



<b><u>Decision Ref:</u></b>	2021-0133
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer appropriate compensation or redress CBI Examination
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to a mortgage loan account held by the Complainant with the Provider and an overcharge of interest in the amount of €7,748.71 on that mortgage loan account.

The mortgage loan was drawn down in **February 2006** in the amount of €140,000. The term of the loan was 25 years and the Loan Offer dated **21 October 2005** provided for a “*Variable Commercial Base Rate*” of 3.25%. The mortgage loan that is the subject of this complaint is secured on the Complainant’s investment property.

The Complainant’s mortgage loan account was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the “Examination”). The Provider identified that a failure had occurred on the mortgage loan account and as such the mortgage loan account was deemed to be impacted under that Examination.

The Provider wrote to the Complainant on **9 December 2016** advising him of the error that had occurred on his mortgage loan account.

The Provider detailed the circumstances giving rise to the error as follows;

*“When you took out your mortgage we gave you the wrong set of terms and conditions due to a manual error.*”

*Despite this error, we have now decided to honour these terms and conditions. These terms and conditions gave you a guarantee that your rate (the 'Buy to Let' rate) could not be more than 1.50% over the European Central Bank (ECB) rate. But the actual rate on your account was often higher than this."*

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

***"What does this mean for you?***

*Now that we have completed the detailed review of your mortgage account and reduced your interest rate, we have been able to calculate the redress and compensation that is due from 31/10/2008, which was when your account was first impacted."*

The period of overcharging on the mortgage loan account was from **October 2008** until **August 2016**.

The Complainant's mortgage loan account was restored to a tracker interest rate of ECB + 1.50% in on **31 August 2016**.

The Provider made an offer of redress and compensation to the Complainant. The amount of €3,596.03 was allocated to reduce the mortgage balance and the offer in the amount of €10,095.93 made by the Provider to the Complainant comprised of the following;

**1. Redress of €8,568.58 covering:**

*"The amount overpaid while on the incorrect rate... Interest to compensate you for not having access to the money you overpaid on your mortgage account (Time Value of Money)....We have also corrected the balance on your account"*

**2. Compensation of €912.35:**

*"Compensation for our failure."*

**3. Independent Professional Advice payment of €615.00:**

*"A payment towards the cost of obtaining independent professional advice that you may wish to seek on this matter."*

In **March 2018**, the Complainant appealed the redress and compensation offering to the Independent Appeals Panel. The basis of the Complainant's appeal was the inadequacy of the redress and compensation offering.

The Independent Appeals Panel decided on **17 September 2018** that the Complainant was unsuccessful in his appeal. The key factors in determining the decision by the Appeals Panel with respect to financial losses claimed were as follows;

*"The Panel has carefully considered the appeal of [Complainant] in accordance with the Terms of Reference and Panel Rules.*

*The Panel decided, based on the information and documentation received from the Bank and [the Complainant], that there was insufficient evidence to support the claims for financial losses contained in the Appeal."*

The Complainant rejected the Independent Appeals Panel's decision on **7 October 2018**. As the Complainant had been through the Provider's internal appeals process, this office was in a position to progress the investigation and adjudication of the complaint.

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

### **The Complainant's Case**

The Complainant submits that he took out a 'Buy to Let' (BTL) mortgage with the Provider in **January 2006**. The Complainant states that the BTL rate was guaranteed not to exceed ECB + 1.5% over the 25 year term of the mortgage.

The Complainant submits that he noticed that his mortgage repayments were exceeding the ECB rates in **2010**. He states that he rang the Provider in relation to the interest rate rising above ECB + 1.5% but he states he was told that his mortgage loan account was not tied to the ECB rate. The Complainant details that he tried to contact the Provider a number of times and requested the Provider to check the mortgage paper work but he "*got nowhere*".

The Complainant submits that "*[g]oing the legal route wasn't an option*" for a number of reasons which included cost, time and no guarantee of a favourable outcome. The Complainant states that this "*was a huge game changer*" for him and his business.

/Cont'd...

He details that his business *“was very vulnerable”* and that *“action was needed before [he] went into the red”*. The Complainant submits that at this time he had four other tracker mortgages and he states that if he had one late mortgage repayment he would have risked losing the tracker rates on all these loans.

The Complainant maintains that he was *“left with no other choice”* but to *“sell assets to reduce this liability and pay down 90k of this mortgage”*. The Complainant details that he made lump sum payments of €25,000 in **December 2010** and €65,000 in **December 2011** from the principal amount of his mortgage loan. The Complainant asserts that this was *“not an option”* and *“money would have run out well before the end of the mortgage”*.

The Complainant further details that as a result of having to use his *“safety net”* of €90,000 to reduce the capital amount on his mortgage loan account, he was left *“in a weak position”* and he *“was left with no choice”* but to sell an investment property. He states that he had to sell this investment property at a *“very poor price”* in **September 2013**.

The Complainant states that when he received correspondence from the Provider in **2016** stating that his interest rate on his mortgage loan account was tied to the ECB rate he immediately wrote a letter seeking restoration of the €90,000 lending facility. The Complainant submits that the Provider rejected this request on that basis that it had never requested him to make these lump sum payments.

The Complainant asserts that the Provider’s behaviour caused him *“a lot of worry and stress”*. He states that he was exposed to *“unquantifiable financial liability”* and he was left with *“no choice but to make early repayments”*. The Complainant states that his rental business is his full time occupation and the failure by the Provider to apply a tracker interest rate to his mortgage loan account *“had a serious impact on [his] business and [he is] now trying to get [his] business back on track”*. The Complainant contends that the compensation offer made by the Provider was *“totally inadequate”*.

In relation to the Provider’s submissions that it received no indication that he was under financial difficulty the Complainant states that he was advised by his *“business friends”* that if he disclosed his *“poor financial situation”* to the Provider, this might have led to his accounts being labelled as *“distressed”* which would not have benefitted him in any way. The Complainant states that he was further advised by his friends to not take legal action unless he had *“deep pockets and time”*.

The Complainant is seeking additional redress and compensation in respect of the following;

- i. The Complainant submits that he made lump sum redemption payments to the mortgage loan account totalling €90,000 (€25,000 in **December 2010** and €65,000 in **December 2011**) in an attempt to mitigate against the high interest rate which was incorrectly applied to his mortgage loan account. He estimates that this has cost him approximately €27,000 in overpaid interest. He is seeking the following;
  - Restoration of the lending facility for the €90,000 at the original tracker interest rate; or,
  - Compensation for the loss of the lending facility for the €90,000 at the original tracker interest rate.
- ii. The Complainant submits that he was "*left with no choice*" but to sell assets due to the impact of the overcharging, including the sale of an investment property in **September 2013**.

### The Provider's Case

The Provider submits that the criteria it considered in setting the level of redress and compensation offered to the Complainant align to the principles of redress outlined under the Central Bank directed Tracker Mortgage Examination guidelines, in particular, that redress will result in impacted customers being returned to the position they should have been in if the issue had not occurred, and that compensation is to be reasonable and reflect the detriment incurred.

The Provider submits that the mortgage loan account was advanced based on a signed and accepted Letter of Offer dated **21 October 2005**. The Provider states that the mortgage loan was drawn down on **10 February 2006** and provided for a sum of €140,000 over a period of 25 years. The Provider states that when the Complainants took out the mortgage loan, the Provider gave them the wrong set of terms and conditions due to a manual error. It says that despite this error, it has now honoured these terms and conditions, which gave a guarantee that the interest rate could not be more than 1.50% over the European Central Bank rate. It states that to redress the Complainants in line with the Central Bank's requirements, the interest rate was reduced and redress and compensation was calculated from **31 October 2008**, which was when the account first became impacted.

/Cont'd...

The Provider is satisfied that the redress and compensation offering it made to the Complainant places the Complainant in the position he would have been in had the failure identified by the Provider not occurred. In this regard the Provider states that it refunded the Complainant the interest that was overcharged which amounted to €8,568.58, which included a time value of money ("TVM") payment of €819.87 which compensated the Complainant for not having the benefit of the money which formed the overcharge. The Provider also details that a compensation payment of €912.35 was made to the Complainant which was *"to compensate for potential inconvenience, harm, personal suffering and hardship"*. The Provider states that this compensation amount was calculated at 7.5% of the amount of the overcharge, which it states was €11,344.74 in the Complainant's case plus 7.5% of the TVM payment of €819.87. The Provider states that it also made a payment of €615 towards independent professional advice. It states that it reduced the balance of the mortgage by €3,596.03 in order to reflect what the balance should have been had the Provider's failure not occurred.

The Provider submits that this redress and compensation was calculated using its 'Compensation Model' which was designed to meet the Central Bank's principles for redress under the Examination. The Provider asserts that it *"believes that the redress and compensation paid is fair and reasonable."*

The Provider submits that the Complainant's decision to make lump sum payments to the mortgage loan account of €25,000 in **December 2010** and €65,000 in **December 2011** was made independently by the Complainant. The Provider states that it did not request or require that the Complainant use his own funds or resources to reduce the balance on the mortgage loan account. The Provider submits that it *"is not unusual for customers in the normal course of business, to make unscheduled payments to their mortgage."* The Provider further details that it has no record of any complaints in **2010** or **2011** by the Complainant in relation to the interest rate which was applied to his mortgage loan account. In response to the Complainant's claim for the Provider to restore the lending facility for the total lump sum payment of €90,000 and request for compensation for the loss of the lending facility for the €90,000 at the original tracker interest rate, the Provider asserts that the redress and compensation payment already made is *"fair and reasonable"* and *"there is no basis"* to restore the lending facility of €90,000 or to compensate for the loss of the lending facility at the original tracker interest rate.

As regards the Complainant's claim that he was *"left with no choice"* but to sell assets (to include an investment property in **2013**) due to the impact of the overcharging, the Provider states it had no knowledge of any potential financial difficulties that the Complainant was experiencing at that time.

/Cont'd...

The Provider submits that there is no evidence to support the Complainant's submissions that he was having trouble meeting his mortgage repayments. It states that where customers request forbearance in cases of financial difficulty, the Provider has a process in place for assessing the particular case and where available, offering a number of different options to the customers with a view to putting in place a solution that is supportive and appropriate. It states that this "*support*" was never sought by the Complainant. It details that all repayments were met on the mortgage since inception and no forbearance measures were sought at any point throughout the life of the loan. The Provider asserts that it "*did not at any stage request the Complainant to sell his investment property*" in **2013**. The Provider contends that this was an "*independent decision*" made by the Complainant and refutes the Complainant's assertion that he was "*left with no choice*" but to sell assets due to the impact of the overcharging.

The Provider is of the view that the redress and compensation payment made was "*fair*" and "*reasonable*". It states that the Complainant's appeal was heard by the Independent Appeals Panel which also agreed that the redress and compensation received by the Complainant was sufficient and there was "*insufficient evidence to support the Complainant's claims for financial and non-financial losses*".

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider has failed to offer adequate redress and compensation to the Complainant for the Provider's failure on his 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 Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

/Cont'd...

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 14 April 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 lengthy and detailed submissions about its view that the terms and conditions that were enclosed with the Complainant's mortgage loan account in error but it has "*has decided to honour*" the terms and conditions and has rectified and redressed the Complainant's account as a result. I will not be making any determination in this decision 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 determination is whether the Provider has offered adequate compensation to the Complainant by consequence of its failure in relation to his mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainant dated **17 August 2016**.

The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Central Bank's principles for redress. The redress payment of €10,095.93 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €819.87 to reflect the TVM. The mortgage loan account balance was also reduced by €3,596.03 in order to reflect what the balance should have been if the error had not occurred. The Provider also paid the Complainant compensation of €912.35 and €615 for the purposes of seeking legal advice. The Provider submits that the redress and compensation payment is fair and reasonable.

The Complainant has sought additional compensation because he made two lump sum payments totalling €90,000 in **2010** and **2011**. The Complainant submits that the reason he made these part redemption payments was in an attempt to mitigate against the high interest rate which was incorrectly applied to his mortgage loan account.

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

/Cont'd...



A **Loan Offer** dated **21 October 2005** issued to the Complainant which detailed as follows;

1. *Amount:* €140,000.00 (one hundred and forty thousand euro)
2. *Term & Nature:* 25 year Repayment Loan
3. *Purpose of Loan:* Towards the purchase of [Property Address] at a cost of 419,000 plus fees.
4. *Rate of Interest:* Variable at 3.25% p.a.  
Rate Basis: Variable Commercial Base Rate
5. *Repayments:* €682.24 per month comprising principal and interest payments based on the above variable rate.

*All Payments shall be made by monthly direct debit on dates as may be determined by [the Provider] and advised to the Borrower in writing. Payments will vary in line with movements in the interest rate."*

The **Standard Commercial Loan Conditions** detail as follows:

**"1. DEFINITIONS**

...

*"Buy to Let Rate" shall be the rate as determined by [the Provider] from time to time for variable residential investment loans. The dates on which the "Buy to Let Rate" shall vary shall be determined by the timing of changes to the ECB Rate and shall take place on the sooner of:-*

...

*Subject to the timing differences outlined above, [the Provider] shall undertake that the variable "Buy to Let" Rate shall not at any time be higher than 1.5% over the ECB rate, throughout the term of the Loan."*

The **Acceptance** of the loan was signed by the Complainant on **21 November 2005**. The Complainant's mortgage loan account was drawn down in **February 2006** on the variable commercial base rate of 3.25%.

The overcharge of interest identified by the Examination commenced on the Complainant's mortgage loan account from **October 2008**.

/Cont'd...

I will now examine the level of overcharging that occurred on the Complainant's mortgage loan account prior to the Complainant making the lump sum payments in **December 2010** and **December 2011** in order to determine if the level of overcharging on the Complainant's mortgage loan account reasonably necessitated these payments.

The Complainant made the first part redemption payment of €25,000 in **December 2010**. I note that the Provider's call log from **18 October 2010** records the following;

*"confd payment and term if mem makes a part red of 50k"*

The **2010 Annual Loan Statement** submitted in evidence by the Provider shows that a lump sum payment of €25,000 was subsequently made on **9 December 2010**.

In the period between **November 2008** and **December 2010**, the mortgage account remained on the Provider's variable commercial rate which fluctuated between 4.37% and 5.62%. The tracker interest rate that should have been applied was ECB + 1.5% from **November 2008**. Between **November 2008** and **December 2010**, the overall tracker rate (ECB + margin) fluctuated between a rate of 2.50% and 5.25%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged between **November 2008** and **December 2010** is demonstrated in column 4 of the table below.

Date range (inclusive)	Rate charged (Variable)	Rate that would have been charged (Tracker)	Difference in Interest rate charged vs the tracker interest rate	Amount of overcharged interest per month
<b>Nov 2008</b>	5.62%	5.25%	0.37%	€40.69
<b>Dec 2008</b>	5.62%	4.75%	0.87%	€95.68
<b>Jan 2009</b>	4.87%	4.00%	0.87%	€95.79
<b>Feb 2009 – Mar 2009</b>	4.87%	3.50%	1.37%	Between €150.49 and €150.62
<b>Apr 2009</b>	4.62%	3.00%	1.62%	€177.74
<b>May 2009</b>	4.37%	2.75%	1.62%	€177.65
<b>Jun 2009 –Dec 2010</b>	4.37%	2.50%	1.87%	Between €203.56 and €204.56

/Cont'd...

The **2008 Annual Loan Statements** submitted in evidence show that the interest rate on the mortgage loan was rising in advance of the overcharge commencing on the mortgage loan account from **November 2008**, as follows:

**30 April 2008:** from 4.995% to 5.07%

**30 June 2008:** from 5.07% to 5.27%

**31 July 2008:** from 5.27% to 5.62%

However, the above table shows that the variable interest rate began to decrease from 5.62% in **November 2008** to 4.87% from **January to March 2009** and to 4.37% from **May 2009 to December 2010**, at which time the Complainant made a part redemption payment of €25,000.

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 + 1.5%) had been applied to the mortgage account between **November 2008** and **December 2010**, is also represented in the table below at column 4.

<b>Date range (inclusive)</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
<b>Nov 2008</b>	€865.62	€837.38	€28.24
<b>Dec 2008</b>	€865.62	€800.08	€65.54
<b>Jan 2009</b>	€809.19	€746.01	€63.18
<b>Feb 2009 – Mar 2009</b>	€809.19	€711.23	€97.96
<b>Apr 2009</b>	€790.98	€677.60	€113.38
<b>May 2009</b>	€773.06	€661.19	€111.87
<b>Jun 2009 –Dec 2010</b>	€773.06	€645.07	€127.99

During the period between **November 2008** and **December 2010**, the overcharging per month ranged from €28.24 to €127.99. The part redemption payment of €25,000 made in **December 2010** reduced the balance on the Complainant's mortgage loan account from €123,748.82 to €98,784.82.

The Complainant appears to submit that he would not have made this part redemption payment in **December 2010** had the tracker interest rate of ECB + 1.5% been applied to his mortgage loan at the time.

/Cont'd...

The Complainant submits that the Provider's "*variable interest rate was rising*" at the time he made the lump sum payments to his mortgage loan account. It is unclear as to whether the Complainant is referring to the period leading up to the part redemption payment in **December 2010** or the subsequent payment in **December 2011**. The evidence does not support the Complainant's submission that the Provider's "*variable interest rate was rising*" in the period preceding the payment made in **December 2010**. The variable interest rate that was applied to the Complainant's mortgage loan account decreased to 4.37% during the 12 month period prior to the Complainant making a part redemption payment in **December 2010**. This was a reduction in interest of 1.25% since the overcharging commenced in **November 2008**. Meanwhile, the tracker interest rate, had it been applied to the Complainant's mortgage loan account had decreased to 2.50% during this same 12 month period from **January 2010** to **December 2010**.

The monthly overpayment on the mortgage loan during this 12 month period at the time was €127.99 per month which I acknowledge is a significant amount to be overpaying on a monthly basis. The Complainant makes reference to having contacted the Provider in **2010** when he noticed that his "*repayments were exceeding the ECB rates*". The Complainant states that he was "*told the mortgage was not tied to ECB rate*" and he "*tried a number of times to correct this by ringing them asking them to check the paper work but I got nowhere*". I have not been provided with any evidence of these communications between the Complainant and the Provider.

Further, I have not been provided with any evidence that would indicate that the Complainant was in financial difficulty at this time or contacted the Provider to seek forbearance in the form of reduced monthly payments. I note the Complainant's assertion that he "*was advised by my business friends, not to tell [Provider] of my poor financial situation, as my account could be class[ed] as "distress mortgage/or account" and it would not benefit me in any way*". For whatever reason, the evidence indicates that the Complainant did not engage with the Provider as to his financial circumstances and decided to make a part redemption payment of €25,000 of his own volition without any request by the Provider to do so. Therefore, the evidence does not support the Complainant's position that the application of the variable interest rate instead of the tracker interest rate in the period between **November 2008** and **December 2010**, influenced the Complainant's decision to make the capital payment of €25,000.

In the period between **January 2011** and **December 2011**, the mortgage loan account remained on the Provider's variable commercial rate which fluctuated between 4.37% and 5.17%. Between **January 2011** and **December 2011**, the overall tracker rate (ECB + 1.50%) fluctuated between a rate of 2.50% and 3.00%.

/Cont'd...

The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged between **January 2011** and **December 2011** is demonstrated in column 4 of the table below.

<b>Date range (inclusive)</b>	<b>Rate charged (Variable)</b>	<b>Rate that would have been charged (Tracker)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Amount of overcharged interest per month</b>
<b>Jan 2011- Mar 2011</b>	4.37%	2.50%	1.87%	Between €136.94 and €164.52
<b>Apr 2011- Jul 2011</b>	4.67%	2.75%	1.92%	Between €169.38 and €188.77
<b>Aug 2011- Sep 2011</b>	4.92%	3.00%	1.92%	€170.62
<b>Oct 2011- Nov 2011</b>	5.17%	3.00%	2.17%	Between €190.84 and €198.87
<b>Dec 2011</b>	4.92%	2.75%	2.17%	€189.53

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 + 1.5%) had been applied to the mortgage account between **January 2011** and **December 2011**, is represented in the table below at column 4.

<b>Date Range (inclusive)</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overpayment per month</b>
<b>Jan 2011</b>	€733.06	€645.07	€127.99
<b>Feb 2011- Mar 2011</b>	€617.45	€513.17	€104.28
<b>Apr 2011</b>	€632.96	€513.17	€119.17
<b>May 2011-Jul 2011</b>	€632.96	€524.64	€108.32
<b>Aug 2011- Sep 2011</b>	€646.22	€536.30	€109.92
<b>Oct 2011- Nov 2011</b>	€659.54	€536.30	€123.24
<b>Dec 2011</b>	€646.31	€524.46	€121.85

/Cont'd...

I note that the Provider's call log from **26 July 2011** records as follows;

*"...cfd effects of a 30k pat red. Cfd that we cannot negotiate rate. Cfd very approx. balance and term remaining."*

A further part redemption payment was made by the Complainant to his mortgage loan account on **2 December 2011** in the amount of €65,000. The capital payment of €65,000 made in **December 2011** reduced the balance on the Complainant's mortgage loan account from €96,377.02 to €31,377.02.

The Complainant appears to submit that he would not have made this capital payment in **December 2011** had the tracker interest rate of ECB + 1.5% been applied to his mortgage loan at the time.

I accept that interest rates were rising generally at the time. The variable interest rate that was applied to the Complainant's mortgage loan account increased from 4.37% in **January 2011** to 5.17% in **October** and **November 2011** and decreased to 4.92% in **December 2011** when the capital payment was made. Equally, I note that the tracker interest rate, had it been applied to the Complainant's mortgage loan account would also have increased from 2.50% in **January 2011** to 3.00% in **October** and **November 2011** and to 2.75% in **December 2011**. During the period between **January 2011** and **December 2011**, the monthly overpayments on the mortgage loan were between €104.28 and €121.85, which I accept are significant overpayments on a monthly basis.

The Complainant appears to submit that the failure by the Provider to apply the tracker interest rate of ECB + 1.50% to his mortgage loan account was a *"huge game changer for me and my business"*. The Complainant asserts that his business *"was very vulnerable and action was needed before I went into the red"*. Despite the Complainant's assertions, I have not been provided with any evidence that would indicate that the Complainant was in financial difficulty or there was a shortfall in his income at this time. It would appear to me that there is in fact evidence to the contrary, in that, the Complainant had funds of €25,000 available to him in **December 2010** and then a further €65,000 built up in funds by **December 2011**.

Further, I have not been provided with any evidence that the Complainant contacted the Provider to discuss any change in his financial circumstances in order to allow the Provider to assess his mortgage loan account for forbearance. Therefore, the evidence does not support the Complainant's submission that making the part redemption payment was *"not an option"* in circumstances where the Complainant could have discussed possible forbearance measures with the Provider in order to ensure the sustainability of his mortgage loan.

/Cont'd...

However, it appears to me that the Complainant chose not to engage with the Provider as to his financial circumstances or indeed the interest rate that applied to his mortgage loan account at the time and decided to make a further part redemption payment of €90,000 of his own volition without any request by the Provider to do so. I am of the view that the evidence does not support the Complainant's position that the application of the variable interest rate instead of the tracker interest rate in the period between **January 2011** and **December 2011**, influenced the Complainants' decision to make a capital payment of €65,000.

I will now consider the Complainant's mortgage loan account in the period from **January 2012** to **September 2013** at which time the Complainant asserts that he "*had no choice*" but to sell an investment property on foot of utilising his "*safety net*" of €90,000 to reduce the balance of his mortgage loan account as a result of the overcharging on his mortgage loan account.

In the period between **January 2012** and **September 2013**, the mortgage account remained on the Provider's variable commercial rate which fluctuated between 4.57% and 4.82%. Between **January 2012** and **September 2013**, the overall tracker rate (ECB + 1.50%) fluctuated between a rate of 2.00% and 2.50% as demonstrated in the table below. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged between **January 2012** and **September 2013** is demonstrated in column 4 of the table below.

<b>Date range (inclusive)</b>	<b>Rate charged (Variable)</b>	<b>Rate that would have been charged (Tracker)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Amount of overcharged interest per month</b>
<b>Jan 2012-Jul 2012</b>	4.57%	2.50%	2.07%	Between €67.21 and €67.26
<b>Aug 2012- May 2013</b>	4.57%	2.25%	2.32%	Between €71.66 and €72.01
<b>Jun 2013-Sep 2013</b>	4.82%	2.00%	2.82%	Between €81.98 and €82.20

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 + 1.5%) had been applied to the mortgage account between **January 2012** and **September 2013**, is represented in the table below at column 4.

/Cont'd...

Date Range (inclusive)	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Jan 2012-Jul 2012	€203.39	€156.99	€46.40
Aug 2012-May 2013	€203.39	€152.50	€50.89
Jun 2013-Sep 2013	€207.29	€148.83	€58.46

It is clear to me that the part redemption payment of €65,000 to the Complainant's mortgage loan account in **December 2011** significantly reduced the monthly repayments from €646.31 in **December 2011** to between €203.30 and €207.29 from **January 2012** to **September 2013**. The above table shows that the monthly overpayments on the mortgage loan were between €46.40 and €58.46 during this period.

The Complainant submits that he was "in a weak position" and he "was left with no choice" but to sell assets due to the impact of the overcharging, including another investment property which he states was sold at a "very poor price" in **September 2013**.

I note from the Provider's call logs that the Complainant contacted the Provider on **20 November 2008** regarding clearing a loan with another provider. The call log details as follows;

*"Spoke with [Complainant] regarding possibility of 120k loan to clear off rental property with [other provider]. Gave details of interest rate for his PDH and for his Commercial. Advised will have a think about it and may contact me back."*

On a review of the evidence submitted, this communication in **2008** appears to me to be the only interaction between the Complainant and the Provider in relation to another investment property, the mortgage of which was held with another provider. It is unclear as to whether this communication relates to the investment property that was ultimately sold by the Complainant in **September 2013**.

The evidence does not support the Complainant's submission that he was "left with no choice but to sell assets" because of the overcharging. I acknowledge that payment of €90,000 over the course of **2010** and **2011** effectively reduced the monthly overcharging on the Complainant's mortgage loan account in **2012** and **2013** to between €46.40 and €58.46 per month.

/Cont'd...



While I am not suggesting that these amounts are not insignificant, I do not consider it reasonable to suggest that this level of overcharging was the sole reason for the Complainant's decision to dispose of certain assets in **2013**. I have not been provided with any evidence that would indicate that the Complainant raised any concerns as to his financial situation with the Provider in the period leading up to the sale of the Complainant's investment property in 2013 or indeed at any stage during the period of overcharging nor have I been provided with any evidence that would indicate that the Complainant even discussed his intention to sell this property with the Provider. The Complainant could have approached the Provider to seek forbearance if his financial circumstances had deteriorated, however he did not. In fact, I have not been provided with sufficient evidence to gain a full understanding of the Complainant's overall financial position during the period of overcharging.

Moreover, there is no evidence to suggest that the Provider requested that the Complainant sell the BTL property the subject of this complaint let alone an investment property mortgaged with another provider. It would appear to me that the Complainant decided to sell his investment property of his volition without any request by the Provider to do so. I am therefore of the view that the evidence does not support the Complainant's position that the application of the variable interest rate instead of the tracker interest rate was his sole motivation for the sale of the Complainant's investment property in **September 2013**.

In the period between **October 2013** and **August 2016**, the mortgage account remained on the Provider's variable commercial rate which remained static at 4.82%. Between **October 2013** and **August 2016**, the overall tracker rate (ECB + 1.50%) fluctuated between a rate of 1.50% and 2.00%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged between **October 2013** and **August 2016** 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 + 1.5%) had been applied to the mortgage account between **October 2013** and **August 2016**, is represented in column 5 of the table below;

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage</b>	<b>Overpayment per month</b>
-------------------------------	---	----------------------------------	---	------------------------------

/Cont'd...

	interest rate		was on the Tracker Rate	
Oct 2013- Nov 2013	2.82%	€207.29	€148.83	€58.46
Dec 2013- Jun 2014	3.07%	€207.29	€145.51	€61.78
Jul 2014- Sep 2014	3.17%	€207.29	€144.02	€63.27
Oct 2014- Mar 2016	3.27%	€207.29	€142.75	€64.54
Apr 2016- Aug 2016	3.27%	€207.29	€141.25	€66.04

I note that the Complainant continued to make overpayments between €58.46 and €66.04 between the latter part of **2013** and **2016** because of the incorrect interest rate being applied to the mortgage account. Again, I have not been provided with any evidence that would suggest that the Complainant experienced financial difficulties during this period that prevented him from meeting his mortgage repayments. Furthermore, I have not been provided with any evidence that would indicate that the Complainant contacted the Provider to raise any concerns as to the interest rate that applied to his mortgage loan account during this period. I note that it was only after the Provider issued a **Mortgage Review Rectification Letter** dated **17 August 2016** to the Complainant confirming that the mortgage loan account had been adjusted to an interest rate of 1.5%, that the Complainant submitted a letter of complaint to the Provider in **September 2016**.

Having considered the documentary evidence submitted, it appears to me that the Complainant has not tendered any evidence which demonstrates that he has suffered the losses or damages that he has claimed, such that additional compensation and/or the restoration of the lending facility for €90,000 loan facility that the Complainant has sought is warranted.

The Provider has paid compensation of €912.35 to the Complainant, together with redress of €8,568.58 (interest overpaid and time value of money payment), a balance adjustment of €3,596.03 and an independent professional advice payment of €615. In the circumstances of this matter I accept that the compensation paid by the Provider to be reasonable.

/Cont'd...

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**

6 May 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.