitted a further note titled "**Rationale for Mortgage Application [ending in 2396]**", which details as follows;

"Mover, Seeking e285K on pp e310K

Balance of funds equity e44.9k

Savings e17.2k & Inheritance e54k

....

Exist pdh sale agreed @e255k

....

NDI: e2112 v e2500 (15% Sig 2 exception)

....

/Cont'd...

Based on loan amount of e210k NDI: e2523 v e2.5k

Proposed property: 3 bed semi detached house in need of modernisation, tight in funding if loan cut back to e210k (exist pdh 3 bed detached in excellent condition)

.....

S/W MA, advised customers would proceed on lower amount of e260k, NDI: E2249 v e2500 (10% Sig 2 exception)

...

Acknowledge the overall positives, however would not be content to support NDI exception, could consider loan amount of e210K

MA has advised the Branch Manager now dealing with the customers

Refer for decline as presented, as discussed with MA would be happy to support on lower amount, however customer not happy to proceed on e210K, seeking e285K max or lower amount of e260K

Decision: Refer for Decline

Added By: [Redacted] on 05/05/2011 at 11:43:06"

The above notes appear to be an underwriting assessment of the Complainants' mortgage loan application that were entered into the Provider's internal system on **5 May 2011**. Prior to this, it appears that the Complainants approached a mortgage advisor in the Provider's branch at which point the Complainants were informed that an initial mortgage offer in principal of €260,000 was the maximum amount that the Provider could offer subject to credit assessment. While I have not been furnished with evidence of this offer in principal, it does not appear to be in dispute between the parties that this amount was offered in principal prior to an assessment by the Provider's underwriting team. The Complainants state that they did not seek a mortgage of €285,000 but in later submissions state that they were considering purchasing a property based on an initial mortgage offer of €260,000 and subsequently asked the Provider to increase the loan amount to €285,000 to see how much extra the monthly repayments would be. I am satisfied that the Provider's notes show that the Complainants approached the Provider in or around **early May 2011** to see whether they would be eligible for a mortgage loan in the amount of €285,000. At that time, it appears that sale of the mortgaged property was at sale agreed status and the Complainants were looking to purchase a new property with a purchase price of €310,000. The Provider's internal notes show that based on the Complainants' mortgage application and their net disposable income, the Provider was only in a position to offer the Complainants a loan in the amount of €210,000.

/Cont'd...

I note from the Provider's internal notes dated **5 July 2011** that this application lapsed as there was no response from the Complainants. A screenshot from the Provider's "**Mortgage Desktop**" dated **5 July 2011** details as follows;

*"Subject: Application Cancelled
Date: 05/07/2011
Application No: [ending 2396]
Applicant(s): [Name of Complainants]
Reason: OTHER-No Response from Customer*

Hi,

This application has been cancelled as it is under negotiation since 06/05/2011. If at a future date it needs to be reactivated please send an [internal mail] with the new information or documentation required..."

The Provider issued redemption figures to the Complainants in respect of their mortgage loan account under cover of letter dated **20 June 2011**. The total balance outstanding as at that date was €209,542.85. The Complainants' mortgage loan account was subsequently redeemed in full in the amount of €209,596.67 on **23 June 2011**.

I understand from the Provider's internal notes that the Complainants drew down a new mortgage in the amount of €260,000 with an alternative provider in **June 2011** in order to purchase the new property. The Provider has submitted "**Sale Information**" from the Property Price Register in respect of the new property into evidence which details as follows;

*"Date of Sale: 01/07/2011
Price: €290,000
.....
Description of property: Second-Hand Dwelling house/Apartment"*

The Complainants approached the Provider in **early February 2017** to apply to switch their mortgage loan on their new property with the alternative provider to the Provider. The Provider's internal notes details as follows;

*"Rates & Terms discussed 8th February 2017
.....*

/Cont'd...

No unpaid or excessing on any of the accounts and no apparent financial distress evident

Looking to switch for a better rate and 2 % cash back plus offer and non-structural equity release of EUR20k for attic conversion

.....

client would like to leave their savings intact to cover children future college expenses. Clients confirmed it make[s] more financial sense to switch from [alternative provider] to [Provider] for a better rate and including the equity release they are paying the same monthly repayment....”

On foot of an assessment of the Complainants’ circumstances, the Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **22 February 2017** in respect of new mortgage loan account ending **1289** for the amount of €246,000 over a term of 19 years. The particulars of the **Mortgage Loan Offer Letter** dated **22 February 2017** are detailed below;

“Amount of Credit advanced:	€246,000
Period of Agreement:	19 years
<u>Number of Repayment Instalments</u>	<u>Instalment Type</u>
36	Fixed at 3.100%
192	Variable Rate at 3.900%
...	
Type of Loan:	Repayment
Interest Rate:	3.100% Fixed
...	
Valuation for Mortgage Purposes:	€440,000”

Part 5 – The General Conditions of the **Mortgage Loan Offer Letter** dated **22 February 2017** detail as follows;

“6. Variable Interest Rates

....

- b) *At all times when a variable interest rate applies to the Loan (a) the interest rate chargeable will vary at the Lender’s discretion upwards or downwards:*

/Cont’d...

and (b) the Lender agrees to vary the interest rate by reference to one or more factors identifies in the Summary Statement of Policy for Variable Rate Mortgage Loans that is current on the date of this Offer Letter or as that may be duly amended or replaced from time to time (the "Summary Statement"). If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty. This Clause 6(b) is Subject to clause 6 (d).

- c) The Lender shall give notice to the Borrower in writing in accordance with Clause 1 (c) of any variation of (i) the interest rate applicable to the Loan or (ii) of any amendment to or replacement of the Summary Statement. Any such notice of any variation of the interest rate applicable to the Loan shall state the Statement may set out the changes made to it or may include the new or revised Summary Statement in full.
- d) Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).

7. Fixed Interest Rates

- a) The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the Loan. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter.

The fixed rate of Interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.

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

The Mortgage Loan Offer Letter dated **22 February 2017** provided for a fixed interest rate at 3.1% for 3 years, thereafter reverting to a standard variable rate. The Provider asserts that the new mortgage loan account ending **1289** is not a “*continuum*” from mortgage loan account ending **6638**, therefore the Complainants cannot fairly and reasonably expect that a tracker interest rate be applied to the new mortgage loan account. The Complainants accept that they are not seeking for a tracker rate to be applied to mortgage loan account ending **1289** as they sold the mortgaged property the subject of mortgage loan account ending **6638** which should have been on a tracker rate in **2011** and the Provider “*cannot be forced to apply a tracker rate to this mortgage account [ending 1289] as the values are not on a like for like basis*”. In this regard, I note that it is not in dispute between the parties that a tracker rate of interest ought to be applied to mortgage loan account ending **1289**.

In any event, I note that the Mortgage Loan Offer Letter dated **22 February 2017** contains no contractual entitlement or otherwise on the part of the Complainants to a tracker rate of interest to be applied to their new mortgage loan account at any point over the term of the loan. The Complainants signed and accepted the terms and conditions contained in the Mortgage Loan Offer Letter on **25 February 2017**. The Complainants subsequently drew down mortgage loan account ending **1289** in **April 2017** on a fixed interest rate.

While the Complainants contend that their decision to sell the mortgaged property in **2011** was influenced by the fact that they were denied a tracker rate for their mortgage loan account ending **6638**, the Provider submits that there were many other factors in play in the decision to move house and avail of a new mortgage to do so. A question arises as to whether the Provider’s removal of a tracker interest rate was the only reason why the Complainants decided to sell the mortgaged property in **2011**.

The Provider has submitted the table below in evidence which shows the differences between mortgage loan account ending **6638** taken out by the Complainants in **2003** with the Provider in respect of the mortgaged property and new mortgage loan account ending **1289** in respect of the new property that was drawn down in **April 2017**.

Details	Mortgage Loan Account [ending 6638]	Mortgage Loan Account [ending 1289]
Drawn down under Mortgage Offer Letter	27 November 2003	22 February 2017
Amount	€250,000	€246,000
Date of drawdown	4 March 2004	3 April 2017
Period of Agreement	30 years to 2034	19 years to 2036

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Number of Repayment Instalments	360	228
Instalment details	12 months Fixed at 2.69% 348 months Standard Variable	36 months Fixed @ 3.1% 192 months Standard Variable
Mortgage Offer Letter. Part 4 - The Special Conditions	No Provision for a tracker interest rate	No Provision for a tracker interest rate
Agreement due to Expire	2 March 2034	1 May 2036
Property mortgaged	[Address of mortgaged property]	[Address of new property]
Property purchase Price	€270,000	€440,000
Property Details	88sq. m Semi detached, Second Hand built in 1980. 2 living rooms, 1 kitchen, 3 bedrooms, 1 bath. In good condition. Site dimension – 189sq. m.	110 sq m. Semi detached, Second Hand built in 1976 6 rooms (including 3 bedrooms) In good condition. Site dimensions – 260 sq. m.
Valuation Report Details	Valuation Report confirms good condition of property prior to purchase	Valuation Report confirms good condition of property prior to purchase. It further noted the proposal to convert the attic into another bedroom at a cost of €20,000
Income details provided at application: [First Complainant]: [Second Complainant]:	1 - €27,198 2 - €30,473 No children	1 -€68,412 2 - €18,008 2 children – [ages redacted]
Current Mortgage Status	23 June 2011 - Mortgage redeemed. Balance Outstanding €209,596.67	Outstanding balance @ 19 July 2019 €225,088.63 Fixed rate: 3.1%

It is clear that the Complainants' circumstances changed somewhat since they took out their original mortgage loan account ending **6638** in respect of the mortgaged property.

/Cont'd...

The Complainants, by their own admission, submit that the reason they approached the Provider for additional funding in **May 2011** was to either extend the mortgaged property or move to a new property. At the time of the application for a new mortgage loan in **2011**, the Complainants note that the First Complainant's salary had increased and the Second Complainant's salary had decreased. Apart from a change in the Complainants' financial circumstances, the Complainants' personal circumstances had changed in that they had started a family and by **2011** had two children. Given the Complainants' mortgaged property was sold for €255,000 in **June 2011** and the mortgage loan account was redeemed in full in the amount of €209,596.67, the Complainants had €45,403.33 in equity before the deduction of legal costs and sales costs. In this regard, it is my view that it is reasonable to conclude that the Complainants may have wanted to trade up to a larger property on foot of their change in circumstances. Moreover, the Provider's internal notes, referenced above, indicate that the Complainants had gone sale agreed on the mortgaged property prior to approaching the Provider for additional funding. Therefore there appears to have been little or no discussion between the parties prior to the sale of the mortgaged property and there was certainly no mention of the interest rate applicable to the mortgage loan account as being the reason for the Complainants' decision to sell their mortgaged property.

The Complainants assert that by the Provider denying access to a tracker interest rate fundamentally impacted on their financial decision making at the time of the sale of the mortgaged property and "*could have potentially le[a]d to future economic hardship*". In this regard, the Complainants estimate that the additional interest paid that they "*would notional pay*" over the life of the original mortgage will be approximately €37,158 from **July 2011** until the remaining term of the loan on foot of their loss of entitlement to a tracker interest rate.

The Complainants have submitted three tables into evidence outlining the impact of switching mortgage provider and moving onto a higher rate of interest then moving back to the Provider's fixed interest rate of 3.10 % over the remaining term of the loan versus not selling the mortgaged property with a tracker interest rate of 2.55% applied for the remaining term of the loan.

The tables submitted by the Complainants in evidence detail as follows;

APPENDIX

Assumption 1.
Did not sell the property and had a tracker rate of 2.25% for the remaining term

LOAN	209,596.67	This is the value of the mortgage before transferring to [REDACTED]
YEARS	22.583	This is the remaining years left on the mortgage if we stayed with [REDACTED]
INT. RATE	2.550%	This is last known tracker rate provided by [REDACTED] to date of transfer
NO. OF MTHS	270.995	

Monthly payments	(1,018.18)
Total payments	(275,923.57)
Total interest	(86,326.90)

Month	Op bal loan	Int per mth	repayments	cls bal loan	Principal	Date
1	209,596.67	445.39	(1,018.18)	208,023.88	430.12	31/07/2011
2	209,023.88	444.18	(1,018.18)	208,449.87	431.95	31/08/2011
3	208,449.87	442.96	(1,018.18)	207,874.65	433.78	30/09/2011
4	207,874.65	441.73	(1,018.18)	207,298.22	435.63	31/10/2011
5	207,298.22	440.51	(1,018.18)	206,720.52	437.48	30/11/2011
6	206,720.52	439.28	(1,018.18)	206,141.62	439.34	31/12/2011
7	206,141.62	438.05	(1,018.18)	205,561.49	441.21	31/01/2012
8	205,561.49	436.82	(1,018.18)	204,980.12	443.08	29/02/2012
9	204,980.12	435.58	(1,018.18)	204,397.52	444.96	31/03/2012
10	204,397.52	434.34	(1,018.18)	203,813.68	446.86	30/04/2012
11	203,813.68	433.10	(1,018.18)	203,228.60	448.75	31/05/2012
12	203,228.60	431.86	(1,018.18)	202,642.28	450.66	31/06/2012
13	202,642.28	430.61	(1,018.18)	202,054.71	452.58	31/07/2012
14	202,054.71	429.37	(1,018.18)	201,465.90	454.50	31/08/2012
15	201,465.90	428.12	(1,018.18)	200,875.83	456.43	30/09/2012
16	200,875.83	426.88	(1,018.18)	200,284.51	458.36	31/10/2012
17	200,284.51	425.63	(1,018.18)	199,691.93	460.30	30/11/2012
18	199,691.93	424.38	(1,018.18)	199,098.09	462.24	31/12/2012
19	199,098.09	423.13	(1,018.18)	198,502.99	464.18	30/01/2013
20	198,502.99	421.88	(1,018.18)	197,906.63	466.13	31/02/2013
21	197,906.63	420.63	(1,018.18)	197,308.99	468.08	31/03/2013
22	197,308.99	419.38	(1,018.18)	196,710.06	470.03	30/04/2013
23	196,710.06	418.13	(1,018.18)	196,109.92	471.98	31/05/2013
24	196,109.92	416.88	(1,018.18)	195,508.47	473.93	30/06/2013
25	195,508.47	415.63	(1,018.18)	194,905.74	475.88	31/07/2013
26	194,905.74	414.38	(1,018.18)	194,301.75	477.83	31/08/2013
27	194,301.75	413.13	(1,018.18)	193,696.44	479.78	30/09/2013
28	193,696.44	411.88	(1,018.18)	193,089.86	481.73	31/10/2013
29	193,089.86	410.63	(1,018.18)	192,481.99	483.68	30/11/2013
30	192,481.99	409.38	(1,018.18)	191,872.84	485.63	31/12/2013
31	191,872.84	408.13	(1,018.18)	191,262.38	487.58	30/01/2014
32	191,262.38	406.88	(1,018.18)	190,650.63	489.53	29/02/2014
33	190,650.63	405.63	(1,018.18)	190,037.58	491.48	31/03/2014
34	190,037.58	404.38	(1,018.18)	189,423.23	493.43	30/04/2014
35	189,423.23	403.13	(1,018.18)	188,807.57	495.38	31/05/2014

Assumption 2.
Calculate the interest incurred by moving to [REDACTED] rates and then back to [REDACTED] rates over the remaining term

LOAN	209,596.67	193,560.93	184,541.36	174,100.55
YEARS	22.583	19.583	18.167	16.667
INT. RATE	5.100%	4.500%	4.250%	3.100%
NO. OF MTHS	270.996	234.996	218.004	200.004

Monthly payments	(1,303.96)	(1,240.68)	(1,216.36)	(1,115.74)
Total payments	(353,367.85)	(291,554.45)	(265,172.01)	(223,153.24)
Total interest	(143,771.18)	(97,993.52)	(80,630.65)	(49,052.99)

Month	Op bal loan	Int per mth	repayments	cls bal loan	Principal	Date
1	209,596.67	890.79	(1,303.96)	208,183.50	430.12	31/07/2011
2	209,183.50	888.03	(1,303.96)	206,768.57	431.95	31/08/2011
3	208,768.57	885.27	(1,303.96)	205,353.61	433.78	30/09/2011
4	208,353.61	882.51	(1,303.96)	203,938.65	435.63	31/10/2011
5	207,938.65	879.75	(1,303.96)	202,523.69	437.48	30/11/2011
6	207,523.69	877.00	(1,303.96)	201,108.73	439.34	31/12/2011
7	207,108.73	874.24	(1,303.96)	199,693.77	441.21	31/01/2012
8	206,693.77	871.48	(1,303.96)	198,278.81	443.08	29/02/2012
9	206,278.81	868.73	(1,303.96)	196,863.85	444.96	31/03/2012
10	205,863.85	865.97	(1,303.96)	195,448.89	446.86	30/04/2012
11	205,448.89	863.21	(1,303.96)	194,033.93	448.75	31/05/2012
12	205,033.93	860.46	(1,303.96)	192,618.97	450.66	31/06/2012
13	204,618.97	857.70	(1,303.96)	191,204.01	452.58	31/07/2012
14	204,204.01	854.94	(1,303.96)	189,789.05	454.50	30/08/2012
15	203,789.05	852.19	(1,303.96)	188,374.09	456.43	31/09/2012
16	203,374.09	849.43	(1,303.96)	186,959.13	458.36	30/10/2012
17	202,959.13	846.68	(1,303.96)	185,544.17	460.30	31/11/2012
18	202,544.17	843.92	(1,303.96)	184,129.21	462.24	30/12/2012
19	202,129.21	841.17	(1,303.96)	182,714.25	464.18	31/01/2013
20	201,714.25	838.41	(1,303.96)	181,300.29	466.13	31/02/2013
21	201,299.33	835.66	(1,303.96)	179,886.33	468.08	30/03/2013
22	200,884.41	832.90	(1,303.96)	178,472.37	470.03	31/04/2013
23	200,469.49	830.15	(1,303.96)	177,058.41	471.98	30/05/2013
24	199,054.57	827.39	(1,303.96)	175,644.45	473.93	31/06/2013
25	198,639.65	824.64	(1,303.96)	174,230.49	475.88	30/07/2013
26	198,224.73	821.88	(1,303.96)	172,816.53	477.83	31/08/2013
27	197,809.81	819.13	(1,303.96)	171,402.57	479.78	30/09/2013
28	197,394.89	816.37	(1,303.96)	170,000.01	481.73	31/10/2013
29	196,979.97	813.62	(1,303.96)	168,597.45	483.68	30/11/2013
30	196,565.05	810.86	(1,303.96)	167,195.89	485.63	31/12/2013
31	196,150.13	808.11	(1,303.96)	165,794.33	487.58	30/01/2014
32	195,735.21	805.35	(1,303.96)	164,392.77	489.53	29/02/2014
33	195,320.29	802.60	(1,303.96)	163,000.01	491.48	31/03/2014
34	194,905.37	799.84	(1,303.96)	161,607.25	493.43	30/04/2014
35	194,490.45	797.09	(1,303.96)	160,214.49	495.38	31/05/2014

Additional interest incurred by denying access to the Tracker Rate

Month	Overcharge	Cumulative overcharge
1	445.39	445.39
2	444.85	890.25
3	444.31	1,334.56
4	443.76	1,778.32
5	443.21	2,221.53
6	442.65	2,664.18
7	442.09	3,106.28
8	441.52	3,547.78
9	440.94	3,988.73
10	440.37	4,429.09
11	439.78	4,868.88
12	439.19	5,308.07
13	438.60	5,746.67
14	437.99	6,184.67
15	437.40	6,622.06
16	436.79	7,058.85
17	436.17	7,495.02
18	435.55	7,930.57
19	434.93	8,365.50
20	434.30	8,799.80
21	433.66	9,233.46
22	433.02	9,666.47
23	432.37	10,098.85
24	431.72	10,530.57
25	431.06	10,961.63
26	430.40	11,392.02
27	429.73	11,821.75
28	429.05	12,250.81
29	428.37	12,679.18
30	427.69	13,106.87
31	427.00	13,533.87
32	426.30	13,960.17
33	425.60	14,385.77
34	424.89	14,810.66
35	424.17	15,234.83

APPENDIX

Assumption 1.
Did not sell the property and had a tracker rate of 2.25% for the remaining term

LOAN	209,596.67	This is the value of the mortgage before transferring to [REDACTED]
YEARS	22.583	This is the remaining years left on the mortgage if we stayed with [REDACTED]
INT. RATE	2.550%	This is last known tracker rate provided by [REDACTED] to date of transfer
NO. OF MTHS	270.996	

Monthly payments	(1,018.18)
Total payments	(275,923.57)
Total interest	(86,326.90)

Month	Op bal loan	Int per mth	repayments	cls bal loan	Principal	Date
36	188,807.57	401.22	(1,018.18)	188,190.60	474.66	30/06/2014
37	188,190.60	399.91	(1,018.18)	187,572.32	475.66	31/07/2014
38	187,572.32	398.59	(1,018.18)	186,952.73	476.66	31/08/2014
39	186,952.73	397.27	(1,018.18)	186,331.82	477.66	30/09/2014
40	186,331.82	395.96	(1,018.18)	185,709.59	478.66	31/10/2014
41	185,709.59	394.63	(1,018.18)	185,086.04	479.66	30/11/2014
42	185,086.04	393.31	(1,018.18)	184,461.17	480.66	31/12/2014
43	184,461.17	391.98	(1,018.18)	183,834.97	481.66	31/01/2015
44	183,834.97	390.65	(1,018.18)	183,207.43	482.66	28/02/2015
45	183,207.43	389.32	(1,018.18)	182,578.56	483.66	31/03/2015
46	182,578.56	387.98	(1,018.18)	181,948.36	484.66	30/04/2015
47	181,948.36	386.64	(1,018.18)	181,316.82	485.66	31/05/2015
48	181,316.82	385.30	(1,018.18)	180,683.93	486.66	30/06/2015
49	180,683.93	383.95	(1,018.18)	180,049.70	487.66	31/07/2015
50	180,049.70	382.61	(1,018.18)	179,414.13	488.66	31/08/2015
51	179,414.13	381.26	(1,018.18)	178,777.20	489.66	30/09/2015
52	178,777.20	379.90	(1,018.18)	178,138.92	490.66	31/10/2015
53	178,138.92	378.55	(1,018.18)	177,499.28	491.66	30/11/2015
54	177,499.28	377.19	(1,018.18)	176,858.28	492.66	31/12/2015
55	176,858.28	375.82	(1,018.18)	176,215.92	493.66	31/01/2016
56	176,215.92	374.46	(1,018.18)	175,572.20	494.66	29/02/2016
57	175,572.20	373.09	(1,018.18)	174,928.04	495.66	31/03/2016
58	174,928.04	371.72	(1,018.18)	174,283.44	496.66	30/04/2016
59	174,283.44	370.35	(1,018.18)	173,638.40	497.66	31/05/2016
60	173,638.40	368.97	(1,018.18)	172,992.92	498.66	30/06/2016
61	172,992.92	367.59	(1,018.18)	172,347.00	499.66	31/07/2016
62	172,347.00	366.21	(1,018.18)	171,699.64	500.66	31/08/2016
63	171,699.64	364.82	(1,018.18)	171,051.85	501.66	30/09/2016
64	171,051.85	363.43	(1,018.18)	170,403.62	502.66	31/10/2016
65	170,403.62	362.04	(1,018.18)	169,754.95	503.66	30/11/2016
66	169,754.95	360.65	(1,018.18)	169,105.84	504.66	31/12/2016
67	169,105.84	359.25	(1,018.18)	168,456.29	505.66	31/01/2017
68</						

APPENDIX 1

Assumption 1.
Did not sell the property and had a tracker rate of 2.25% for the remaining term

LOAN	209,596.67	This is the value of the mortgage before transferring to [REDACTED]
YEARS	22.583	This is the remaining years left on the mortgage if we stayed with [REDACTED]
INT. RATE	2.550%	This is the last known tracker rate provided by [REDACTED] up to date of transfer
NO. OF MONTHS	270.996	

Monthly payments	(1,018.18)
Total payments	(275,923.57)
Total interest	(66,326.90)

Month	Op bal loan	Int per month	repayments	cls bal loan	Principal	Date
71	186,415.06	353.63	(1,018.18)	165,750.54	509.68	31/05/2017
72	185,760.54	352.22	(1,018.18)	165,084.58	510.68	30/06/2017
73	185,084.58	350.80	(1,018.18)	164,417.20	511.66	31/07/2017
74	184,417.20	349.38	(1,018.18)	163,748.40	512.66	31/08/2017
75	183,748.40	347.97	(1,018.18)	163,078.19	513.66	30/09/2017
76	183,078.19	346.54	(1,018.18)	162,406.54	514.66	31/10/2017
77	182,406.54	345.11	(1,018.18)	161,733.47	515.66	30/11/2017
78	181,733.47	343.68	(1,018.18)	161,058.85	516.66	31/12/2017
79	181,058.85	342.25	(1,018.18)	160,383.04	517.66	31/01/2018
80	180,383.04	340.81	(1,018.18)	159,705.67	518.66	28/02/2018
81	159,705.67	339.37	(1,018.18)	159,026.86	519.66	31/03/2018
82	159,026.86	337.93	(1,018.18)	158,346.61	520.58	30/04/2018
83	158,346.61	336.49	(1,018.18)	157,664.92	521.66	31/05/2018
84	157,664.92	335.04	(1,018.18)	156,981.77	522.89	30/06/2018
85	156,981.77	333.59	(1,018.18)	156,297.17	523.66	31/07/2018
86	156,297.17	332.13	(1,018.18)	155,611.12	524.66	31/08/2018
87	155,611.12	330.67	(1,018.18)	154,923.61	525.66	30/09/2018
88	154,923.61	329.21	(1,018.18)	154,234.64	526.66	31/10/2018
89	154,234.64	327.75	(1,018.18)	153,544.21	527.66	30/11/2018
90	153,544.21	326.28	(1,018.18)	152,852.31	528.66	31/12/2018
91	152,852.31	324.81	(1,018.18)	152,158.93	529.66	31/01/2019
92	152,158.93	323.34	(1,018.18)	151,464.09	530.66	28/02/2019
93	151,464.09	321.86	(1,018.18)	150,767.77	531.66	31/03/2019
94	150,767.77	320.38	(1,018.18)	150,069.97	532.66	30/04/2019
95	150,069.97	318.90	(1,018.18)	149,370.68	533.66	31/05/2019
96	149,370.68	317.41	(1,018.18)	148,669.91	534.66	30/06/2019
97	148,669.91	315.92	(1,018.18)	147,967.65	535.66	31/07/2019
98	147,967.65	314.43	(1,018.18)	147,263.90	536.66	31/08/2019
99	147,263.90	312.94	(1,018.18)	146,558.65	537.66	30/09/2019
100	146,558.65	311.44	(1,018.18)	145,851.91	538.66	31/10/2019
101	145,851.91	309.94	(1,018.18)	145,143.66	539.66	30/11/2019
102	145,143.66	308.43	(1,018.18)	144,433.90	540.66	31/12/2019
103	144,433.90	306.92	(1,018.18)	143,722.64	541.66	31/01/2020
104	143,722.64	305.41	(1,018.18)	143,009.87	542.66	28/02/2020
105	143,009.87	303.90	(1,018.18)	142,295.58	543.66	31/03/2020

Assumption 2.
Calculate the interest incurred by moving to [REDACTED] rates and then back to [REDACTED] rates over the remaining term

LOAN	209,596.67	193,560.93	184,541.36	174,100.55
YEARS	22.583	19.583	18.167	16.667
INT. RATE	5.100%	4.500%	4.250%	3.100%
NO. OF MONTHS	270.996	234.996	218.004	200.004

Monthly payments	(1,303.96)	(1,240.66)	(1,216.36)	(1,115.74)
Total payments	(353,367.85)	(291,554.45)	(265,172.01)	(223,153.24)
Total interest	(143,771.18)	(97,993.52)	(80,830.65)	(49,052.69)

Month	Op bal loan	Int per month	repayments	cls bal loan	Principal	Date
71	174,698.19	618.72	(1,216.36)	174,100.55	509.68	31/05/2017
72	174,100.55	486.76	(1,115.74)	173,434.56	610.68	30/06/2017
73	173,434.56	448.04	(1,115.74)	172,766.86	511.66	31/07/2017
74	172,766.86	448.31	(1,115.74)	172,097.43	512.66	31/08/2017
75	172,097.43	444.59	(1,115.74)	171,426.27	513.66	30/09/2017
76	171,426.27	442.85	(1,115.74)	170,753.38	514.66	31/10/2017
77	170,753.38	441.11	(1,115.74)	170,078.75	515.66	30/11/2017
78	170,078.75	439.37	(1,115.74)	169,402.37	516.66	31/12/2017
79	169,402.37	437.62	(1,115.74)	168,724.25	517.66	30/01/2018
80	168,724.25	435.87	(1,115.74)	168,044.38	518.66	28/02/2018
81	168,044.38	434.11	(1,115.74)	167,362.75	519.66	31/03/2018
82	167,362.75	432.35	(1,115.74)	166,679.36	520.66	30/04/2018
83	166,679.36	430.59	(1,115.74)	165,994.20	521.66	31/05/2018
84	165,994.20	428.82	(1,115.74)	165,307.28	522.66	30/06/2018
85	165,307.28	427.04	(1,115.74)	164,618.58	523.66	31/07/2018
86	164,618.58	425.26	(1,115.74)	163,928.10	524.66	31/08/2018
87	163,928.10	423.48	(1,115.74)	163,235.94	525.66	30/09/2018
88	163,235.94	421.69	(1,115.74)	162,541.78	526.66	31/10/2018
89	162,541.78	419.90	(1,115.74)	161,845.94	527.66	30/11/2018
90	161,845.94	418.10	(1,115.74)	161,148.30	528.66	31/12/2018
91	161,148.30	416.30	(1,115.74)	160,448.85	529.66	30/01/2019
92	160,448.85	414.49	(1,115.74)	159,747.60	530.66	28/02/2019
93	159,747.60	412.68	(1,115.74)	159,044.54	531.66	31/03/2019
94	159,044.54	410.87	(1,115.74)	158,339.66	532.66	30/04/2019
95	158,339.66	409.06	(1,115.74)	157,632.96	533.66	31/05/2019
96	157,632.96	407.22	(1,115.74)	156,924.44	534.66	30/06/2019
97	156,924.44	405.39	(1,115.74)	156,214.08	535.66	31/07/2019
98	156,214.08	403.55	(1,115.74)	155,501.89	536.66	31/08/2019
99	155,501.89	401.71	(1,115.74)	154,787.86	537.66	30/09/2019
100	154,787.86	399.87	(1,115.74)	154,071.98	538.66	31/10/2019
101	154,071.98	398.02	(1,115.74)	153,354.26	539.66	30/11/2019
102	153,354.26	396.17	(1,115.74)	152,634.58	540.66	31/12/2019
103	152,634.58	394.31	(1,115.74)	151,913.24	541.66	28/02/2020
104	151,913.24	392.44	(1,115.74)	151,189.94	542.66	31/03/2020
105	151,189.94	390.57	(1,115.74)	150,464.77	543.66	31/03/2020

Additional Interest Incurred by denying access to the Tracker Rate

Month	Monthly overcharge	Cumulative overcharge
71	265.98	265,987.61
72	97.54	26,065.15
73	97.23	26,162.39
74	96.93	26,279.31
75	96.63	26,375.93
76	96.31	26,472.24
77	96.00	26,568.24
78	95.69	26,663.93
79	95.37	26,759.30
80	95.06	26,854.36
81	94.74	26,949.10
82	94.42	27,043.52
83	94.10	27,137.62
84	93.78	27,231.40
85	93.46	27,324.86
86	93.13	27,417.99
87	92.81	27,510.80
88	92.48	27,603.28
89	92.15	27,695.43
90	91.82	27,787.25
91	91.49	27,878.74
92	91.16	27,969.90
93	90.82	28,060.72
94	90.49	28,151.22
95	90.15	28,241.35
96	89.81	28,331.15
97	89.46	28,420.62
98	89.12	28,509.74
99	88.78	28,598.51
100	88.43	28,686.95
101	88.08	28,775.03
102	87.73	28,862.77
103	87.38	28,950.15
104	87.03	29,037.18
105	86.68	29,123.86

APPENDIX 1

Assumption 1.
Did not sell the property and had a tracker rate of 2.25% for the remaining term

LOAN	209,596.67	This is the value of the mortgage before transferring to [REDACTED]
YEARS	22.583	This is the remaining years left on the mortgage if we stayed with [REDACTED]
INT. RATE	2.550%	This is the last known tracker rate provided by [REDACTED] up to date of transfer
NO. OF MONTHS	270.996	

Monthly payments	(1,018.18)
Total payments	(275,923.57)
Total interest	(66,326.90)

Month	Op bal loan	Int per month	repayments	cls bal loan	Principal	Date
106	142,295.58	302.38	(1,018.18)	141,578.78	544.66	30/04/2020
107	141,578.78	300.66	(1,018.18)	140,862.45	545.66	31/05/2020
108	140,862.45	299.33	(1,018.18)	140,143.60	546.66	30/06/2020
109	140,143.60	297.81	(1,018.18)	139,423.22	547.66	31/07/2020
110	139,423.22	296.27	(1,018.18)	138,701.31	548.66	31/08/2020
111	138,701.31	294.74	(1,018.18)	137,977.87	549.66	30/09/2020
112	137,977.87	293.20	(1,018.18)	137,252.89	550.66	31/10/2020
113	137,252.89	291.66	(1,018.18)	136,526.37	551.66	30/11/2020
114	136,526.37	290.12	(1,018.18)	135,798.31	552.66	31/12/2020
115	135,798.31	288.57	(1,018.18)	135,068.69	553.66	31/01/2021
116	135,068.69	287.02	(1,018.18)	134,337.53	554.66	28/02/2021
117	134,337.53	285.47	(1,018.18)	133,604.82	555.66	31/03/2021
118	133,604.82	283.91	(1,018.18)	132,870.54	556.66	30/04/2021
119	132,870.54	282.35	(1,018.18)	132,134.71	557.66	31/05/2021
120	132,134.71	280.79	(1,018.18)	131,397.31	558.66	30/06/2021
121	131,397.31	279.22	(1,018.18)	130,658.35	559.66	31/07/2021
122	130,658.35	277.65	(1,018.18)	129,917.82	560.66	31/08/2021
123	129,917.82	276.08	(1,018.18)	129,175.71	561.66	30/09/2021
124	129,175.71	274.50	(1,018.18)	128,432.02	562.66	31/10/2021
125	128,432.02	272.92	(1,018.18)	127,686.76	563.66	30/11/2021
126	127,686.76	271.33	(1,018.18)	126,939.91	564.66	31/12/2021
127	126,939.91	269.75	(1,018.18)	126,191.47	565.66	31/01/2022
128	126,191.47	268.16	(1,018.18)	125,441.45	566.66	28/02/2022
129	125,441.45	266.56	(1,018.18)	124,689.83	567.66	30/03/2022
130	124,689.83	264.97	(1,018.18)	123,936.61	568.66	31/05/2022
131	123,936.61	263.37	(1,018.18)	123,181.79	569.66	30/06/2022
132	123,181.79	261.76	(1,018.18)	122,425.37	570.66	31/07/2022
133	122,425.					

APPENDIX 1

Assumption 1. Did not sell the property and had a tracker rate of 2.25% for the remaining term

Summary table for Assumption 1: LOAN 209,596.67, YEARS 22.583, INT. RATE 2.500%, NO. OF MTHS 270.996

Summary table for Assumption 1: Monthly payments (1,018.18), Total payments (275,923.57), Total interest (66,326.90)

Main monthly payment schedule for Assumption 1, columns: Month, Op bal loan, Int per mth, repayments, c/c bal loan, Principal, Date

Assumption 2. Calculate the interest incurred by moving to [redacted] rates and then back to [redacted] rates over the remaining term

Summary table for Assumption 2: LOAN 209,596.67, YEARS 22.583, INT. RATE 5.000%, NO. OF MTHS 270.996

Summary table for Assumption 2: Monthly payments (1,303.96), Total payments (353,367.85), Total interest (143,771.18)

Main monthly payment schedule for Assumption 2, columns: Month, Op bal loan, Int per mth, repayments, c/c bal loan, Principal, Date

Additional interest incurred by [redacted] denying access to the Tracker Rate

Summary table for Additional Interest: Monthly overcharge, Cumulative overcharge

Main monthly payment schedule for Additional Interest, columns: Month, Monthly overcharge, Cumulative overcharge

APPENDIX 1

Assumption 1. Did not sell the property and had a tracker rate of 2.25% for the remaining term

Summary table for Assumption 1: LOAN 209,596.67, YEARS 22.583, INT. RATE 2.500%, NO. OF MTHS 270.996

Summary table for Assumption 1: Monthly payments (1,018.18), Total payments (275,923.57), Total interest (66,326.90)

Main monthly payment schedule for Assumption 1, columns: Month, Op bal loan, Int per mth, repayments, c/c bal loan, Principal, Date

Assumption 2. Calculate the interest incurred by moving to [redacted] rates and then back to [redacted] rates over the remaining term

Summary table for Assumption 2: LOAN 209,596.67, YEARS 22.583, INT. RATE 5.000%, NO. OF MTHS 270.996

Summary table for Assumption 2: Monthly payments (1,303.96), Total payments (353,367.85), Total interest (143,771.18)

Main monthly payment schedule for Assumption 2, columns: Month, Op bal loan, Int per mth, repayments, c/c bal loan, Principal, Date

Additional interest incurred by [redacted] denying access to the Tracker Rate

Summary table for Additional Interest: Monthly overcharge, Cumulative overcharge

Main monthly payment schedule for Additional Interest, columns: Month, Monthly overcharge, Cumulative overcharge

APPENDIX 1

Assumption 1.
Did not sell the property and had a tracker rate of 2.26% for the remaining term

LOAN	209,596.67	This is the value of the mortgage before transferring to [REDACTED]
YEARS	22.583	This is the remaining years left on the mortgage if we stayed with [REDACTED]
INT. RATE	2.550%	This is the last known tracker rate provided by [REDACTED] up to date of transfer
NO. OF MTHS	270.996	

Monthly payments	(1,018.18)
Total payments	(275,923.57)
Total interest	(66,326.90)

Month	Op bal loan	Int per mth	repayments	cls bal loan	Principal	Date
211	58,190.70	123.66	(1,018.18)	57,296.17	646.66	31/01/2029
212	57,296.17	121.75	(1,018.18)	56,399.74	650.66	28/02/2029
213	56,399.74	119.85	(1,018.18)	55,501.41	651.66	31/03/2029
214	55,501.41	117.94	(1,018.18)	54,601.17	652.66	30/04/2029
215	54,601.17	116.03	(1,018.18)	53,699.01	653.66	31/05/2029
216	53,699.01	114.11	(1,018.18)	52,794.94	654.66	30/06/2029
217	52,794.94	112.19	(1,018.18)	51,889.94	655.66	31/07/2029
218	51,889.94	110.26	(1,018.18)	50,981.02	656.66	31/08/2029
219	50,981.02	108.33	(1,018.18)	50,071.18	657.66	30/09/2029
220	50,071.18	106.40	(1,018.18)	49,159.39	658.66	31/10/2029
221	49,159.39	104.46	(1,018.18)	48,245.67	659.66	30/11/2029
222	48,245.67	102.52	(1,018.18)	47,330.01	660.66	31/12/2029
223	47,330.01	100.58	(1,018.18)	46,412.41	661.66	31/01/2030
224	46,412.41	98.63	(1,018.18)	45,492.85	662.66	28/02/2030
225	45,492.85	96.67	(1,018.18)	44,571.34	663.66	31/03/2030
226	44,571.34	94.71	(1,018.18)	43,647.87	664.66	30/04/2030
227	43,647.87	92.75	(1,018.18)	42,722.44	665.66	31/05/2030
228	42,722.44	90.79	(1,018.18)	41,795.04	666.66	30/06/2030
229	41,795.04	88.81	(1,018.18)	40,865.67	667.66	31/07/2030
230	40,865.67	86.84	(1,018.18)	39,934.33	668.66	30/08/2030
231	39,934.33	84.86	(1,018.18)	39,001.00	669.66	30/09/2030
232	39,001.00	82.88	(1,018.18)	38,065.70	670.66	31/10/2030
233	38,065.70	80.89	(1,018.18)	37,128.41	671.66	30/11/2030
234	37,128.41	78.90	(1,018.18)	36,189.12	672.66	31/12/2030
235	36,189.12	76.90	(1,018.18)	35,247.84	673.66	31/01/2031
236	35,247.84	74.90	(1,018.18)	34,304.56	674.66	28/02/2031
237	34,304.56	72.90	(1,018.18)	33,359.27	675.66	31/03/2031
238	33,359.27	70.89	(1,018.18)	32,411.98	676.66	30/04/2031
239	32,411.98	68.88	(1,018.18)	31,462.67	677.66	31/05/2031
240	31,462.67	66.86	(1,018.18)	30,511.34	678.66	30/06/2031
241	30,511.34	64.84	(1,018.18)	29,558.00	679.66	31/07/2031
242	29,558.00	62.81	(1,018.18)	28,602.62	680.66	31/08/2031
243	28,602.62	60.78	(1,018.18)	27,645.22	681.66	30/09/2031
244	27,645.22	58.75	(1,018.18)	26,685.78	682.66	31/10/2031
245	26,685.78	56.71	(1,018.18)	25,724.31	683.66	30/11/2031

Assumption 2.
Calculate the interest incurred by moving to [REDACTED] rates and then back to [REDACTED] rates over the remaining term

LOAN	209,596.67	193,560.93	184,541.36	174,100.55
YEARS	22.583	19.583	18.167	16.667
INT. RATE	5.100%	4.500%	4.250%	3.100%
NO. OF MTHS	270.996	234.996	218.004	200.004

Monthly payments	(1,303.96)	(1,240.68)	(1,216.36)	(1,115.74)
Total payments	(353,367.85)	(291,554.45)	(265,172.01)	(223,153.24)
Total interest	(143,771.18)	(97,993.52)	(80,630.65)	(49,052.69)

Month	Op bal loan	Int per mth	repayments	cls bal loan	Principal	Date
211	62,897.55	162.48	(1,115.74)	61,944.29	649.66	31/01/2029
212	61,944.29	160.02	(1,115.74)	60,988.57	650.66	28/02/2029
213	60,988.57	157.55	(1,115.74)	60,030.38	651.66	31/03/2029
214	60,030.38	155.08	(1,115.74)	59,069.71	652.66	30/04/2029
215	59,069.71	152.61	(1,115.74)	58,106.57	653.66	31/05/2029
216	58,106.57	150.11	(1,115.74)	57,140.93	654.66	30/06/2029
217	57,140.93	147.61	(1,115.74)	56,172.80	655.66	31/07/2029
218	56,172.80	145.11	(1,115.74)	55,202.17	656.66	31/08/2029
219	55,202.17	142.61	(1,115.74)	54,229.03	657.66	30/09/2029
220	54,229.03	140.09	(1,115.74)	53,253.38	658.66	31/10/2029
221	53,253.38	137.57	(1,115.74)	52,275.21	659.66	30/11/2029
222	52,275.21	135.04	(1,115.74)	51,294.51	660.66	31/12/2029
223	51,294.51	132.51	(1,115.74)	50,311.28	661.66	31/01/2030
224	50,311.28	129.97	(1,115.74)	49,325.50	662.66	28/02/2030
225	49,325.50	127.42	(1,115.74)	48,337.18	663.66	31/03/2030
226	48,337.18	124.87	(1,115.74)	47,346.31	664.66	30/04/2030
227	47,346.31	122.31	(1,115.74)	46,352.88	665.66	31/05/2030
228	46,352.88	119.74	(1,115.74)	45,356.86	666.66	30/06/2030
229	45,356.86	117.17	(1,115.74)	44,358.31	667.66	31/07/2030
230	44,358.31	114.59	(1,115.74)	43,357.18	668.66	31/08/2030
231	43,357.18	112.01	(1,115.74)	42,353.42	669.66	30/09/2030
232	42,353.42	109.41	(1,115.74)	41,347.09	670.66	31/10/2030
233	41,347.09	106.81	(1,115.74)	40,338.16	671.66	30/11/2030
234	40,338.16	104.21	(1,115.74)	39,326.62	672.66	31/12/2030
235	39,326.62	101.59	(1,115.74)	38,312.47	673.66	31/01/2031
236	38,312.47	98.97	(1,115.74)	37,295.70	674.66	28/02/2031
237	37,295.70	96.35	(1,115.74)	36,276.30	675.66	31/03/2031
238	36,276.30	93.71	(1,115.74)	35,254.27	676.66	30/04/2031
239	35,254.27	91.07	(1,115.74)	34,229.60	677.66	31/05/2031
240	34,229.60	88.43	(1,115.74)	33,202.28	678.66	30/06/2031
241	33,202.28	85.77	(1,115.74)	32,172.31	679.66	31/07/2031
242	32,172.31	83.11	(1,115.74)	31,139.68	680.66	31/08/2031
243	31,139.68	80.44	(1,115.74)	30,104.38	681.66	30/09/2031
244	30,104.38	77.77	(1,115.74)	29,066.41	682.66	31/10/2031
245	29,066.41	75.09	(1,115.74)	28,025.75	683.66	30/11/2031

Additional Interest incurred by [REDACTED] denying access to the Tracker Rate

Month	Monthly overcharge	Cumulative overcharge
211	38.83	35,944.22
212	38.27	35,982.49
213	37.70	36,020.26
214	37.14	36,057.33
215	36.57	36,093.90
216	36.00	36,129.90
217	35.42	36,165.33
218	34.85	36,200.18
219	34.27	36,234.45
220	33.69	36,268.14
221	33.11	36,301.24
222	32.52	36,333.77
223	31.93	36,365.70
224	31.34	36,397.05
225	30.75	36,427.80
226	30.16	36,457.95
227	29.56	36,487.51
228	28.96	36,516.47
229	28.36	36,544.83
230	27.75	36,572.58
231	27.15	36,599.73
232	26.54	36,626.27
233	25.92	36,652.19
234	25.31	36,677.50
235	24.69	36,702.19
236	24.07	36,726.26
237	23.45	36,749.71
238	22.83	36,772.54
239	22.20	36,794.74
240	21.57	36,816.30
241	20.94	36,837.24
242	20.30	36,857.54
243	19.66	36,877.20
244	19.02	36,896.23
245	18.38	36,914.61

APPENDIX 1

Assumption 1.
Did not sell the property and had a tracker rate of 2.26% for the remaining term

LOAN	209,596.67	This is the value of the mortgage before transferring to [REDACTED]
YEARS	22.583	This is the remaining years left on the mortgage if we stayed with [REDACTED]
INT. RATE	2.550%	This is the last known tracker rate provided by [REDACTED] up to date of transfer
NO. OF MTHS	270.996	

Monthly payments	(1,018.18)
Total payments	(275,923.57)
Total interest	(66,326.90)

Month	Op bal loan	Int per mth	repayments	cls bal loan	Principal	Date
246	25,724.31	54.66	(1,018.18)	24,780.79	684.66	31/12/2031
247	24,780.79	52.62	(1,018.18)	23,795.22	685.66	31/01/2032
248	23,795.22	50.56	(1,018.18)	22,827.60	686.66	28/02/2032
249	22,827.60	48.51	(1,018.18)	21,857.93	687.66	31/03/2032
250	21,857.93	46.45	(1,018.18)	20,886.20	688.66	30/04/2032
251	20,886.20	44.38	(1,018.18)	19,912.40	689.66	31/05/2032
252	19,912.40	42.31	(1,018.18)	18,936.53	690.66	30/06/2032
253	18,936.53	40.24	(1,018.18)	17,958.58	691.66	31/07/2032
254	17,958.58	38.16	(1,018.18)	16,978.56	692.66	31/08/2032
255	16,978.56	36.08	(1,018.18)	15,996.46	693.66	30/09/2032
256	15,996.46	33.99	(1,018.18)	15,012.27	694.66	31/10/2032
257	15,012.27	31.90	(1,018.18)	14,025.98	695.66	30/11/2032
258	14,025.98	29.81	(1,018.18)	13,037.61	696.66	31/12/2032
259	13,037.61	27.70	(1,018.18)	12,047.13	697.66	31/01/2033
260	12,047.13	25.60	(1,018.18)	11,054.55	698.66	28/02/2033
261	11,054.55	23.49	(1,018.18)	10,059.85	699.66	31/03/2033
262	10,059.85	21.38	(1,018.18)	9,063.05	700.66	30/04/2033
263	9,063.05	19.26	(1,018.18)	8,064.12	701.66	31/05/2033
264	8,064.12	17.14	(1,018.18)	7,063.08	702.66	30/06/2033
265	7,063.08	15.01	(1,018.18)	6,059.90	703.66	31/07/2033
266	6,059.90	12.88	(1,018.18)	5,054.60	704.66	30/08/2033
267	5,054.60	10.74	(1,018.18)	4,047.15	705.66	30/09/2033
268	4,047.15	8.60	(1,018.18)	3,037.57	706.66	31/10/2033
269	3,037.57	6.45	(1,018.18)	2,025.84	707.66	30/11/2033
270	2,025.84	4.30	(1,018.18)	1,011.96	708.66	31/12/2033
271	1,011.96	2.15	(1,018.18)	(4.07)	709.66	31/01/2034

Assumption 2.
Calculate the interest incurred by moving to [REDACTED] rates and then back to [REDACTED] rates over the remaining term

LOAN	209,596.67	193,560.93	184,541.36	174,100.55
YEARS	22.583	19.583	18.167	16.667
INT. RATE	5.100%	4.500%	4.250%	3.100%
NO. OF MTHS	270.996	234.996	218.004	200.004

Monthly payments	(1,303.96)	(1,240.68)	(1,216.36)	(1,115.74)
Total payments	(353,367.85)	(291,554.45)	(265,172.01)	(223,153.24)
Total interest	(143,771.18)	(97,993.52)	(80,630.65)	(49,052.69)

Month	Op bal loan	Int per mth	repayments	cls bal loan	Principal	Date
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“

1. At the time of the sale the value of the mortgage was EUR 209,597
2. The last known tracker rate was 2.55%, assume no change in this rate for the remaining term
3. The remaining term of the mortgage was 22.58 years
4. The total tracker interest incurred would be approx. EUR 66,327
5. Assume the same mortgage value and term but this time apply the mortgage rates incurred switching to [alternative Provider] 5.1%, 4.5% & 4.25% and then switching back to [Provider] currently 3.1%.
6. Assume the current mortgage rate of 3.1% remains unchanged for the remaining term
7. The total variable interest incurred would be EUR 103,485”

I understand from the Complainants’ assumptions above that if they did not sell the mortgaged property in **June 2011** and if a tracker interest rate of 2.55% was restored on their mortgage loan account ending **6638** from **31 July 2011** to **31 January 2034** they would have incurred interest payments in the amount of €66,327 compared to interest payments in the amount of €103,485 on foot of selling the mortgaged property, purchasing a new property, taking a new mortgage loan out with an alternative provider and subsequently switching their new mortgage loan account to the Provider. The difference between the two amounts being €37,158. The Complainants note that this additional cost of €37,158 does not take into account the current tracker interest rate therefore they maintain that the actual additional interest could be considerably higher.

While I have considered the Complainants’ assumptions, I do not accept that the Complainants’ reasoning and estimation as to the additional interest payments is entirely accurate as it does not take into account other potential factors or “assumptions”. It cannot be proven, for example, that the Complainants intended to remain in the mortgaged property and sought a tracker rate for the remaining term of the mortgage. The Complainants’ assumptions do not take into account interest incurred in the event that the Complainants retained the mortgaged property with the tracker interest rate restored and sold the mortgaged property at a later date or fluctuations in the tracker interest rate or indeed the variable rate with the alternative provider and the Provider. Therefore, I do not accept the Complainants’ contention that they will have overpaid interest to the value of €37,158 since **2011** over the life of the mortgage loan.

The Complainants further submit that they have not calculated the additional loss incurred as a result of selling the mortgaged property in **2011** during the economic downturn “which had seen properties lose over 50% of their value”. It appears from the Mortgage Loan Offer Letter dated **27 November 2003** that the purchase price of the mortgaged property in **2003** was €270,000 and the mortgaged property sold for €255,000 in **2011**

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however the Complainants had equity on foot of the sale. The Provider on the other hand submits that the Complainants' new property has increased in value to a greater extent than the mortgaged property that they sold in **2011**. The Provider is of the view that the Complainants "*traded up*" by moving to a new property in a better location at a time when market conditions meant it was favourable to do so, and that their "*decision was a shrewd one and based on an intelligent interpretation of the property market and prevailing prices*". The Provider further submits that the Complainants have achieved a potential equity gain of €200,000 by selling the mortgaged property in **2011** and purchasing the new property. In this regard the Provider has submitted a **Valuation Report** dated **27 February 2017** that references the "*current valuation figure*" of the new property at that time as €450,000.

The Complainants contend that "*the value of [their] current property should be disregarded when considering if [the Provider] should pay any additional compensation*" and that they have "*no intention of selling [their] property to realise any gain in value*". In this regard, it is important for both parties to understand that any fluctuation in the value of either the mortgaged property or the new property is not something that can be accurately predicted. The prevailing conditions of **mid-2011** were that residential property prices were remarkably low. It is entirely conceivable that the Complainants sought to take advantage of this fact, as is submitted by the Provider. However, I am of the view that the Complainants' could not have accurately known the future value of their new property at the time they decided to sell the mortgaged property in **2011**.

The Complainants submit in their correspondence to the Independent Secretariat, which provides administrative support to the Independent Appeals Panel, that the Provider issued the letter dated **15 December 2017**, outlining the Provider's failure in respect of mortgage loan account ending **6638** and the offer of redress and compensation to the Complainants' old address (the address of the mortgaged property). The Complainants explain that they did not in fact receive notice of this letter until **March 2018**, when one of the Complainants received a text message reminder from the Provider. Furthermore, the Complainants state that the Provider failed to notify the Independent Appeals Panel of the Complainants' new correspondence address, and as a result the appeals pack was also sent to the Complainants' previous address. It is important to note that I have not been provided with any evidence from the Complainants that they notified the Provider of the change in correspondence address.

General Condition 1 (c) of Part 5- General Conditions of the Mortgage Loan Offer Letter dated **27 November 2003** details as follows;

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“Any notice or demand shall be sufficiently given to or served on the Borrower if it is left or sent by ordinary pre-paid post addressed to the Borrower at the address of the Property or the Borrower’s last place of abode...”

As such, it is important for the Complainants to understand that in the absence of a specific instruction from them to change the correspondence address in respect of mortgage loan account ending **6638**, the Provider would continue to send correspondence to the address of the mortgaged property. In circumstances where the Complainants were afforded 12 months to appeal the Provider’s offer of redress and compensation from the date of receipt of the redress and compensation pack, I am of the view that the Complainants were not inconvenienced by the fact that the correspondence was sent to their old address in **December 2017** and they only received it in **March 2018** as they would have been afforded 12 months from **March 2018** to lodge an appeal. In any event the Complainants lodged their appeal in **July 2018**.

Further, I do not accept that the Provider failed to notify the Independent Appeals Panel of the Complainants’ new correspondence address. In this regard, it is important for the Complainants to understand that the Independent Secretariat and the Independent Appeals Panel are separate and independent bodies from the Provider. Therefore, and as outlined by the Provider in its letter to the Complainants on **16 April 2018**, it was up to the Complainants to request an “*appeals pack*” from the Independent Secretariat. I note that the Provider also furnished the Complainants with the relevant contact details of the Independent Secretariat under cover of letter dated **16 April 2018**.

The Provider’s failure has been accepted by it, and redress of €3,236.42 (to include a payment for the time value of money of €154.12) and compensation of €1,300 (to include the additional compensation of €650 awarded by the Independent Appeals Panel) has been paid to the Complainants together with the sum of €750 for legal advice. Having considered the evidence and the circumstances of this complaint, I am of the view that the level of compensation paid by the Provider is reasonable for the Provider’s failure in overcharging the Complainants on their mortgage loan account ending **6638**. While I acknowledge that the Complainants may not have been able to make a fully informed decision with regard to the sale of the mortgaged property as they were not aware that a tracker rate of interest should have been applied to their mortgage loan account, the Complainants have not furnished any evidence to show that they have suffered any actual economic hardship or adverse financial effects on foot of the sale of the mortgaged property in **June 2011**.

In fact, the Complainants approached the Provider seeking additional funding after the mortgaged property went sale agreed and there is no evidence to indicate that the Complainants were unable to meet their monthly mortgage repayments or in financial

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difficulties prior to the sale of the mortgaged property. Moreover, the evidence does not support the Complainants' contention that if they had known that they were entitled to a tracker interest rate they would not have sold the mortgaged property. While I appreciate that, with the benefit of hindsight, knowledge of the availability of a tracker interest rate may have been a factor in the Complainants' decision whether or not to sell the mortgaged property, I cannot accept that it was the only factor at play in the Complainants' decision making. I accept that the amount of compensation which has been paid to the Complainants is reasonable in the circumstances of this particular matter.

For the reasons outlined 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**

18 February 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

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

