



<u>Decision Ref:</u>	2021-0152
<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**

The complaint relates to two mortgage loan accounts held by the Complainant with the Provider and the overcharge of interest in the amount of €45,653.47 on the mortgage loan accounts. The Complainant is a sole trader.

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

- Mortgage loan account ending **4991** was drawn down in **July 2005** in the amount of €215,000 over a term of 19 years. This mortgage loan account is secured on the Complainant's buy-to-let property (the "**Impacted Property 1**").
- Mortgage loan account ending **9486** was drawn down in **November 2007** in the amount of €161,000 over a term of 16 years. This mortgage loan is secured on the Complainant's second buy-to-let property (the "**Impacted Property 2**").

The Complainant's two mortgage loan accounts were considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "**Examination**").

The Provider identified that a failure had occurred on the mortgage loan accounts and as such the mortgage loan accounts were deemed to be impacted under that Examination.

The Provider contacted the Complainant on **24 November 2017** in respect of mortgage loan account ending **4991** advising her that an error occurred on her mortgage loan account and that it was going to *“move [her] account to the tracker rate”*.

The Provider also wrote to the Complainant on **24 November 2017** in respect of mortgage loan account ending **9486** and sent a further letter to the Complainant on **12 December 2017** in respect of mortgage loan account ending **4991** detailing how it *“got things wrong”* with respect to both mortgage loan accounts as follows;

Mortgage loan account ending 4991	Mortgage loan account ending 9486
<i>“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.”</i>	<i>“In the review, we found that the tracker rate applied to your mortgage loan was too expensive. The tracker rate in your offer letter was to be an agreed percentage (the margin) above the ECB Rate*. We charged you a margin that was too high. This failure happened because we used a margin that applied when you drew down your mortgage loan instead of the margin set out in your mortgage loan offer letter.”</i>

With respect to the effect of its failure on mortgage loan account ending **4911**, the Provider outlined as follows;

“As a result of our failure, we can confirm that you were charged an incorrect interest rate between 16 Nov 2010 and 23 Nov 2017.”

With respect to the effect of the failure on mortgage loan account ending **9486** the Provider outlined as follows;

“As a result of our failure, we can confirm that you were charged an incorrect margin on you tracker interest rate between 09 Nov 2009 and 04 Jan 2010.”

The Provider restored mortgage loan account ending **4991** to a tracker interest of ECB + 1.60% in **November 2017**.

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The Provider made an offer of redress and compensation totalling **€53,223.21** to the Complainant in relation to both mortgage loan accounts as follows:

	Account ending 4991	Account ending 9486
Redress covering; (a) Total Interest Overpaid. (b) Interest to reflect time value of money.	€47,870.18	€62.87
Compensation	€4,787.02	€3.14
Independent Professional Advice Payment	€500	
Total	€53,157.20	€66.01

The Complainant signed the **Acceptance Form** for the redress and compensation offering in relation to mortgage loan account ending **4866** on **20 November 2017** and signed a further **Acceptance Form** in relation to mortgage loan account ending **4991** on **15 December 2017**. The amount of **€53,223.21** was paid into the Complainant's nominated bank account.

In circumstances where the Complainant was not satisfied with the amount of redress and compensation offered by the Provider, the Complainant appealed the redress and compensation offering to the Independent Appeals Panel in **January 2018**. The basis of the Complainant's appeal was the inadequacy of the redress and compensation offered by the Provider.

In **March 2018**, the Independent Appeals Panel decided that the appeal in respect of mortgage loan account ending **9486** was unsuccessful however it decided to uphold the Complainant's appeal in relation to mortgage loan account ending **4991** and awarded additional compensation of €5,000 to the Complainant. In determining the appeal the Independent Appeals Panel outlined as follows;

- *“Having carefully considered the Appeal documentation, including the additional supporting documents provided by the Customer, the Panel is not satisfied that the Customer was compelled to sell the relevant investment property as a consequence of the overcharging by the Bank. The consequential loss of rental income and loss of opportunity costs are similarly not attributable to the Bank's overcharging.*

- *However the Panel is of the view that as a consequence of the Bank’s overcharging the Customer’s monthly cash flow was impacted, resulting in unnecessary reliance on her [Provider] credit card for day to day expenses. The Panel is of the view that additional compensation is warranted for this impact”.*

As the Complainant has been through the Provider’s internal appeal process and the offer by the Provider was not made in full and final settlement of the matter, this office was in a position to progress the investigation and adjudication of the complaint.

The conduct complained of that is being adjudicated on by this office is that the Provider has not offered adequate redress and compensation to the Complainant by consequence of the Provider’s failure in relation to her mortgage loan accounts.

Given the number of properties and mortgage loan accounts that will be considered in this Preliminary Decision, some of which are not the subject of the complaint, I have prepared the following table which sets out the position regarding each loan account;

Property	Loan Account	Subject of this complaint
Irish Properties		
[The Impacted Property 1]	Mortgage Loan Account ending 4991	Yes
[The Impacted Property 2]	Mortgage Loan Account ending 9486	Yes
[The Impacted Property 1]	Mortgage Loan Account ending 9101	No
[The Impacted Property 2]	Mortgage Loan Account ending 6056	No
[The Impacted Property 1]	Mortgage Loan Account ending 6021	No
[The Rental Property]	Mortgage Loan Account [Held with Third Party Provider]	No

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[The Complainant's Private Dwelling House]	None	No
N/A	Loan account ending 8437 [the " Rental Account "]	No
[Foreign location] Properties		
[Foreign Property 1]		No
[Foreign Property 2]		No
[The Leasehold Property]	Top up loans with the Third Party Provider	No

The Complainant's Case

The Complainant submits that the Provider has not offered her adequate redress and compensation for the failures identified by the Provider as part of the Examination.

The Complainant details she worked in both [foreign location] and Ireland during the 1970s. The Complainant details that her children have a strong "*[foreign] cultural and academic background too*".

"Family Trusts in [foreign location]"

The Complainant details that there are "*Family Trusts*" in [foreign location], and that her local Provider's branch was fully informed of this type of asset ownership structure. The Complainant asserts that she does not own any properties in [foreign location] in her own name but owns shares in "*[foreign location] incorporated family trusts*". The Complainant submits that the Family Trust purchased a leasehold in a rental property (the "**Leasehold Property**") in [foreign location] in **1999** and which was sold in **2012**. The Complainant outlines that the sale made "*significant profits*" which allowed the Family Trust to "*maintain their strong independent financial standing in [foreign location] and continue with their own business as normal*".

The Complainant details that part of the proceeds were used to repay in full the top up loans from another financial services provider ("**Third Party Provider**") which were used to assist with the purchase two [foreign location] properties.

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I note that the [foreign location] properties were purchased by way of a property transaction popular in [foreign location] whereby a person agrees to sell their property to a purchaser in exchange for a down payment and regular cash instalments for the rest of their life. Meanwhile, the vendor continues to live in the property for the remainder of their life and it is only when the vendor dies that the purchaser is free to take over the property.

The Complainant details that she is involved in two properties in [foreign location]. The Complainant details that she was granted full use and ownership of the first property in **February 2008** (the "**Foreign Property 1**"). The Complainant outlines that **Foreign Property 1** has generated an income since then. The Complainant details that she was involved in the purchase of a second property in [foreign location] in **December 2007** (the "**Foreign Property 2**") and outlines that the income from **Foreign Property 1** has financed **Foreign Property 2** since **February 2008**. The Complainant outlines that all rental income from the **Foreign Property 1** is paid directly to a letting company in [foreign location].

The Complainant outlines that she provided **Impacted Property 1** as security for mortgage loan account ending **9486** and the purpose of this loan was to purchase the **Foreign Property 2** in **December 2007**. The Complainant details that the occupier "*remains in situ*" in **Foreign Property 2**.

The Complainant details that she never "*at any time intended to sell any of her properties to a third party*". The Complainant details that her properties were "*investments for sale cum gift*" to her adult children.

The Complainant details that the **Rental Property** was used as security for two top-up loans from the **Third Party Provider** in the amount of €50,000 and €60,000 to purchase the **Leasehold Property** in [foreign location] in **1999** and the **Foreign Property 1**. The Complainant outlines that these top-up loans were redeemed in full on foot of the sale of the **Leasehold Property** in **2012**, a few years prior to the sale of the **Rental Property**.

The Complainant outlines that she never "*had any legal personal agreement with any life interest in [foreign location] and never had to be incumbent to any such agreement made*". The Complainant further details that there is no evidence of any payments made by her in Ireland to any [foreign] third party or individual because of this.

The Complainant details that both Family Trusts are "*incorporated separately*" of which she is a director of and "*have no dealings with activities in The State*".

The Complainant notes that when completing standard financial statements (“**SFSs**”) on the request of the Provider, even though she was not in arrears, she discussed her involvement in a [foreign] Family Trust with the Provider’s branch and it was accepted by the Provider’s branch that she did not need to include the shares in the Family Trust in the **SFSs**. The Complainant asserts that given she owns shares in [foreign] incorporated Family Trusts and not public listed shares, she did not need to include reference to the [foreign] Family Trusts in the **SFSs**. The Complainant outlines that it is important to stress her full transparency with the Provider and objects to “...*any inference and fabrication it may be making to her personal incapacity to honour her financial obligations in Ireland that she always upheld without failure*”.

Arrears on the Rental Account

The Complainant contends that the “*banks errors*” resulted in the brief arrears she fell into. The Complainant outlines that she was advised by a “*local bank personnel*” to withdraw her cash temporarily until the Provider “*finalised the deduction process as it would be taken by the provider when it shouldn’t*”.

The Complainant further details that she was in weekly contact with personnel of the Provider and she submits that they would tell her “*don’t lodge it yet*” so she only re-lodged the cash when advised to do so. The Complainant details that this explains the “*perceived arrears*” that she fell into.

The Complainant submits that “*Local honourable bank personnel took it upon themselves to advise in the face of the injustice perpetrated by the providers operations in Dublin and how they at a local level were not allowed to remedy matters as they did in the past*”. The Complainant outlines that the **Rental Account** ending **8437** was never in arrears prior to this nor has it been in arrears since.

Sale of Rental Property

The Complainant details that she always had registered tenants in the **Rental Property** and the rent was lodged with the Provider into the **Rental Account** ending **8437**. The Complainant states that the **Rental Property** was secured against a mortgage held with a **Third Party Provider** and her husband never held a bank loan with the **Third Party Provider**. The Complainant notes that such matters were never discussed during meetings with the Provider.

The Complainant outlines that she was “*given notice to quit*” by her tenants of the **Rental Property in December 2015**. The Complainant further outlines that there were “*considerable repairs to be carried out*” on the **Rental Property** prior to entering into another lease. The Complainant details that a local builder assessed the property in **December 2015** and identified a roof leakage, a gas supply issue and chimney cracks. The Complainant details that these issues which contributed to the tenants leaving the **Rental Property**, were estimated to cost €5,000 and needed to be remedied immediately. The Complainant details that as a result, it was not possible to seek new tenants for the **Rental Property** as it was no longer to the standard expected by the Residential Tenancies Board. The Complainant details that due to the inadequate cash reserves in the **Rental Account** with the Provider, she felt it was prudent not to proceed with the renewal of a lease on the **Rental Property** and instead to sell the **Rental Property**. The Complainant details that she never carried out the necessary renovations including painting and decorating prior to the sale of the **Rental Property** as this would have cost over €15,000.

The Complainant outlines that she did not trust the Provider and decided “*in fear of the unknown that it was prudent to reduce existing borrowings in the face of adversity she was up against with her provider*”. The Complainant details that because of the “*extraordinary miscalculated interest charged*” by the Provider there was diminished monthly cash flow which resulted in a reduced bank balance of “*monies on hand*”. The Complainant outlines that had she not been overcharged on her mortgage loan accounts, she would have had adequate “*reserves of monies on hand in her rental bank account and adequate monthly cash flow surpluses for working capital purposes*”. The Complainant contends that this “*working capital deficiency*” would not have arisen had the tracker interest rate “*been maintained by the [Provider] since 1st December 2010*”. The Complainant submits that she was “*forced*” to sell the **Rental Property** due to this overcharge on her mortgage loan accounts.

The Complainant further details that she was engaged in “*protracted legal proceedings for the removal of a very difficult tenant staying at*” the **Impacted Property 1**. The Complainant details that she “*was left with no choice but to sell*” the **Rental Property**, which was not secured with the Provider as the legal proceedings in respect of the **Impacted Property 1** were still ongoing at the time of the sale. The Complainant outlines that it was tax efficient to sell the **Rental Property** and the “*[e]xisting properties secured by [the Provider] were let out and not readily available*”. The Complainant details that the **Rental Property** was the “*most saleable*” property in her portfolio. The Complainant details that given a notice to quit/notice of termination was given by the tenants of the **Rental Property in December 2015** this allowed the sale to proceed with “*ease*”.

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The Complainant outlines that had she been aware that the overcharged interest would be refunded to her, she would not have made the decision to sell the “valuable” **Rental Property**. The Complainant details that she only had a “bank loan balance of €38,000” outstanding with the **Third Party Provider** (not the subject of this complaint) at the time of sale and three years remaining on the term of the loan to fully redeem the mortgage loan account with the **Third Party Provider**. She submits that it was her “intention to be able to hold on to this investment and bank loan free to empower her ongoing banking commitment to the [Provider].”

The Complainant details that she was forced to use the net proceeds of the sale of the **Rental Property** to reduce the capital amounts owed to the Provider in respect of mortgage loan account ending **4991** (by €41,295) and a third mortgage loan account held with the Provider (not the subject of this complaint) (by €139,580), totalling €180,875 on **12 January 2017**. The Complainant contends that she was compelled to sell the **Rental Property** to maintain a good credit rating with the Provider by making a capital payment to the Provider.

The Complainant details that it was always her intention that her daughter would purchase the **Impacted Property 1** and “...will do so in a timely manner”. The Complainant further outlines that she is a professional and independent landlord “in control of her business activities both in [location] and Ireland” and rejects any attempt by the Provider in their response to this office that suggests how she should run her business successfully.

The Complainant submits that the mortgage repayments in respect of the **Rental Property** were funded from deposits placed with her bank from “part proceeds from the sale of” the **Leasehold Property in 2012**.

“Harassing” Letters

The Complainant asserts that the receipt of “harassing letters” from the Provider also contributed to the forced sale of the **Rental Property**. The Complainant outlines the Provider issued “sustained harassment letters” to the Complainant on **2 and 8 February 2016, 2, 3 and 11 March 2016, and 19 January 2017**. The Complainant details that these letters impacted her health and wellbeing, in addition to her professional dignity and personal independence.

The Complainant refers to the Provider's reference to meetings in its response to this office. The Complainant outlines that these meetings were held at her "*behest*" in a branch of the Provider during **2014, 2015 and 2016** and details that they related to the "*anxiety and fear*" she suffered as a result of "*the harassing letters she received from the Provider for the excessive bank interest and her loss of trust with the Provider and the confusions and fear they caused her*".

Credit Card

The Complainant details that she was forced to remain on a "*constant expensive*" credit card overdraft with the Provider due to the overcharge of interest on her mortgage loan accounts. The Complainant contends that this would not have arisen had she not been forced to pay higher interest rates from **16 November 2011**.

Breach of Codes

The Complainant asserts that the Provider breached the **Sale of Goods Act** relating to the financial services that it provided as well as breaching the "*code of ethics and duties of due care and responsibilities showing integrity, dignity and prudence*". The Complainant further asserts that the Provider breached its contractual rights and obligations in relation to "*tracker interest rates and noncompliance with responsibilities under consumer protection regulations*".

Other issues

The Complainant details that she took early retirement in **2014** and that various lodgements in her **Rental Account** in **2013** and **2014** relate to her dealings "*with her lump sum and other monies at that time*". The Complainant details that the **Rental Property** was located in a desirable location and she received an annual rental income of €9,600. She further outlines that the reduction in her rental income in **2016** was due to the sale of the **Rental Property**. The Complainant outlines that, in the absence of knowing that the Provider would ultimately compensate her for the overcharging, the decision to sell the **Rental Property** in early **2016** was perceived at the time to be the best decision "*and remains so in hindsight*".

Compensation

The Complainant details that it was the "*conduct of Negligence for overcharging bank interest, that caused to compel [the Complainant] to sell a valuable investment property, that caused a 'force majeure' to hinder further business development, that gave rise to additional consequential borrowing and interest to maintain working capital, that caused*

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loss of projected rental income, that caused loss in increase of investment value of property sold, and that caused additional switch bank charges as result of sale investment property”.

The Complainant is seeking additional compensation in the amount of **€124,172**, in addition to “...full restitution of the full original amount of the tracker mortgage for the total residual bank loans” in the amount of **€180,875**.

The Complainant details that the breakdown of the additional compensation of **€124,172** is as follows:

- i. Compensation of **€60,000.00** to reflect the estimated loss of 5 years of rental income as a result of the “forced sale” of the **Rental Property** calculated at “ $€1,100pm \times 12 = €13,200pa$ gross or $€12,000pa$ net after costs”;
- ii. Compensation of **€15,000** minimum to reflect the lost opportunity of the increase in value of the **Rental Property** since the date of sale;
- iii. “Switch Fees” of **€1,152** paid to the Provider;
- iv. Compensation of **€1,645** paid to the **Third Party Provider** for additional interest and compensation of **€1,224** for “Breaking Fund Costs” on the mortgage secured on the **Rental Property** from **1 January 2016 to 20 July 2016** (the period during which the **Rental Property** was vacant and on the market);
- v. Interest on credit card held with the Provider of **€4,057** (calculated at €3,000 per month at 1.591% interest per month over 85 months; and
- vi. “Interest repaid to reflect value of Money” in the amount of **€4,450**

The Complainant submits that the above amounts detailed at (i) to (vi) total **€86,376** (however I note that the amounts detailed at (i) to (vi) actually total €87,528).

In addition to the above, the Complainant submits that she is seeking “30% damages compensation” in the amount of **€37,796**. The Complainant states that this amount is calculated on the basis of the overall agreed redress and compensation figure which includes the amount of **€86,376** and the **€58,899** already offered to the Complainant as redress and compensation (however I note that €53,223,21 was offered by the Provider and €5,000 was offered by the Independent Appeal Panel which equals €58,223.21).

The Provider’s Case

The Provider submits that the Complainant holds the following five mortgage loan accounts with the Provider;

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Account no	Security	Drawdown date	Original amount
Account ending 4991	Impacted Property 1	11 July 2005	€215,000
Account ending 6021	Impacted Property 1	February 2016	€139,725
Account ending 9486	Impacted Property 2	07 November 2007	€161,000
Account ending 9101	Impacted Property 1	13 November 2007	€15,000
Account ending 6056	Impacted Property 2	February 2016	€96,100

The Provider details that it is aware of an additional four properties which the Complainant has or had an interest in but are not mortgaged with the Provider.

The Provider states that the Complainant's mortgage accounts ending **4991** and **9486** were deemed impacted under the Examination and are the subject of this complaint.

Mortgage Loan Account ending 4991

The Provider outlines the following history regarding mortgage loan account ending **4991**;

- A **Mortgage Loan Offer Letter** dated **3 May 2005** issued to the Complainant in the amount of €215,000 for a term of 19 years and was secured by way of charge over the **Impacted Property 1**. The **Mortgage Loan Offer Letter** provided for a variable interest rate of no more than 1.60% above the ECB rate.

The Provider details that the purpose of the mortgage was to "*facilitate the purchase of an investment property*".

- The Mortgage Loan Offer Letter was signed and accepted by the Complainant on **1 June 2005** and the mortgage loan was drawn down on **11 July 2005**. The Provider outlines that the Complainant was obliged to make interest only repayments that for the first 10 years of the term of the loan term, with full capital and interest repayments to commence from **July 2015**.
- The Provider outlines that the Complainant signed a **Mortgage Form of Authorisation ("MFA")** on **9 December 2005** to apply a 5-year fixed interest rate of 3.99% to the mortgage loan.

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The Provider details that the Complainant signed a further **MFA** on **27 October 2010** to apply a 2-year fixed interest rate of 5%. The Complainant subsequently signed and accepted another **MFA** on **11 November 2012** to apply a 5-year fixed interest rate of 6.2% to the mortgage loan.

- The Provider details that the Complainant signed a **MFA** in **July 2015** for reduced repayments of €1,312 for 6 months.
- The Complainant signed an **Agreement to Amend Mortgage Loan Offer** on **23 February 2016** to amend the Mortgage Loan Offer Letter by splitting the mortgage loan into (1) €138,726.05 interest only part; and (2) €74,698.64 to be the annuity part. Mortgage loan account ending **4991** was split and mortgage loan account ending **6021** was subsequently created for the purposes of the split mortgage on foot of the alternative repayment arrangement in the amount of €139,725. Mortgage loan account ending **6021** is not the subject of this complaint.

Mortgage Loan Account ending 9486

The Provider outlines the following history regarding mortgage loan account ending **9486**;

- A **Mortgage Loan Offer Letter** dated **19 September 2007** issued to the Complainant in the amount of €161,000 for a term of 16 years and was secured by way of charge over the **Impacted Property 2**. The Mortgage Loan Offer Letter provided for a 2 year fixed interest rate, to be followed by a variable interest rate which was not to more than 1.10% over the ECB rate. The Provider details that the purpose of the mortgage was to “*facilitate the purchase of an investment property in [foreign location]*”.
- The Mortgage Loan Offer Letter was signed and accepted by the Complainant on **5 October 2007** and the mortgage loan was drawn down on **7 November 2007**. The Provider outlines that for the first 7 years of the term of the loan, the Complainant was obliged to make interest only repayments, with full capital and interest repayments to commence from **November 2014**.
- The Provider details that on **13 November 2007**, the Complainant drew down buy-to-let mortgage loan account ending **9101** for €15,000 secured over the **Impacted Property 1**. The Provider notes that the purpose of this mortgage was to assist with the purchase of a property in [foreign location]. The Provider states that this mortgage was “made in conjunction with mortgage loan account ending **9486**”. Mortgage loan account ending **9101** is not the subject of this complaint.

- The Provider outlines that the Complainant signed and accepted an **Agreement to Amend Mortgage Loan Offer** on **21 October 2014** in respect of mortgage loan account ending **9486** to change from a tracker interest rate and to amend other terms of the mortgage loan account. The Complainant accepted this agreement on **4 November 2014** and a “*BTL Variable Rate*” was applied to the mortgage loan account.
- The Provider details that the Complainant signed and accepted a **MFA to Pay Reduced Payments** for a period of 6 months at €528 per month on **6 July 2015**. The Provider further outlines that the Complainant signed and accepted an **Agreement to Amend Mortgage Loan Offer** on **23 February 2016** to split the mortgage loan into (1) €96,100.09 interest only part and (2) €64,066.72 to be the annuity part. Mortgage loan account ending **6056** was created for the purposes of the split mortgage on foot of the alternative repayment arrangement in the amount of €96,100. Mortgage loan account ending **6056** is not the subject of this complaint.

The Provider details that it is aware that the Complainant’s private dwelling house is an unencumbered asset. It further outlines that it is aware that she holds two properties in [foreign location] under a “*Family Trust*” but has no further details regarding this. The Provider outlines that, according to the Complainant, the two properties in the [foreign location] were purchased by way of a transaction which results in the vendor having a right of residence or life estate in the purchased property, in addition to an annuity from the purchaser for their life. The Provider details that the purchaser can take possession once the vendor has passed away or vacated the property.

The Provider outlines that it included the Complainant’s mortgage loan accounts ending **4991** and **9486** in the Examination because a tracker interest rate had applied during the lifetime of both mortgage loan accounts.

The Provider detailed that mortgage loan account ending **4991** originated on a tracker interest rate and a tracker interest rate had been applied to the mortgage loan during the life of the mortgage. It submits that the “*[e]xamination found that when the Complainant moved to a fixed rate of interest from a tracker interest there was insufficient clarity as to what would happen at the end of the fixed rate period and whether the Complainant was entitled to a tracker rate of interest or a standard variable rate of interest.*”

The Provider detailed that a tracker interest rate had been applied to mortgage loan account ending **9486** during the life of the mortgage. It submits that the “*[e]xamination found that, when the Provider moved the Complainant’s account to a tracker rate of interest, the incorrect margin was applied to the mortgage loan account.*”

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The margin charged for period was higher than it should have been vis-à-vis that set out in the loan offer.”

The Provider submits that it made an offer of redress and compensation totalling **€66.01** in respect of mortgage loan account ending **9486** in **November 2017** and redress and compensation totalling **€53,157.20** in respect of mortgage loan account **4991** in **December 2017**.

The Provider outlines that the Complainant was not satisfied with the redress and compensation offered and appealed the award to the Independent Appeals Panel. It explains that the Complainant's appeal with respect to mortgage loan account ending **9486** was not upheld.

The Provider further outlines that the appeal with respect to mortgage loan account ending **4991** was upheld in **March 2018** and the Independent Appeals Panel awarded the Complainant an additional payment of €5,000. The Provider details that the Complainant is not satisfied with the Provider's offer of redress and compensation and as increased by the Independent Appeals Panel.

The Provider submits that the *“heart of the complaint as expressed by the Complainant seems to the Provider to be the Complainant's belief that she was forced to sell a property as a result of the Provider's failure. In the Provider's view, the evidence does not support this contention.”*

The Provider rejects the Complainant's assertion that she was forced to sell the **Rental Property** as a result of the Provider's failures and sets out the following reasons in this regard;

“

1. *The Complainant has produced insufficient evidence that the sale would not have arisen 'but for' the Provider's failure;*
2. *The Complainant was caused to sell by other factors unrelated to the failure of the Provider;*
3. *If the Complainant can show such causation, which the Provider denies, the sale is too remote a factor and does not merit further compensation from the Provider.*

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4. *The Complainant failed to take such reasonable steps, or any steps, to avoid the loss and/or failed to mitigate her loss."*

The Provider submits that the redress and compensation offered to the Complainant in respect of both mortgage loan accounts was in line with the Provider's Redress and Compensation Scheme Framework. It submits that it has been *"fully compliant with the Examination and, under it, has paid redress and compensation to the Complainant."*

It outlines that the *"award for redress is adequate as the amount given is sufficient to put the Complainant in the position she would have been in had the appropriate tracker rate of interest been applied to her mortgage loan account at the appropriate times."* The Provider details that the redress included a *"time value"* of money to reflect the additional loss that the Complainant would have suffered from being denied access to the relevant amount of cash.

The Provider details that it gave the Complainant the choice to either apply the compensation and redress payments to her mortgage loan account to reduce the capital balance as if the tracker issue had not arisen or to accept the amount by way of payment to a nominated current account. The Provider is of the view that the level of compensation awarded is fair, reasonable and proportionate to the Complainant's circumstances.

The Provider submits that the Independent Appeals Panel rejected the Complainant's appeal in respect of mortgage loan account ending **9486** as it deemed the redress and compensation already granted to be appropriate.

The Provider further details that the Independent Appeals Panel partially upheld the Complainant's appeal in respect of mortgage loan account ending **4991** and awarded her an additional sum of €5,000. The Provider outlines that the Independent Appeals Panel found that the loss of the Complainant's tracker interest rate affected her monthly income and caused her to rely on her credit card for day to day expenses more so than she would have done otherwise. The Provider details that the Complainant's claim for redress on the basis that she was forced to sell the **Rental Property** was rejected, as was her claim for consequential loss of rental income and loss of opportunity.

The Provider details that the Complainant completed **SFSs in 2014, 2015 and 2016** and did not disclose the **Rental Property**, the mortgage held with the **Third Party Provider**, the amount of that mortgage and interest rate applicable, her rental income or any anticipated expenditure. The Provider further details that she did not disclose her credit card debt or any other debt she might have had.

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The Provider does not agree with the Complainant's contention that she was in "full cooperation" regarding her properties in [foreign location] and that these properties were not disclosed or described in the SFSs completed by the Complainant nor were the financial details regarding these properties disclosed in the Complainant's appeal to the Independent Appeals Panel or in her complaint to this office. The Provider details that the Complainant has failed to provide financial details or any financial insight in relation to the [foreign] properties. The Provider outlines that it is "disappointed" that the Complainant "would fail to include so many pertinent details in her Standard Financial Statements. Full and frank disclosure of information is an expectation and a requirement when submitting a Standard Financial Statement and essential if the Provider is to make a good and suitable assessment of the needs of a borrower." The Provider submits that the Complainant has failed to provide a complete picture of her finances in order to demonstrate what caused her to sell the **Rental Property**.

The Provider takes issue with the Complainant's assertion that its records have been fabricated. The Provider submits that its records are contemporaneous notes of statements made by the Complainant and serve to shed light on her actions, beliefs and dealings with the Provider. It submits that these entries are made in order for staff to be able to monitor a mortgage loan account and ensure a customer's needs are met. It submits that staff members who input these entries are invested in their veracity and accuracy. The Provider submits that the Complainant has not advanced anything "save for blanket denial that she made the statements."

The Provider is satisfied that its "records accurately reflect the statements and discussion the Complainant had with the Provider over the course of a decade, these previous statements are inconsistent with what she now maintains."

The Provider submits that both mortgage loan account ending **4991** and **9486** "experienced some missed payments" between **January 2016** and **May 2016**, and between **January 2016** and **April 2016** respectively. The Provider details that during this period, the Complainant was offered an alternative repayment arrangement in respect of which she "had submitted her acceptance and the agreement was in the process of being implemented." The Provider submits that the Complainant was due to roll off her existing forbearance arrangements at this time and had insufficient funds to make full capital and interest repayments under the new agreement. The Provider submits that the missed repayments resulted in a number of interactions with the Complainant in respect of both mortgage loan accounts.

The Provider submits that “[i]t was, at all times, common cause that the mortgage loan accounts in question would have forbearance applied to them and the Complainant would be able to meet the payments under this new arrangement. The Complainant was aware and knew that forbearance was going to be applied to her mortgage loan accounts.” The Provider therefore disputes the contention that the Complainant was placed under pressure or was fearful of actions by the Provider. The Provider details that this is corroborated by the Complainant’s own telephone calls to the Provider where she indicated her displeasure at the delay in implementing the alternative repayment arrangements and did not express any other concern.

The Provider outlines that it appears that the Complainant sold the **Rental Property** in **early summer 2016** and the Complainant redeemed the mortgage over the **Rental Property** that she held with the **Third Party Provider** on **28 July 2016**. The Provider outlines that it did not have any engagement with the Complainant in **2016** or at any time in relation to the sale of the **Rental Property**.

The Provider details that the Complainant met with a representative of the Provider on **8 August 2016** in a private office at one of the Provider’s branches. The Provider outlines that during this meeting, the Complainant requested that the Provider grant her interest only repayments for a period of 5 years on the mortgage loan accounts secured on the **Impacted Property 2**, and in exchange the Complainant proposed clearing the debt on the **Impacted Property 1** with funds “*which her solicitor could vouch for*”.

The Provider outlines that the Complainant indicated that she had rental income from **Impacted Property 1 and Impacted Property 2**, along with rental income from two properties in [foreign location], however one of the properties in [foreign location] could not be rented as the vendor had a right of residence until she moved out or passed away. The Provider outlines that the Complainant had to pay the vendor €1,200 per month in respect of that property which she serviced using rent obtained from the other [foreign] property.

The Provider outlines that it held a further meeting with the Complainant and her husband on **30 August 2016** where the Complainant requested that the Provider release the title deeds for the **Impacted Property 1**, and in exchange she would apply a capital reduction of €175,000 to the mortgages secured on the **Impacted Property 1**, with the balance, which would be approximately €51,000, to be paid secured on the **Impacted Property 2**.

The Provider states that it was informed that the funds would be from “*legal, verifiable family funds*” but beyond that, the Complainant did not indicate the source of the funds. The Provider explains that it declined this proposal as the loan to value ratio on the **Impacted Property 2** would be too high.

The Provider details that the Complainant subsequently had her representative email the Provider with a proposal offering the sum of €155,000 to redeem the mortgages over the **Impacted Property 2** and reduce the balance of the mortgages on the **Impacted Property 1** to below €200,000 with the Complainant making interest only repayments on the remaining mortgages on the **Impacted Property 1**. The Provider outlines that this proposal was accepted as the Complainant had already signed an **Agreement to Amend a Mortgage Loan Offer** on **23 February 2016**.

The Provider contends that the Complainant never referenced selling a property during any discussions in **2016** nor did the Provider request or prompt the Complainant to sell any property during those discussions. The Provider details that the Complainant in fact never included the **Rental Property** on any of the SFSs that she submitted. The Provider states that it does not understand why the Complainant was not forthright regarding the source of the funds or why it was incorrectly suggested that they were family funds as opposed to the proceeds of a property sale.

The Provider submits that the Complainant has sought compensation under the following headings;

1. Compensation for the forced sale of the Complainant’s **Rental Property**;
 - i. Loss of rental income from the property for 5 years: €60,000
 - ii. Loss of increase in value of the property: €15,000
 - iii. Interest paid on the investment property mortgage: €1,645
 - iv. Breakage/redemption fees: €1,224, and

2. Compensation for other financial hardship suffered;
 - i. Credit card interest
 - ii. Compensation for switch fees of €1,152.00 incurred in respect of the subject mortgage accounts
 - iii. Compensation for the time value of money: €4,455.00
 - iv. Compensation of €37,796.00 for the Provider’s failure (30% of the sum due)

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The Provider submits that *“the Complainant is not entitled to recover under any of these headings”* or *“under any of these sub-headings of loss because they are mutually exclusive, speculative and in the Providers view unreasonable.”*

1. Compensation for the forced sale of the Complainant’s Rental Property

The Provider explains that the **Rental Property** sold by the Complainant was not the subject of a mortgage with the Provider. It submits that the Complainant did not disclose the ownership of the **Rental Property** *“in the Standard Financial Statements completed by her in 2014, 2015 or 2016.”* The Provider details that when it asked the Complainant why an additional mortgage was showing on *“her ICB”*, the Provider submits that the Complainant *“advised”* the Provider that the *“property was not hers, it was her husbands.”*

The Provider *“refutes any assertion that the sale of the property was forced.”* It submits that the **Rental Property** could only have been sold at the Complainant’s specific request. The Provider states that the Complainant did not disclose to the Provider that the Rental Property was being sold nor was the Provider involved in the sale. It further submits that the *“Complainant has offered no evidence to support the contention that the tracker issue was in any way the proximate or even an indirect cause of the Complainant’s personal decision to sell [the Rental Property] and any subsequent loss of rental income or loss of profit if any.”*

i. Loss of rental income from the property for 5 years: €60,000

The Provider submits that the Complainant is seeking loss of rent from the **Rental Property** for a period of 5 years.

The Provider contends that the Complainant *“has provided no details or evidence to support what the existing monthly rental income of the property was”* and outlines that this makes it impossible for *“the Provider to ascertain the value of the losses she claims to have actually suffered and to estimate any future losses.”*

The Provider notes that in the Complainant’s submission to this office dated **15 August 2018** and in the **SFS** submitted in **2015**, the Complainant claims that it was her initial intention to sell one of her investment properties but was prevented by circumstance and later, she decided to sell a different property, the **Rental Property**. The Provider contends that it is clear that it was always the Complainant’s decision to sell one of her investment properties and thereby foregoing any rental income from such sold property.

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The Provider contends that a true measure of loss would be the difference, if any, between the rental income received from the property retained and that of the **Rental Property** sold. The Provider submits that the Complainant has not produced any evidence of rental income received from any of the properties, thus making the calculation under this heading impossible. The Provider asserts that this part of the Complainant's claim is unsubstantiated.

The Provider further details that in each of the Complainant's SFSs submitted in **2014, 2015 and 2016** *"the Complainant makes no reference to receiving any rental income from the [Rental Property], nor does she disclose that she in fact owned [Rental Property]."* It details that *"the Complainant has not explained why this information was omitted from her Standard Financial Statement on three successive occasions."*

The Provider submits that *"the Complainant has not suffered the loss as alleged or at all."* The Provider submits that on its analysis of the Complainant's **Rental Account**, it does not show a drop in rental income which accords with the loss of the **Rental Property**. The Provider outlines the Complainant stated that the combined rental income from the **Impacted Property 1** and the **Impacted Property 2** was €1,200 per month in successive SFSs. The Provider further outlines that the Complainant claims that the **Rental Property** would yield €1,100 per month but has not given details of what rental income she actually received from the **Rental Property** nor has the Provider been able to identify any corresponding sums lodged to her **Rental Account**. The Provider contends that if the Complainant was receiving €1,100 per month in rent from the **Rental Property**, combined with €1,200 per month from **Impacted Property 1** and **Impacted Property 2**, her annual rental yield would be €27,600, and the loss of the **Rental Property** would reduce this annual yield to €14,400.

The Provider details that it analysed the Complainant's **Rental Account** for the years **2013 to 2017** while disregarding certain large lodgements and has concluded that the Complainant received the following income from rents annually:

Year	Approximate Annual Rental income
2013	€42,059
2014	€62,000
2015	€46,000
2016	€36,000
2017	€40,000

The Provider contends that the Complainant's **Rental Account** does not disclose any loss "*caused by the Provider or at all*". The Provider submits that in **2014**, prior to the sale of the **Rental Property**, the Complainant saw a rental yield of approximately €42,000 and in **2017**, post-sale of the **Rental Property**, the Complainant's rental income remained at approximately €40,000. The Provider submits that this activity does not support the Complainant's contention that she suffered a loss or accord with the Complainant's "*declared loss of €12,300*".

The Provider does not accept that the Complainant would not have sold the **Rental Property** if a tracker interest rate had been applied to mortgage loan accounts ending **9486** and **4991** and does not accept the Complainant's claim for loss of rent. The Provider details that the Complainant completed three SFs in **2014, 2015 and 2016** seeking alternative repayment arrangements and the Provider offered the Complainant forbearance, which the Complainant accepted. The Provider notes that the forbearance measure offered did not involve to sale of the **Rental Property**. The Provider details that it was the Complainant's decision to access equity from the **Rental Property** and she made the decision to release equity from the assets available to her.

ii. Loss of increase in value on the Rental Property: €15,000

The Provider outlines that the Complainant is seeking additional compensation of €15,000 for the lost opportunity on foot of having to sell the **Rental Property**. The Provider notes that it did not hold a mortgage or security over this property and "*was not aware of the sale of [Rental Property] at the time of its sale.*" The Provider details that the Complainant has provided a letter from an estate agent confirming that the **Rental Property** would have sold for approximately €15,000 more had it been sold in the first quarter of **2018**, rather than in **2016**.

The Provider submits that the Complainant made the decision to sell the **Rental Property** without consulting the Provider, which she was free to do. The Provider outlines that it "*found no record to indicate the Complainant expressed any unhappiness about selling the [Rental Property] to the Provider in 2016 or that she even contacted the Provider before selling.*" The Provider contends that it is "*not fair or reasonable for the Complainant to link her decision to sell with any complaint about the rates of interest on two entirely unrelated mortgage loan account[s] ex post facto.*"

The Provider is of the view that the Complainant's need to release equity from an asset arose from personal reasons, not connected with the question as to whether or not a tracker interest rate should have applied to her mortgage loan accounts after **November 2009** and **November 2010**.

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The Provider details that on the date the Complainant agreed to sell the **Rental Property**, she had already entered into forbearance arrangements in respect of both mortgage loan accounts ending **9486** and **4991**, which are not related to the **Rental Property**. The Provider details that a further forbearance arrangement and/or a sustainable solution could have been available to the Complainant if such a request was received, however the Provider notes that the Complainant decided to sell the **Rental Property** and did not seek additional forbearance in an effort to retain the **Rental Property**. The Provider contends that it *“was always open to the Complainant to seek an alternative arrangement to alleviate any financial strain which would have been considered.”* The Provider outlines that it is not privy as to whether the Complainant sought any forbearance from the **Third Party Provider**. The Provider details that the reason given by the Complainants as part of her requests for forbearance in **2014, 2015 and 2016** was that she was waiting on rent from her [foreign] properties which the Provider asserts is an entirely different circumstance and unconnected to this dispute. The Provider details that nowhere in the evidence submitted is there a suggestion that the interest rate cost, the absence of a tracker interest rate or the cost of servicing the mortgage loan accounts the subject of this complaint, were factors in the Complainant’s decision to sell the **Rental Property**.

The Provider submits that the *“overwhelming probability is that the Complainant would have sold the [Rental Property] as an answer to her personal needs”*, regardless of the unrelated interest rate charged on the mortgage loan accounts held with the Provider. The Provider details that there are any number of factors that someone might consider when deciding to sell an investment property and so it cannot be fairly or reasonably said that the decision to sell the **Rental Property** and consequential loss in any way results from the conduct complained of.

The Provider further notes that the letter provided by the Complainant from the estate agent only shows the value of the **Rental Property** in **2018**. The Provider asserts that that house prices fluctuate over time. The Provider notes that the Complainant contends that she had planned to rent out the **Rental Property** for a period of five years and so the earliest she would have considered selling would have been **2021**. The Provider submits therefore that any loss suffered would have to be calculated at the projected value in **2021** and the uncertainty of market factors in **2021** would mean it is not possible to fairly calculate the profit or loss which might accrue on the **Rental Property**.

The Provider submits that it is *“of a strong view”* that the non-availability of a tracker interest rate was not the cause of loss of ownership on the **Rental Property**.

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It is of the view that the claim for compensation for both the loss of rental income and the loss in value are too remote from the tracker interest rate issue and there are any number of factors that someone might consider when making a financial decision to sell an investment property. The Provider details that the Complainant's claim is too remote from the tracker issue to attract additional compensation and it would be unfair and unreasonable to allow for compensation to be awarded for such a remote claim.

iii. Refund of interest paid on the mortgage of the property: €1,645

The Provider submits that the Complainant had mortgaged the **Rental Property** with the **Third Party Provider** and it *"is not party to any agreement between the Complainant and the other Financial Services provider and is therefore only in a position to make limited comments on it."*

The Provider outlines that the bank statement from the **Third Party Provider** shows that payments were made by direct debit. It details that it *"cannot identify any corresponding transactions or direct debits leaving the Complainant's current accounts, held with the Provider, during the relevant period"*. The Provider further details that it is *"at a loss"* to explain how the Complainant paid the mortgage on the **Rental Property** by direct debit during the relevant period given the Provider understood that all of her accounts were held with the Provider.

The Provider highlights once again that the Complainant completed three SFSs and did not include the **Rental Property** as an asset owned by her nor the mortgage liabilities relating to this property. The Provider details that it only discovered the existence of the **Rental Property** when it checked the Complainant's history with the Irish Credit Bureau, and submits that the Complainant has not given any explanation for her omission.

The Provider details that during the Complainant's application for mortgage loan account ending **9486**, it queried why there was another mortgage registered in her name according to the Irish Credit Bureau and details that the Complainant advised that it was actually her husband's loan.

The Provider also details that it *"cannot see how this is a loss which flowed from its breach or even accurately characterised as a loss at all"* as the Complainant is obliged to repay all her debts regardless of whether or not she sold or retained the **Rental Property**. In addition, the Provider contends that the Complainant has submitted a single page from a statement of account in support of this claim which does not contain the address of the mortgaged property, account number, the monthly repayments or the applicable rate of interest.

The Provider details that this part of her claim is unsubstantiated and this alleged loss was not caused by any failure on the part of the Provider.

iv. Compensation for breakage/redemption fees: €1,244.00

The Provider details that the breakage fee appears to be in respect of a mortgage held by the **Third Party Provider** and details that its submissions at (iii) above are applicable here and *“re-iterates them in full”*.

2. Compensation for other financial hardship suffered

The Provider outlines the following in relation to the Complainant’s claim for other financial hardship suffered;

i. Credit card interest

The Provider details that the Complainant’s credit card had an initial limit of €2,540 and the limit was amended as follows;

Year	Credit Card Limit
2002	€5,000
05 January 2008	€5,275
15 January 2008	€5,000
17 February 2008	€5,300

The Provider outlines that the Complainant’s credit card limit remains at €5,300.

The Provider submits that a review of the Complainant’s credit card history from **June 2011 to December 2017** *“reveals little to no change in her payment patterns or in the monthly interest incurred”*. The Provider submits that the Complainant’s credit card history and *“this pattern is consistent with the Complainant having a low sensitivity to credit card or choosing not to prioritise it.”* The Provider contends that the facts demonstrate that the Complainant chose not to prioritise credit card repayments.

The Provider submits that the *“Independent Appeals Panel has already awarded redress of €5,000”* in respect of this ground and that the Complainant *“has advanced no new evidence following from that.”*

The Provider details that the Complainant *“has received redress in respect of this ground and said redress is greater than the original amount sought”* and in the circumstances, there are no grounds to award further redress in respect of this.

ii. Compensation for switch fees of €1,152.00 incurred in respect of the subject mortgage accounts.

The Provider submits that breakage fees applied in respect of loan accounts ending **4991** and **6021** (not the subject of this complaint) and notes that the *“Complainant has been refunded these amounts by the Provider.”*

The Provider submits that it reversed the breakage fee of €153.02 for mortgage loan account ending **4991** on **2 November 2018**. The Provider also submits that it refunded the breakage fee of €999.17 for mortgage loan account ending **6021** on **19 November 2018**.

iii. Compensation for the time-value of money: €4,455.00

The Provider details that the Complainant *“has received compensation in respect of this category and this has been detailed in the Redress and Compensation packs that were sent to the Complainant.”* It outlines that this *“heading of compensation is to reinstate people for the lack of access to cash over time which resulted from the Provider’s failure. It reflects money which a customer should have had the access to at a point which they have not been given until now.”*

The Provider outlines that it is not clear how the Complainant arrived at this sum or how it was calculated but it appears that it was derived from the sum of the other heads of compensation sought. In circumstances where the Provider denies that the Complainant has suffered the *“losses alleged or at all”*, the Provider maintains that *“there is no interest chargeable on them”*.

In addition, the Provider contends that the Complainant’s claim is deficient and includes damage for future loss and speculative loss. The Provider details that interest would not attach to these headings and any figure for *“time value”* of money needs to be derived from a sum which excludes these figures.

The Provider contends that the claim has not been substantiated.

iv. Compensation of €37,796 for the Provider's failure (30% of the sum due)

The Provider contends that the Complainant has already received compensation under this heading and she is not entitled to anything further. The Provider details that the Complainant *"has not advanced such new ground which would entitle her to greater compensation."* The Provider details that it has outlined its reasoning for this in (i) –(iii) above.

The Provider further submits that *"[c]ompensation calculations are made in accordance with the prescribed Framework, which has been reviewed and approved by an independent third party."* The Provider contends that the compensation awarded is *"fair, reasonable and proportionate to the Complainant's circumstances"*.

Decision to sell the Rental Property

The Provider does not accept the Complainant's claim that she would not have had to sell the **Rental Property in 2016** if she had been charged the correct interest rate on the mortgage loan accounts the subject of this complaint. It submits that it *"is for the Complainant to show the loss claimed would not have occurred 'but for' the error by the Provider"* and provide evidence pointing to the overcharging being a substantial cause in her decision to sell. The Provider outlines that the Complainant has not demonstrated any causal link between the application of the incorrect interest rate and the sale of the **Rental Property in 2016**.

The Provider details that the Complainant maintains that she was forced to sell the **Rental Property in 2016** as a result of having inadequate cash reserves. The Provider contends that when applying for mortgage loan account ending **9486** in **2007**, the Complainant informed a member of staff that she intended to sell one or more of her investment properties within 10 years to clear all of her debt. The Provider details that the Complainant sought 10 years interest only when applying for mortgage loan account ending **9486** and sought extended interest only periods for mortgage loan account ending **4991**. The Provider further details that when completing her standard financial statement ("**SFS**") in **2014**, she informed the Provider that she intended to sell the **Impacted Property 1** in the next 5 years. The Provider outlines that the Complainant sought and obtained forbearance in **2014 and 2015** and agreed to an alternative repayment arrangement with the Provider in **February 2016**. The Provider outlines that it received numerous telephone calls from the Complainant and her representative between **January and May 2016** expressing unhappiness at the delay in applying the terms of the alternative repayment arrangement to her mortgage loan accounts.

The Provider outlines that during a meeting on **30 August 2016**, the Complainant proposed that the Provider return the title deeds for the **Impacted Property 1** and clear the debt, and in exchange, the Complainant proposed repaying €175,000 towards the mortgage on the **Impacted Property 1** and the balance of that mortgage to be secured by way of re-mortgage on the **Impacted Property 2**. The Provider details that the Complainant indicated that the funds were to come from “*verifiable, legal family funds*”. The Provider submits that this proposal was not accepted by the Provider. On **12 September 2016**, the Provider states that the Complainant made a further offer to clear the debt over the **Impacted Property 2** in exchange for the title deeds and move to 5 year interest only repayments on the mortgage loan accounts secured on the **Impacted Property 1**, and in exchange, the Complainant would contribute €155,000 from “*family funds*” to clear the debt on the **Impacted Property 2**.

The Provider details that “*the Complainant’s plan from the outset was to secure extended interest-only repayment periods on her mortgages and, following the end of those periods, sell the properties and clear the debt.*” The Provider further contends that the Complainant had also asserted that she had planned to sell a property before **2017** or before **2019** in the SFS that she had completed in **2014**. The Provider submits that the Complainant sold the **Rental Property** in **2016** and there is nothing to suggest that this sale “*deviated from her initial plan or that the Provider’s error was a trigger for it*”.

The Provider submits that the Complainant never intended to keep these properties and always intended on selling them. The Provider asserts that the facts do not show that the Complainant would not have suffered a loss “*but for*” the Provider’s error.

The Provider further contends that even if it was accepted that it was not the Complainant’s plan to sell these properties, there were intervening events which “*break the chain of causation, either singly or in combination*” between the Provider’s error and the decision to sell.

The Provider maintains that the intervening events that broke the chain of causation between the Provider’s error and the Complainant’s decision to sell the **Rental Property** are as follows:

- **The notice to quit/notice of termination given to the Complainant by the tenants in the Rental Property:** The Provider details that it has no information about the tenants, their lease, the date they left the property nor the monthly rent paid. The Provider details that the Complainant has submitted that she lacked the funds to repair the property and rent it again and has accepted that this played a “*significant causal role*” in her decision to sell the **Rental Property**.

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- **Dispute with tenants in the Impacted Property 1:** The Provider notes that the Complainant has indicated that there was a dispute with the tenants in the **Impacted Property 1** which required the services of a solicitor and a barrister. The Provider contends that this event is independent of the Provider's actions and would have had a significant effect on the Complainant's material circumstances and affected her cash flow.
- **Delay in realising the rental income from the Complainant's properties in [foreign location]:** The Provider submits that the purpose of mortgage loans was to purchase two apartments in [foreign location]. The Provider states that the Complainant informed the Provider that she estimated the properties would yield a rent of between €30,000 and €60,000. The Provider details that in or around **2007** the Complainant purchased two properties in [foreign location] by way of a property transaction that is popular in [foreign location] which the Provider contends is an unusual and risky purchase agreement. The Provider details that the vendor has a right of residence in the property and the purchaser pays a lump sum, in addition to a monthly payment to the vendor. The Provider details that the rent could not be realised until the vendor, who was in her eighties at the time of purchase, either left or passed away. The Provider details that in **2016**, the Complainant reported that the vendor was still in situ, which meant the Complainant was still obliged to pay a monthly stipend and could not realise the rental income.
- **Discrepancies in the Complainant's rental income:** The Provider details that when applying for mortgage loan account ending **9486** in **2007**, the Complainant stated that her annual rental income was €42,480 for her Irish properties and €7,800 for her [foreign location] properties. The Provider outlines that when completing her SFSs in **2014, 2015 and 2016**, she indicated that her monthly rental income for her Irish properties was €1,200 split at €700 per month for **Impacted Property 1** and €500 per month for **Impacted Property 2** resulting in an annual rental income of €14,400. The Provider outlines that even if the Complainant received €12,000 per annum from the **Rental Property**, the combined figures only amount to €26,400.

The Provider further outlines that the Complainant states that her yearly rental income is €40,180 in her annual accounts for **2017**. The Provider further outlines that the Complainant's rental income for the years **2013 to 2017** show that she did not suffer a loss of rental income as alleged or at all.

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The Provider outlines that the Complainant's rental income has remained steady during this period and finds this surprising as she sold the **Rental Property** in **2016**. The Provider details that there was a drop in rental income in **2016** and the Provider contends that it is reasonable to infer that the dispute with her tenants in the **Impacted Property 1** would have impacted on the Complainant's rental income for **2016**, and the drop in income could not be attributed to the Provider.

The Provider contends that even if the drop in rental income in **2016** is disregarded, the Complainant's **Rental Account** reveals that she did not suffer the loss claimed of or any such loss. The Provider details that the Complainant is seeking €60,000, being the loss of 5 years rental income. The Provider outlines that this would equate to a loss of €12,000 per annum. The Provider details that the Complainant did not suffer such a drop in rental income, and her **Rental Account** shows that her rental income rebounded to €40,180 in the year after the sale of the **Rental Property**. The Provider submits that the Complainant has not explained how such a recovery occurred and the Provider is at a loss to explain it.

The Provider further outlines that the Complainant's income from her current account cannot be reconciled with her other statements in respect of her rental income and payments to rental accounts are at irregular times for irregular amounts.

The Provider submits that the Complainant has consistently received an income far above the amount of €14,400 per annum that she indicated in the SFSs in **2014, 2015 and 2016**. The Provider notes that in **2015** it was €19,665 greater than this.

- **Complainant entered into a forbearance arrangement prior to the sale:** The Provider submits that the Complainant was granted extensions to her interest only repayment period in **2015 and 2016**. In **late 2015**, the Provider details that the Complainant negotiated a long-term restructure and this culminated in an agreement to an alternative repayment arrangement ("**ARA**") on **08 February 2016**, which, as already discussed above, resulted in mortgage loan accounts ending **4991** and **9486** being split, with the Complainant only needing to pay interest on one part and capital on the other part of the split.

The Provider outlines that there was no requirement as part of this **ARA** for a lump sum to be paid nor a condition requiring the sale of a property. The Provider submits that there was no pressure on the Complainant to pay down any debt.

The Provider submits that there was a delay in the implementation of this **ARA** which resulted in the Complainant falling briefly in arrears. The Provider states that there is no basis for the Complainant claiming that she was forced to sell the **Rental Property** or pay down her debt with the Provider. The Provider submits that it was the Complainant who approached the Provider in **August 2016** and offered to pay down the debt in exchange for the return of title deeds. The Provider submits that it was unaware that the **Rental Property** had been sold or that the monies used to pay off the debts were the proceeds of sale because the Complainant told the Provider that they were "*family funds*" or a gift from her family. The Provider outlines that it knew little of the **Rental Property**, barely anything about the mortgage on it and nothing of its sale.

- **Remoteness:** The Provider contends that considering all the factors stated above, the Complainant's claim for the consequential loss of the **Rental Property** is too remote to warrant compensation. The Provider outlines that the Complainant is claiming that its error meant that she did not have sufficient funds to carry out the repairs on the **Rental Property** when her tenants served a notice to quit on her, which in turn caused her to sell the **Rental Property** and even if there is a "*cogent, causal link between these*", the resultant loss would not be reasonably foreseeable by the Provider or by any reasonable person.

The Provider contends that it especially could not foresee that the Complainant would sell a property that it had no security over and so is of the view that the Complainant has not shown a causal connection between its error and the sale of the **Rental Property**.

The Provider "*maintains the Complainant's claim has not been substantiated*" for the following reasons;

- i. The facts do not reveal the Complainant suffered the loss she alleged or at all;
- ii. The facts disclosed show no causal link between the Provider's error and any loss the Complainant has claimed; and

/Cont'd...

- iii. The loss complained of is too remote to warrant redress.

The Provider outlines the Complainant failed to mitigate her loss or to take adequate or any steps to avoid said loss, in particular, she failed to disclose her income and expenditure in her SFSs when agreeing forbearance measures.

The Provider contends that if the Complainant experienced "*straitened*", which the Provider denies, it submits that this arose entirely from the Complainant or her representative's failure to complete the SFSs correctly and had she done so, she would not have experienced a lack of cash reserves which would "*impel*" her to sell the **Rental Property**. The Provider contends that the loss the Complainant alleges arose entirely from her own fault or in the alternative, the Complainant took inadequate or no steps to avoid the loss thus breaking the chain of causation between the Provider's error and the damage caused.

The Provider outlines that mortgage loan account ending **4991**, which is on a tracker interest rate of ECB +1.60%, and mortgage loan account ending **9486**, which is on a non-tracker variable rate of 2.15%, remain active and have a maturity date of **1 November 2033**.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer adequate redress and compensation to the Complainant for the failure identified on her mortgage loan account ending **4991** and mortgage loan account ending **9486**.

Decision

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

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

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

A Preliminary Decision was issued to the parties on **25 February 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.

Following the issue of my Preliminary Decision, the Complainant's representative made further submissions under cover of letter and e-mail to this Office dated **18 March 2021** and by e-mail to this Office dated **19 March 2021**, copies of which were transmitted to the Provider for its consideration. The Complainant's representative, in its post Preliminary Decision submission dated **18 March 2021**, notes that;

"I am requesting respond [sic] and to make further submissions that fall under either or both of the following:

Additional Point of Fact: *In the absence of inclusion of relevant details submitted by my client in your report and the loss of earlier submissions at an earlier juncture in the process, prior to commencement of investigation, and that had to be resubmitted, I am unsure that more may have gone astray, thus I am including what are considered relevant; and*

Error of Facts: *There are many."*

The Provider has not made any further submission.

Having considered the Complainant's additional submissions and all of the submissions and evidence furnished to this Office, I set out my final determination below.

The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress.

/Cont'd...

The redress payment of €47,933.05 reflects the amount of interest overpaid on the mortgage loan accounts and includes a payment of €2,279.58 to reflect the time value of money. The Provider also paid the Complainant compensation of €4,790.16 and €500 for the purposes of seeking legal advice. In circumstances where the Complainant was not satisfied with the redress and compensation paid by the Provider, the Complainant appealed to the Independent Appeals Panel. The Independent Appeals Panel awarded the Complainant an additional €5,000 in respect of mortgage loan account ending **4991**. The Independent Appeals Panel deemed the redress and compensation already granted in respect of mortgage loan account ending **9486** to be appropriate. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider has already provided for.

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

This complaint relates to two mortgage loan accounts held by the Complainant with the Provider.

I will now consider each mortgage loan account below;

Mortgage loan account ending 4991

The Provider has submitted into evidence internal notes titled **Mortgage Desktop – INFO Notes – Account [ending 4991]** regarding the Complainant’s mortgage loan application in **2005** which detail as follows;

“

...

FURTHER APPLICATION DETAILS

BACKGROUND

*Details of branch history to date including family Connections
[Complainant] is [Job Title] sal 61k and has been investing in houses(sic) over a no of years. She has 2 inv props plus has just purchased one now. She wants to take a loan on a property whihc(sic) is burden free and not the one she is purchasing.*

/Cont’d...

She requires int only. She has rental income of 21k per annum on two houses and the third will yield 850 pm

Her profile in the branch is excellent with grade 2M and range for rental income showing 26k and personal showing 49k.

She explained that most of her income over the years has gone into the houses and now been saved, when I queried other savings or assets. The pdh is valued conservatively at 500k.

Her huysband (sic) is an [occupation] and she did not disclose his earnings.

I reocmmend(sic) sanction.

I am aware [Third Party Provider] took collateral stamping of thisa(sic) Prop [Impacted Property 1] for [Rental Property] but now she is reuesting(sic) the release of these deeds as the house at [Rental Property] is now valued 330k and loan is 198k with [Third Party Provider]. You may find it on a search.”

It would appear to me that the Complainant had used the **Impacted Property 1** as collateral for the mortgage loan taken out with the **Third Party Provider** for the purchase of the **Rental Property**. When applying for mortgage loan application number **4991**, it appears that the Complainant intended to seek the release of the deeds of **Impacted Property 1** from the **Third Party Provider** in order to use **Impacted Property 1** as security for a new mortgage with the Provider to purchase another investment property.

A **Mortgage Loan Offer Letter** dated **3 May 2005** issued to the Complainant in respect of mortgage account ending **4991** which details as follows;

“

<i>1.Amount of Credit Advanced</i>	<i>€215,000</i>
<i>2. Period of Agreement</i>	<i>19 Years</i>
<i>3. Number of</i>	
<i>Repayment</i>	<i>Instalment</i>
<i><u>Instalment</u></i>	<i><u>Type</u></i>
<i>120</i>	<i>Variable at 3.600%</i>
<i>108</i>	<i>Variable at 3.600%</i>

.....

/Cont'd...

11. *Type of Loan:* Interest Combo
12. *Interest Rate:* 3.6% Variable”

The **Conditions Precedent** at **Part 3** of the **Mortgage Loan Offer Letter** detail as follows:

“ ...

(iii) Independent confirmation of projected rental income of EUR 10,200 per annum from property being purchased at [Impacted Property 2 address]”

The **Special Conditions** at **Part 4** of the **Mortgage Loan Offer Letter** detail as follows;

“(a) The following conditions apply to the Loan:

...

(ii) For the first ten years of the term of the Loan, repayment of this Loan shall be comprised of interest and any other amounts payable only and General Condition 4(a) is hereby varied. At the end of the above period, repayments shall comprise of principal and interest and any other amounts payable fully in accordance with General Condition 4(a). The amount of such revised repayment instalments shall be as advised to the Borrower by the Lender in writing.

The Lender may at any time during the initial interest-only period and at its absolute discretion (or at the request of the Borrower), convert the Loan to an annuity or repayment loan whereupon the Borrower shall be obliged to make such revised repayment instalments comprising both of principal and interest and any other moneys payable as the Lender shall advise the Borrower in writing.

(iii) Solicitor to undertake to use mortgage proceeds to purchase investment property at [Impacted Property 2 address] costing EUR 215,000.00.”

...

(v) The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.60% above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the Loan. Variation in interest rates shall be implemented by the lender not later than close of business on the 5th working day following a change in the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rate in accordance with General Condition 6(b) of this Offer letter. In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Investment Variable rate.”

/Cont’d...

General Condition 6 at Part 5-The General Conditions of the Mortgage Loan Offer Letter details 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), 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.”

The Complainant signed the **Borrower’s Acceptance and Consents** section of the **Mortgage Loan Offer Letter** on **1 June 2005** on the following terms;

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

It appears to me from the terms of the **Mortgage Loan Offer Letter** and the Provider’s internal notes titled **Mortgage Desktop – INFO Notes – Account [ending 4991]** that the purpose of mortgage loan account ending **4991** was to purchase **Impacted Property 2**, but the mortgage was to be secured against **Impacted Property 1**.

On **9 December 2005**, the Complainant signed a **MFA** applying a 5 year fixed interest rate of 3.99% to mortgage loan account ending **4991**. On **27 October 2010**, the Complainant signed a further **MFA** applying a 2-year fixed interest rate of 5% to mortgage loan account ending **4991**. It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainant’s mortgage loan account in that, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed rate period. The Provider found that the language used may have been confusing or misleading.

/Cont’d...

The Complainant signed and accepted another **MFA** on **11 November 2012** applying a 5-year fixed interest rate of 6.2% to mortgage loan account ending **4991**. Although this office is not in receipt of any of the **MFAs** signed by the Complainant between **2005** and **2010** for mortgage loan account ending **4991**, none of the above mentioned rate changes have been disputed by the Complainant. The tracker interest rate that should have been applied from **November 2010** was ECB + 1.60%. Between **November 2010** and **September 2014**, the overall tracker rate (ECB + margin) fluctuated between a rate of 1.75% and 3.10%.

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

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB +1.60%) had been applied to the mortgage loan account between **November 2010** and **September 2014**, is represented in the below table;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Dec 2010 – Apr 2011	2.40%	€895.17	€466.41	€428.76
May 2011 – Jul 2011	2.15%	€895.17	€511.00	€384.17
Aug 2011 – Nov 2011	1.90%	€895.17	€555.69	€339.48
Dec 2011	2.15%	€895.17	€510.87	€384.30
Jan 2012 – Jul 2012	2.40%	€895.17	€466.31	€428.86
Aug 2012 – Oct 2012	2.65%	€895.17	€421.47	€473.70
Nov 2012	2.65%	€1,108.84	€421.47	€687.37

/Cont'd...

Dec 2012 – May 2013	3.85%	€1,108.84	€421.47	€687.37
Jun 2013 – Nov 2013	4.10%	€1,108.84	€376.65	€732.19
Dec 2013 – Jun 2014	4.35%	€1,108.84	€331.99	€776.85
Jun 2014	4.45%	€1,108.84	€331.99	€776.85
Jul 2014 – Sep 2014	4.45%	€1,108.84	€314.02	€794.82

The Complainant has detailed that she was forced to remain on an expensive credit card overdraft from **16 November 2011**. The Provider has indicated that the Complainant's credit limit was €5,000 in **2002** and has never gone above €5,300, which is the current limit. I have not been provided with any evidence to confirm this but it has not been disputed by the parties.

The Provider has submitted the Complainant's credit card statements from **May 2011 to June 2014** into evidence. I have prepared a table setting out the monthly credit card balances, together with the interest charged on credit card purchases and interest overcharged on mortgage loan account ending **4991** for **May 2011 to December 2012**;

Month	Month end balance	Interest rate on purchases per month	Amount of interest charged on purchases per month	Amount of interest overcharged on account ending 4991
May 2011	€5,200.09	1.506%	€89.59	€384.17
Jun 2011	€5,248.82	1.506%	€74.69	€384.17
Jul 2011	€5,521.67	1.506%	€75.19	€384.17
Aug 2011	€5,264.85	1.506%	€81.18	€339.48
Sep 2011	€4,941.11	1.543%	€74.36	€339.48
Oct 2011	€5,256.17	1.543%	€72.21	€339.48
Nov 2011	€4,939.38	1.543%	€84.33	€339.48
Dec 2011	€5,356.10	n/a	n/a	€384.30
Jan 2012	€323.79	n/a	n/a	€428.86
Feb 2012	€3,143.57	n/a	n/a	€428.86
Mar 2012	€58.32	n/a	n/a	€428.86
Apr 2012	€3,744.69	n/a	n/a	€428.86
May 2012	€1,327.40	n/a	n/a	€428.86

/Cont'd...

Jun 2012	€4,333.45	n/a	n/a	€428.86
Jul 2012	€2,481.04	n/a	n/a	€428.86
Aug 2012	€2,907.50	n/a	n/a	€473.70
Sep 2012	€2,329.55	n/a	n/a	€473.70
Oct 2012	€2,414.25	n/a	n/a	€473.70
Nov 2012	€3,077.18	n/a	n/a	€687.37
Dec 2012	€5,411.38	1.543%	€70.48	€687.37

This office has not been provided with copies of the Complainant's credit card statements prior to the beginning of the overcharge in **December 2010**. The above table shows that the overcharge for the period between **May 2011** and **December 2012** ranged from €339.48 to €687.37. I note that during this period, the Complainant's credit card balance ranged from €58.32 and €5,411.38. The above table shows that interest ranging from 1.506% to 1.543% per month was charged on purchases from **May 2011** to **November 2011** and in **December 2012** when the credit limit was exceeded. The total amount of interest charged during this period was €622.03.

I note that in **January 2012**, the Complainant made a lodgement of €5,500 to her credit balance thereby reducing the overall balance. I further note that in **March 2012**, she made two separate lodgements totalling €8,000 and in **May 2012** and **July 2012** she made lodgements of €3,750 and €4,335 respectively. Therefore, it would appear to me that the Complainant had large deposits of cash available to her in the first half of **2012**.

I have prepared a table setting out the monthly credit card balances, together with the interest charged on credit card purchases and interest overcharged on mortgage loan account ending **4991** for **January 2013 to March 2014**;

Month	Month end balance	Interest rate on purchases per month	Amount of interest charged on purchases per month	Amount of interest overcharged on account ending 4991
Jan 2013	€3,365.92	n/a	n/a	€687.37
Feb 2013	€4,990.06	1.591%	€44.63	€687.37
Mar 2013	€4,388.49	1.591%	€86.40	€687.37
Apr 2013	€5,178.27	1.591%	€71.32	€687.37
May 2013	€4,500.41	1.591%	€77.72	€687.37
Jun 2013	€5,054.16	1.591%	€66.46	€732.19
Jul 2013	€4,490.51	1.591%	€85.70	€732.19
Aug 2013	€3,805.45	1.591%	€57.21	€732.19

/Cont'd...

Sep 2013	€4,593.72	1.591%	€68.58	€732.19
Oct 2013	€4,349.19	1.591%	€85.33	€732.19
Nov 2013	€5,620.87	1.591%	€59.22	€732.19
Dec 2013	€4,320.69	1.591%	€101.72	€776.85
Jan 2014	€5,404.94	1.591%	€72.88	€776.85
Feb 2014	€5,689.94	1.591%	€109.40	€776.85
Mar 2014	€4,742.18	1.591%	€71.92	€776.85

The above table shows that there was a marked increase in the Complainant's reliance on her credit card for day-to-day expenses and transactions from **February 2013 to March 2014**. During this period, interest of 1.591% per month was charged on purchases. The total amount of interest charged during this period was €1,058.49. The above table shows that the overcharge on the Complainant's mortgage loan account ending **4991** during this period ranged from €687.37 to €776.85 per month. I accept that if the Complainant had access to these additional funds, she may not have relied on her credit card as much as she did in respect of day-to-day expenses. In addition, I accept that the overcharging may have affected the Complainant's ability to repay her credit card balance. However, this appears to have been marginal, given the disparity in the level of the overcharge and the balance on her credit card.

I note from the decision of the Independent Appeals Panel that the Panel was of the view that as a consequence of the Provider's overcharging, the Complainant's monthly cash flow was impacted resulting in the "*unnecessary reliance*" on her credit card for day-to-day expenses.

On that basis, the Independent Appeals Panel awarded the Complainant additional compensation in the sum of €5,000 on **20 March 2018**. I accept that this is sufficient compensation in respect of this aspect of the Complainant's complaint.

Before moving on to consider the Complainant's mortgage journey in relation to mortgage loan account ending **4991** in the period from **October 2014 to November 2017**, I will firstly consider the details of the Complainant's second mortgage loan account ending **9486** which was drawn down in **November 2007**.

Mortgage loan account ending 9486

/Cont'd...

The Provider has submitted into evidence internal notes entitled **Mortgage Desktop – INFO Notes – Account [ending 9486]** regarding the Complainant’s mortgage loan application in **2007** which detail as follows;

“

...

Additional Costs Breakdown

Part pur apt [foreign location] cost 200k:184000

Existing Mortgage Accounts

[Account Number Ending]4991

...

FURTHER APPLICATION DETAILS

*-----
BACKGROUND NB CROSS REF TO NO [Account Number Ending] 9101 EQ RE APP SUB
TODAY*

ALSO

*Details of branch history to date including family
connections*

As you can see [Complainant] has 5 investment props, 3 in Ireland and 2 in [foreign location]. It is her intention to purchase another in [foreign location] for 200k. I will be submitting another ril app for [Impacted Property 2] (burden free now) for the sum of 184 I will cross ref the apps. She requires interest only for 10 years if you approve.

*The statement of affairs are the 5 apts and the pdh burden free pdh 750k.
Her salary as a [occupation] of [Place of work] is E71,000. In addition she earns rental income from 3 props in Ireland, totalling E42480 and a further E7800 net in [foreign location] from one of the apts. The second apt is [foreign location] as a [redacted], in which an old lady lives for her life and she dies the apt is theirs,*

Her husband is an [occupation] and does not wish to go on the property titles. He gave me his company accounts. He is a sole trader and he would be prepared to offer a guarantee if you require it.

It is their plan to sell some of the Inv props in max 10 years and clear all debt.

/Cont’d...

The build up of deposits are from rent while 55k is in two c/a's here I listed them as savings I can give you account numbers if you wish.

I am very happy to strongly recommend this application as I am aware that property in [foreign location] is increasing in value and [Complainant] will have 3 props when this purchase complete

I recommend sanction.

THIS [IMPACTED PROPERTY 2] IS VALUED AT 230K RENT OF 1800PM AND I AM APPLYING FOR 80% INTEREST ONLY FOR 10 YEARS

...

stat affairs 2 burden free apts [foreign location] total value E800k rent 3 props in [Irish location] total value E983k mort os E170k IIB and [Provider] E213k PDH burden free E750k

purchasing a further apt in [foreign location] for 200k whihc[sic.] will be burden free as she is taking eq rel and ril mort grom[sic] us total 199k"

The Provider has also submitted into evidence a document titled "**Rationale for Application [Mortgage Loan Account Ending] 9486**" which details as follows;

"...

2 applications recvd:

[Ending] 9101 – 15k Rip eq rel/LTV 75% int only

[Ending] 9486 – 184k Rip eq rel/LTV 80% int only

Purpose to buy another RIP in [foreign location]

Spoke to [Complainant] and the unencumbered RIP @ [Impacted Property 2] is actually used by appl's husband as his office (self employed [occupation])

...

Undisclosed lease on bureau – [the Complainant] advised that this is actually husbands loan.

Rents of 1.8k per month advised on the [Impacted Property 2] RIP, but i[f] rented as a 2 bed property, would generate c. 750 per month. For the purposes of this assessment am allowing lower figure"

/Cont'd...

A **Mortgage Loan Offer Letter** dated **19 September 2007** issued to the Complainant in respect of mortgage account ending **9486** which details as follows;

“

1. Amount of Credit Advanced	€161,000
2. Period of Agreement	16 Years
3. Number of	
Repayment	Instalment
<u>Instalment</u>	<u>Type</u>
24	Fixed at 4.790%
60	Variable at 5.100%
108	Variable at 5.100%
...	
11. Type of Loan:	Interest Combo
12. Interest Rate:	4.790% Fixed”

The **Special Conditions** at **Part 4** of the **Mortgage Loan Offer Letter** detail as follows;

“(a) The following conditions apply to the Loan:

...

(iii) The interest rate applicable to the Loan is a fixed rate and is fixed for the period set out in Part 1 of this Offer Letter. At the end of the fixed rate period 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, in accordance with general condition 7(b) of the Offer Letter, the interest rate applicable to the Loan will be a variable interest rate. The variable interest rate may vary upwards or downwards.

The interest rate shall be no more than 1.10% above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the Loan. Variation in interest rates shall be implemented by the lender not later than close of business on the 5th working day following a change in the Repo rate by the European Central Bank.

Notification shall be given to the Borrower of any variation in interest rate in accordance with General Condition 6(b) of this Offer letter. In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable rate.

/Cont’d...

...

(v) For the first 7 years of the term of the Loan, repayment of this Loan shall be comprised of interest and any other amounts payable and General Condition 4(a) is hereby varied. At the end of the above period, repayments shall comprise of principal and interest and any other amounts payable fully in accordance with General Condition 4(a). The amount of such revised repayment instalments shall be as advised to the Borrower by the Lender in writing. The Lender may at any time during the initial interest-only period and at its absolute discretion (or at the request of the Borrower), convert the Loan to an annuity or repayment loan whereupon the Borrower shall be obliged to make such revised repayment instalments comprising both of principal and interest and any other moneys payable as the Lender shall advise the Borrower in writing."

General Condition 6 (a) and (b) at Part 5- The General Conditions of the Mortgage Loan Offer Letter are set out on the same terms as mortgage loan account ending **4991** as detailed above.

General Condition 7 at Part 5 of the Mortgage Loan Offer Letter details as follows;

"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 of 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 of interest 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 Complainant signed the **Borrower's Acceptance and Consent** section of the **Mortgage Loan Offer Letter** on **1 October 2007** on same terms as set out in respect of mortgage

/Cont'd...

account ending **4991** as detailed above, and the mortgage loan was drawn down on **7 November 2007**.

It is not in dispute between the parties that a tracker interest rate with a margin not above ECB + 1.10% was to apply on the expiry of the fixed interest rate period in **November 2009**. The ECB rate from **December 2009** to **January 2010** was 1%. The tracker interest rate incorrectly charged on mortgage loan account ending **9486** between **1 December 2009** and **4 January 2010** was 2.35% (ECB + a margin of 1.35%), when it should have been 2.10% (ECB + a margin of 1.10%). 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 ending **9486**.

The **mortgage loan statements** submitted into evidence show that the rate changed to 2.35% on **9 November 2009** and shows that the monthly repayments for **December 2009** and **January 2010** were €316.23.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the correct tracker margin (ECB +1.10%) had been applied to the mortgage loan account from **December 2009** to **January 2010**, is represented in the table below;

Mortgage loan account ending 9486				
Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Dec 2009	0.25%	€316.23	€282.65	€33.58
Jan 2010	0.25%	€316.23	€282.65	€33.58

The Provider has awarded the Complainant redress of €62.87 (comprising of overpaid interest and time value of money), in addition to compensation of €3.14 in respect of this overcharge. Having regard to all of the evidence before me in terms of the particular circumstances of the Complainant, the level of overcharging and the period over which the overcharging occurred, I accept that the amount of compensation paid by the Provider in relation to its failure on mortgage loan account ending **9486** is reasonable in the circumstances.

/Cont'd...

The **mortgage loan statements** show that on **5 January 2010**, there was a further rate change to 4.950% with monthly mortgage repayments increasing to €664.49. It is unclear to me why this rate change came about, or why the Complainant elected to apply a much higher interest rate to her mortgage loan account in **January 2010**, however such matters are not the subject of this complaint.

I will now continue to consider the Complainant's mortgage journey in relation to mortgage loan account ending **4991**, in particular in the period from **October 2014** up to **January 2016**.

Mortgage loan account ending 4991

The tracker interest rate that should have been applied from **October 2014** to mortgage loan account ending **4991** was ECB + 1.60%. Between **October 2014** and **January 2016**, the overall tracker rate (ECB + margin) was 1.65%. I note that the Complainant signed a **MFA** in **July 2015** implementing reduced monthly repayments of €1,312 for 6 months which appear to have commenced in **August 2015**.

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

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB +1.60%) had been applied to the mortgage loan account between **October 2014** and **January 2016**, is represented in the below table;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month

Oct 2014 – Jul 2015	4.55 %	€1,108.84	€296.10	€812.74
Aug 2015 – Jan 2016	4.55%	€1,312	€296.10	€1,015.90

I note from **Special Condition (a) (ii)** contained in the **Mortgage Loan Offer Letter** dated **3 May 2005** and as detailed above, that the monthly repayments on mortgage loan account ending **4991** were to be interest only repayments for the first 10 years of the term of the loan. Mortgage loan account ending **4991** was drawn down on **11 July 2005** therefore the interest only period was due to end in or around **July 2015**.

The Provider's internal notes submitted in evidence indicate that the Provider tried to contact the Complainant by telephone on **24 July 2014** in relation to mortgage loan accounts ending **4991** and **9486** however the Provider received no answer.

The Provider's internal notes detail as follows;

"[...] obc no answer acc [ending 4991] due to r/o r/r 13/11/2014 est step up payment 142.13e, acc [ending 9486] due to r/o r/r 07/11/2014 est step up payment of 1526.50e need to confirm step up on acc"

The Provider's internal notes indicate that the Provider contacted the Complainant again on **7 August 2014** as follows;

"[...] adv cus of step up pymts on both a/cs at this point in time she does not know what her situation will beputting a/cs on exclusion for rollers for 2 weeks to allow letter to issue due out 7th & 15th aug..c/b to advise if can meet step up pymts"

The Provider's internal notes dated **20 August 2014** indicate that Complainant requested a "continuation of existing arrangement for additional 5 yrs" in respect of her mortgage loan accounts and the Complainant "agreed to complete SFS".

The Provider has indicated that all customers are required to complete a **SFS** in order to extend interest only repayment periods. I note from the evidence submitted by the Provider that a meeting was arranged between the Provider and the Complainant on **18 September 2014** and the Complainant completed a **SFS** on that same date in respect of mortgage loan accounts ending **4991**, **9486** and **9101**.

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The Complainant detailed the following under “**Section A: Account & Borrower Details**” of the SFS;

		Borrower Information	
		Borrower 1	Borrower 2
A1	Name	Complainant	none
A2	Mortgage Account Reference No (s)	[Ending 9486] [Ending 4991]	none
A3	Outstanding Mortgage Balance (€)	a) 175,000 b) 215,000	none
A4	Estimated Current Value of Primary Residence (€)	none	none
A5	Monthly Mortgage Repayments Due (€)	none	none
A6	Correspondence Address	Private Dwelling House	
A7	Property Address if different to correspondence Address	Impacted Property 1 Impacted Property 2	none

The SFS further records the “Reason(s) for review/arrears” as “not to change existing arrangements”.

The Complainant has detailed the following under “**Section B: Your Monthly Income**” of the SFS:

		Borrower 1	Borrower 2	TOTAL
B1	Gross Monthly Salary (before tax and any other deductions at source)	2636	none	2636
B2	Net Monthly Salary (after tax and any other deductions at source)	2.242	none	2242

...

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B9	Monthly Income from Property assets (other than primary residence) (see E5)	€1,200	none	1200
B10	Monthly Income from non-property assets (see F6)	none	none	none
B11	Total Monthly Income (sum of B2 to B10)			3442 G1

The Complainant has detailed under “**Section C: Monthly Household Expenditure**” of the SFS that her total monthly expenditure was €1,500.

The Complainant has detailed the following under “**Section E: Property Assets (other than Primary Residence)**” of the SFS;

Section E: Property Assets (other than Primary Residence)								
	Property (give details below)	Property Type (e.g. Buy to let)	Ownership Type*	Current Value (est)* €	Loan Balance €	Arrears Balance €	Monthly Rental Income €	Monthly Expenditure (e.g., upkeep, maintenance)
E1	1	Buy to let	Sole	220000		none	700	
E2	2	Buy to let	Sole	200000		none	500	
E3	3							
E4	4							

...

Property Assets (other than Primary Residence)		
Property	Address	Date of Purchase
1	Impacted Property 1	
2	Impacted Property 2	

I note that **page 2 of 5** of the **Branch SFS Checklist** contains a section titled “**Summary of discussion with customers and Branch recommendation**” on foot of the meeting on **18 September 2014** which details as follows;

“... 2 [Provider] BTLs, 1 unencumbered PDH, and part ownership of 1 BTL in [foreign location] valued at eu1.2M.

The sale agreement on the latter included the provision that the previous owner will remain in the property until death or on entering a nursing home. An elderly lady, [Complainant] said her health is not good and expects to be able to rent the

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property in the next 3 years. Similar properties in [foreign location] fetch 4.6k for a weekend during festival seasons and expects a lot more for weekly rentals. No intention of selling. It is held under family trust. She expects her income to increase by eu30-60K when it is rented. Intends selling BTL at [Impacted Property 1] in next five years but intends to keep renting [Impacted Property 2] indefinitely with a view to it being inherited by her children. She has 2 children in 3rd level education with one expected to continue in a Masters degree. Both expected to be in college for at least another 2 years. [Complainant] seeking a continuation of interest only for another five years.

Did not know she would lose the tracker rate on [mortgage loan account ending 9486] and if offered i/o on both mortgages, would have to discuss with her [profession] husband. He has no involvement in these mortgages.”

I note that **page 3 of 5** of the **Branch SFS Checklist** contains a section titled “**Alternative Repayment Option(s) now Recommended to ASU**” which details as follows;

LONG TERM OPTIONS (if recommending in combination, please place an X in more than one box)			
Capitalisation of Arrears	<input type="checkbox"/>		
Extended Term	<input type="checkbox"/>	From <input type="checkbox"/> mths To <input type="checkbox"/> mths	New maturity date <input type="checkbox"/>
Long Term Interest only (1 - 5 years)	<input checked="" type="checkbox"/>	Term <input type="text" value="60"/> mths	
Long Term Reduced repayment (1 - 5 yrs)	<input type="checkbox"/>	Term <input type="text"/> mths	
Split Mortgage Option	<input type="checkbox"/>	Details of split included with OptionsLink outputs.	
Standard Restructure of Unsecured Lending	<input type="checkbox"/>	Details of standard restructure of unsecured lending included with OptionsLink outputs.	
Radical Restructure of Unsecured Lending	<input type="checkbox"/>	Details of radical restructure of unsecured lending included with OptionsLink outputs.	
Trade-down mortgage forbearance option	<input type="checkbox"/>	Include relevant details in recommendation below	
Other (please specify)	<input type="text"/>	<input type="checkbox"/>	<input type="text"/>

Under the heading “**Branch Recommendation and Rationale**” of the **Branch SFS Checklist** the Provider details as follows;

“Recommend 3 years interest only on both. Decision for customer to revert to full c & I on [ending 9486] or choose to lose tracker. Affordability and long term financial security in little doubt. Unencumbered PDH. Part ownership in unencumbered BTL. Rental income coming in on [Provider] BTLs Substantial income from [foreign] BTL expected in next 3 years. 3 years i/o will allow a review to check if this has progressed. “

The Provider’s internal notes dated **29 September 2014** detail the following recommendation in relation to mortgage loan account ending **9486** and mortgage loan account ending **9101** (which is not the subject of this complaint);

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"[...] recommending IO extension [account ending 9486&9101 for income stream from [foreign] BTL to begin, to improve affordability for LT f/b. Acc [ending 4991] due to roll off IO July 2015. LT f/b may be required at this juncture....LT sustainable solution identified for both properties. E IO extension will not assist in l/t given high LTV, bwr plans to hold one asset & sell the other. C&I reps will be required...Bwr has a strong asset position, however [foreign] property income not confirmed as dependent on previous owners health.

The sale of this property is not an option...Step up to L/T f/b not evident from assessed figures, bwr requirs[sic] income from foreign property or husband income for this to be affordable."

The Provider's internal notes dated **17 October 2014** detail the following in relation to the Provider's decision to extend the interest only repayment period on the Complainant's mortgage loan accounts;

"Reviewed approving I/O X8months on a/c [ending 9101] & I/OX9months on a/c [ending 9486] subject to 1% rate loading. This co-incides (sic) with a/c [ending 4991] rolling off i/o. At this time the borrowers will be required to step up reps to split level total rep approx E1900 pm. Based on the financial info provided this should be affordable as CC bal of 4.8k current being paid at E500pm. This will be cleared within the 9 months timeframe & can be put [...] towards the mtg making split reps affordably in long term. Based on the financial information provided & TFI this provides a sustainable arrangement & a positive debt exit position 80 yr...A/C no [ending 9486] Interest only for 9 months.. LT Strategy: ..Prove repayment track record for permanent forbearance measure, Split mortgage (SOURCE) : Asset disposal... A/C no [ending 9101] Interest only for 8 months.. LT Strategy: ..Prove repayment track record for permanent forbearance measure, Split mortgage (SOURCE) : Asset disposal"

The Provider's internal notes indicate that a call was made to the Complainant on **21 October 2014** where the Complainant *"asked if further i/o will be approved"*. The Provider in turn informed the Complainant that the mortgage loan accounts *"will be assessed for long term solution"*. The Provider's internal notes indicate that a **MFA** was issued on **21 October 2014**. The Provider's internal notes indicate that the Complainant called to the Provider's branch on **6 November 2014** when the Complainant signed the **MFA**s in respect of mortgage loan account ending **9486** and **9101**.

/Cont'd...

The Provider has submitted into evidence screenshots from its internal system which the Provider has named "**Letter History Screenshots**". These screenshots detail the following in respect of mortgage loan account ending **9486**:

"Opt Code	Date	Time	Description	User
.....	7/11/2014 [Redacted]	6:34:00	Interest Only Rollover	
.....	21/10/2014 [Redacted]	13:39:12	BTL [Illegible] Letter: Terms Amendment	
.....	21/10/2014 [Redacted]	13:36:12	BTL [Illegible] Letter: Terms Amendment	
.....	09/09/2014 [Redacted]	22:10:27	Rate Change Document	
.....	11/08/2014 [Redacted]	23:45:17	Interest Only Review	
.....	10/06/2014 [Redacted]	22:08:15	Rate Change Document	

It appears that the Provider granted the Complainant's request to extend the interest only period on mortgage loan account ending **9486** and according to the Provider's internal notes, the alternative repayment arrangement was implemented on or around **18 November 2014**.

I note that the Provider has submitted into evidence **bank statements** from the Complainant's bank account ending **8437** which is the Complainant's **Rental Account**. I note from a review of the bank statements from **January 2014** up the end of **August 2014**, that lodgements were made totalling €102,026.35 which is significantly more than €1,200 per month rental income (which would have amounted to €9,600 for the same period) as detailed by the Complainant in the **SFS**. However, the Complainant has detailed in her submissions to this office that she took early retirement in **2014** and that various lodgements in the **Rental Account** in **2013** and **2014** relate to her dealings "*with her lump sum and other monies at that time*". The lodgements made to the **Rental Account** are made on various dates in various amounts, therefore it is difficult to ascertain what lodgements can be attributed to rental income.

I further note that the Complainant did not disclose her ownership of the **Rental Property** under the relevant section titled "**Section E: Property Assets (other than Primary Residence)**" of the **SFS**, nor did she disclose her monthly rental income from the **Rental Property**. The Complainant detailed in her submissions to this office that the monthly rental income for the **Rental Property** was €1,100.

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The Provider’s internal notes indicate that a call was scheduled with the Complainant on **8 May 2015** to discuss “*next steps*” in relation to mortgage loan account ending **4991**. The Provider’s internal notes detail as follows;

“[...] Confirmed with customer that forbearance up August 2015 and 3rd mortgage rolling of[f] interest only in 07/15.. Cust had agrred[sic] to fill out new SFS and revert..”

I note from the evidence submitted by the Provider that a meeting was arranged between the Provider and the Complainant on **8 June 2015** and the Complainant completed a further **SFS** on that date in respect of mortgage loan accounts ending **4991, 9486 and 9101**. The Provider’s internal notes of the meeting detail as follows;

“[...] Summary of Discussion: customer looking to extend int only by 3 years. ...recommend 3 yr int only to allow [BTL] to recover value and for situation in [location] to work its way out....consequences of not accepting FB offered were advised to CM.”

The Complainant has detailed the following under “**Section A: Account & Borrower Details**” of the SFS;

BORROWER INFORMATION	BORROWER 1	BORROWER 2
A1 Name	Complainant	
A2 Mortgage Account Reference No(s)	[Ending 9486] [Ending 4991]	
A3 Outstanding Mortgage Balance (€)	[Ending 9101]	
A4 Estimated Current Value of Primary Residence (€)		
A5 Monthly Mortgage Repayments Due (€)		
A6 Correspondence Address	Private Dwelling House	
A7 Property Address (if different to correspondence address)	Impacted Property 1 Impacted Property 2	
	Please indicate preferred mortgage solution	

The **SFS** further records the “**Reason(s) for review/arrears**” as “*to continue present arrangement of interest only for a period of 3 years*”.

The Complainant has detailed the following under “**Section B: Your Monthly Income**” of the **SFS**;

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BORROWER INFORMATION		BORROWER 1	BORROWER 2	TOTAL
B1	Gross Monthly Salary (before tax and any other deductions at source)	€2,636.96		€2,636.96
B2	Net Monthly Salary (after tax and any other deductions at source)	€2,254.90		€2,254.90

B9	Monthly Income from Property assets (other than primary residence) (see E5)	€1,200		€1,200
B10	Monthly Income from non-property assets (see F8)	—		
B11	Total Monthly Income (sum of B2 to B10)			€3,454.90 G1

The Complainant has detailed under “**Section C: Monthly Household Expenditure**” of the SFS that her total monthly expenditure was €2,033. I note that this is an increase of €533 per month than in **September 2014**.

The Complainant has detailed the following under “**Section E: Property Assets (other than Primary Residence)**” of the SFS;

SECTION E: Property Assets (other than Primary Residence)												
PROPERTY (GIVE DETAILS BELOW)	PROPERTY TYPE (EG BUY/LET)	OWNERSHIP TYPE	CURRENT VALUE (€)	LOAN BALANCE (€)	ARREARS BALANCE (€)	MONTHLY RENTAL INCOME (€)	MONTHLY EXPENDITURE (EG RENT, MORTGAGE)	RE-STRUCTURED Y/N	MONTHLY MORTGAGE PAYMENTS		LENDER	FOR SALE Y/N
									DUE (€)	BEING PAID (€)		
B1	1	buy to let	sole	€240,000		€700						
B2	2	buy to let	sole	€200,000		€500						

Property Assets (other than Primary Residence)		
Property	Address	Date of Purchase
1		
2	Impacted Property 1	
3	Impacted Property 2	

/Cont'd...

I note that **page 2 of 5** of the **Branch SFS Checklist** contains a section titled “**Summary of discussion with customers and Branch recommendation**” which details as follows;

“... 2 [Provider] BTLs, 1 unencumbered PDH, and part ownership of 1 BTL in [foreign location] valued at eu1.2M. The sale agreement on the latter included the provision that the previous owner will remain in the property until death or on entering a nursing home. An elderly lady, [Complainant] said her health is not good and expects to be able to rent the property in the next 3 years. Similar properties in [foreign location] fetch 4.6k for a weekend during festival seasons and expects a lot more for weekly rentals. No intention of selling. It is held under family trust. She expects her income to increase by eu30-60K when it is rented. Intends selling BTL at [Impacted Property 1] in next five years but intends to keep renting [Impacted Property 2] indefinitely with a view to it being inherited by her children. She has 2 children in 3rd level education with one expected to continue in a Masters degree.

Both expected to be in college for at least another 2 years. [Complainant] seeking a continuation of interest only for another three years. Her husband has no involvement in these mortgages. Customer has already taken the hit on the tracker rates on the two mortgages. [Account ending 4991] is now coming off ten year interest only. “

The Provider’s internal notes dated **16 June 2015** detail as follows;

*“***Sustainability*** ...TFI on both [Provider] btl security property 1 indicates borrowers will achieve break even status by 2026 on proposed split reps@ E528pm. TFI on Provider] btl security property 2 indicated borrowers will achieve break even status by 2028 on proposed split reps @ E1361 pm.. Long term sustainable solution identified for borrower with affordability/income step up confirmed”.*

The Provider’s internal notes show that a **MFA** was issued on **22 June 2015**. The Provider has submitted that the Complainant signed a **MFA** on **6 July 2015** to reduce the monthly repayments on mortgage loan account ending **4991** to €1,312 for a period of 6 months. This office has not been provided with a copy of this **MFA**, however, the agreement to reduce the monthly repayments is not in dispute between the parties.

The Provider has submitted into evidence screenshots from its internal system titled “**Letter History Screenshots**”.

These screenshots detail the following in respect of mortgage loan account ending **4991**:

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Code	"Opt	Date	Time	Description	User
.....		10/09/2015	5:53:40	Interest Only Review [Redacted]	
.....		8/07/2015	4:32:42	PRODUCT SWITCH DOCUMENT FOR [PROVIDER] [Redacted]	
.....		22/06/2015	14:15:57	MFA Letter: Pay Interest & Part Capital [Redacted]	
.....		13/03/2015	6:00:22	Interest Only Review [Redacted]	

The **bank statements** for mortgage loan account ending **4991** submitted by the Provider show that the Complainant's monthly payments were €1,312 from **4 August 2015** and remained at this level for a period of 6 months up to and including **January 2016**. During this same period, I note that the Complainant was on an extended interest only repayment period and was overpaying €1,015.90 per month in interest which is a very significant amount to be overpaying on a monthly basis.

I further note that the Complainant once again did not disclose her ownership of the **Rental Property** under "**Section E: Property Assets (other than Primary Residence)**" in the **SFS**, nor did she disclose her monthly rental income from the **Rental Property**.

The Complainant detailed in her submissions to this office that the monthly rental income for the **Rental Property** was €1,100.

I will now consider mortgage loan account ending **4991** in the period from **February 2016** up to **November 2017**.

Between **February 2016** and **November 2017**, the overall tracker rate (ECB + margin) fluctuated between a rate of 1.60% and 1.65%.

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

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB +1.60%) had been applied to the mortgage loan account between **February 2016** and **November 2017**, is represented in the table below;

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Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Feb 2016- Mar 2016	4.55%	€2,682.15 (UPAID)	€1,293 (lodgement in this amount made on 25 February 2016)	€1389.15
Apr 2016 – Jan 2017	4.60%	€603.37	€416.30	€187.07
Feb 2017 – Nov 2017	4.60%	€275.46	€183.03	€92.43

The Provider's internal notes dated **13 January 2016** detail as follows;

“Review for LT solution to be implemented: Case was assessed and approved for LT forbearance of Max Split plus Term Extension on 17.06.2015 refer to assessment...No arrears on accounts.

On review of last 6 months, borrower has fully maintained repayments at LT strategy levels fulfilling interim repayments as requested. MFA [...] will issue for LT forbearance on accounts [ending 9486,4991,9101]...A/C no 4991Forbearance Offer, Details: Split Mortgage. 40% on Annuity and 60% on Interest Only. Capitalisation of arrears to zero. Take out source: Sale of security held [Impacted Property 1]..Term Extension. New maturity date: 01/08/2033... A/C no 9486Forbearance Offer, Details: Split Mortgage. 40% on Annuity and 60% on Interest Only. Capitalisation of arrears to zero. Take out source: [Impacted Property 2]..Term Extension. New maturity date: 30/11/2033... A/C no 9101Forbearance Offer, Details: Split Mortgage. 40% on Annuity and 60% on Interest Only. Capitalisation of arrears to zero. Take out source: Sale of security held [Impacted Property 1]..Term Extension. New maturity date: 30/11/2033”

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The Provider's internal notes record a call to the Complainant on **14 January 2016** when the Complainant informed the Provider of the following;

"[...] 1 property generating rental income of 500pcm. and other is rented but tenant hasnt being paying since before xmas..."

The Provider's internal notes record a call between the Complainant and the Provider on **25 January 2016** as follows;

"[...] Cust anxious for a decision on the account. Went through account from June-

Adv 6 months payment were in line with LT FB-

Adv decision was back on the a/c re same. Went through the decision on the 3 a/cs and adv of repayments. A/cs have reverted back to full C&I. Adv of suspending DD. cust wanted same. (cannot suspend due to t/f). Adv cust I would c/b to confirm residual bal of mtgs and to discuss Feb repayment. Need to advise cannot suspend DD..."

The Provider's internal notes record a call between the Complainant and the Provider on **28 January 2016** as follows;

"...Adv cust that it was too late to suspend DD as need 10 days. Advised full C&I will from the a/c. Adv cust if there are sufficient funds in the a/c when the payments will go through..."

The Provider's internal notes record a further call between the Complainant and the Provider on **28 January 2016** as follows;

"...Went through offers with customer and repayment amounts....Adv cust that DD would call for full funds- Cust will call to branch as she does not want full amount to go through on DD. Cust adv she will make manual payment next week of the FB amounts...Adv of t/f of the MFA,s (sic) to issue out on the accounts. Cust was unhappy that the paperwork was not ready to issue when she has been in contact back in Dec and was told she would need to wait until the months before being reviewed...Cust wants to have MFA for meeting adv it has not issued could possible (sic) be two weeks before this is received..."

/Cont'd...

The Provider has submitted into evidence screenshots from its internal system which the Provider has named “**Letter History Screenshots**”. These screenshots detail the following in respect of mortgage loan account ending **4991**:

Code	Opt	Date	Time	Description	User
.....		11/03/2016	8:05:45	Unpaid Letter	
		[Redacted]			
.....		3/03/2016	5:25:17	31 Days in Arrears Letter	
		[Redacted]			
.....		2/03/2016	5:45:02	Unpaid Letter	
		[Redacted]			
.....		24/02/2016	5:25:52	DD Amendment Letter	
		[Redacted]			
.....		10/02/2016	5:09:31	Unpaid Letter	
		[Redacted]			
.....		08/02/2014	12:16:30	MFA Letter: Mortgage Split	
		[Redacted]			
.....		02/02/2014	15:55:39	Unpaid Letter	
		[Redacted]			

The Complainant has stated that the Provider issued “*sustained harassment letters*” to her on **2 and 8 February 2016, and 2, 3 and 11 March 2016**. I note from the **bank statements** submitted in evidence that the Complainant’s monthly repayments increased to €2,682.15 in **February 2016** as the payments reverted to capital and interest repayments. The Complainant’s direct debits for this amount were returned as unpaid in **February and March 2016**. I further note that a lodgement of €1,293 was made on **26 February 2016**. It would appear that the Complainant’s mortgage loan account fell into arrears in **February 2016** as the Complainant rolled off her existing forbearance arrangement and the Provider was in the process of implementing a new forbearance arrangement. I note that the letter dated **2 February 2016** that has been submitted in evidence by the Complainant was issued by the Provider to notify the Complainant of a missed payment of €2,682.15 on mortgage loan account ending **4991** on **1 February 2016**. The letter details as follows;

“Our records show that the most recent mortgage repayment due was not paid in full by the due date.

If you have now brought your mortgage repayments up to date, have made an alternative repayment arrangement with us (or are in the process of making an arrangement with us), please ignore this letter.”

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It is clear from the telephone calls that took place between the Provider and the Complainant in **January 2016** that detailed discussions took place in relation to the implementation of a further forbearance arrangement and the Provider informed the Complainant that a **MFA** detailing the terms of the ARA would issue shortly. The Complainant had clearly discussed how the direct debits would operate while the forbearance arrangement was being implemented, therefore I do not consider it reasonable for the Complainant to characterise this correspondence as “*harassing*” in nature.

I note that the Provider issued a **MFA** to the Complainant under cover of letter dated **8 February 2016**. This letter served to inform the Complainant that the Provider assessed the mortgage loan account and was in a position to offer an ARA. The letter dated **8 February 2016** also details as follows;

“We strongly recommend that you get independent financial and legal advice to help you whether to accept our offer of an alternative repayment arrangement.”

The Provider’s internal notes indicate that the Complainant contacted the Provider on **22 February 2016** as follows;

“[.]ArRs 2682.15 Unable to make payment today...rental income 700 pcm (not being paid) on [Impacted Property 1] and 500pcm on [Impacted Property 2]. Cus will be signing MFA with NAM today @ 3Pm. Discussed stopping DD Adv cus that March is already in the system and unable to stop at this point, requires 10 days but she could approach branch re same. adv cus that it was likely that MFa will be in place by [A]pril payment so could see no benefit in cancelling same...”

It appears that the Complainant had a meeting with the Provider later that day as the Provider’s internal notes dated **22 February 2016** detail as follows;

“...3XMFA ..and DD..signed as [Complainant] is going to pay cash for March payments ...Advised will be set up for April payment...”

The Provider received a signed **MFA** from the Complainant on **23 February 2016** to amend the **Mortgage Loan Offer Letter** dated **3 May 2005** and facilitate the implementation of an

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ARA to split mortgage loan account ending **4991** into (1) an interest only loan in the amount of €138,726.05 and (2) an annuity loan in the amount of €74,698.64.

Mortgage Loan account ending **6021** was created with an opening balance of €139,725 for the purposes of the split mortgage as part of the forbearance agreement. This mortgage loan account is not the subject of this complaint. This office has only been provided with the cover letter dated **8 February 2016** enclosing a copy of the **MFA** but has not been provided with a copy of the signed **MFA**. However, I note the details of the alternative repayment arrangement are not in dispute between the parties and the **bank statements** submitted in evidence align with the arrangement that was put in place.

I note that the letter dated **2 March 2016** submitted in evidence by the Complainant was issued by the Provider to notify the Complainant of a further missed payment on mortgage loan account ending **4991** on **1 March 2016**. The letter details as follows;

“Our records show that the most recent mortgage repayment due was not paid in full by the due date.

If you have now brought your mortgage repayments up to date, have made an alternative repayment arrangement with us (or are in the process of making an arrangement with us), please ignore this letter.”

I note that a further letter dated **3 March 2016** was issued by the Provider to notify the Complainant that mortgage loan account ending **4991** “has been in arrears for 31 days or more”. The letter also details as follows;

“If you have already paid off the arrears, or have made an alternative repayment arrangement which you are keeping to, please ignore this letter.”

I note that a further letter dated **11 March 2016** was issued by the Provider to notify the Complainant that a mortgage repayment was missed on mortgage loan account ending **4991**. The letter also details as follows;

“Our records show that the most recent mortgage repayment due was not paid in full by the due date.

If you have now brought your mortgage repayments up to date, have made an alternative repayment arrangement with us (or are in the process of making an arrangement with us), please ignore this letter.”

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It is important to note that the Complainant had already signed the **MFA** when the above letters issued. It is clear from the telephone calls that took place between the Provider and the Complainant in **February 2016** that the forbearance arrangement would be implemented in **April 2016**. The Complainant again discussed how the direct debits and repayments would operate while the forbearance arrangement was being implemented therefore I do not consider it reasonable for the Complainant to characterise this correspondence as “*harassing*” in nature.

The Complainant’s representative, in its post Preliminary Decision submission dated **18 March 2021**, states that the Complainant’s “*alleged harassments with [Provider] demanding excessive interest more than once and supported by local [Provider] management in [location] and subsequently reported to an internal arbitrator, had caused a ‘breach of trust’ and ‘anxiety and fear’ with [the Complainant] had occurred prior to the decision to sell Rental Property and was also a contributory factor in addition to lack of funds to refurbish the Rental Property to re-let it again*”. While I acknowledge that overcharging occurred on the Complainant’s mortgage loan accounts at this time, this error was only identified by the Provider in **2017** on foot of the Examination. Therefore, I do not consider it reasonable for the Complainant’s representative to view the overcharging of interest as a form of “*harassment*”. I have not been provided with sufficient evidence from the Complainant that would indicate that her dealings with the Provider or indeed any of the agents of the Provider’s branch were of such a nature that caused anxiety and fear.

Provision 8.3 of the **Consumer Protection Code 2012** outlines as follows;

“Where an account is in arrears, a regulated entity must seek to agree an approach (whether with a personal consumer or through a third party nominated by the personal consumer in accordance with Provision 8.5) that will assist the personal consumer in resolving the arrears.”

I accept that in its engagements with the Complainant in **February and March 2016**, the Provider complied with its obligations under **provision 8.3** of the **Consumer Protection Code 2012** and sought to agree an approach with the Complainants to resolve the arrears after the mortgage loan account reverted to capital and interest repayments.

I note from the Provider’s internal notes that the Complainant had a number of telephone calls with the Provider in **March and April 2016** expressing her dissatisfaction in the delay in implementing the terms of the ARA. It appears that the forbearance arrangement was

/Cont’d...

initially only implemented in relation to mortgage loan account ending **9101**. I note from the Provider's internal notes that the Provider's representative who was dealing with the Complainant at the time sent an "*urgent request*" to the relevant unit on **13 April 2016** to set up the forbearance on the other two accounts. I note that the ARA was subsequently implemented on or around **15 April 2016** and the direct debit was activated on **22 April 2016**.

At this juncture I note that reference has been made to various **MFA**s and documents relating to ARAs implemented in respect of mortgage loan account ending **4991**. It is disappointing to note that the Provider has not furnished copies of the documents referenced in its submissions to this office. While I acknowledge that this office did not specifically seek copies of the various ARAs, I would expect the Provider to have provided these documents in evidence in order to substantiate the references made in its submissions. Nevertheless, in circumstances where the contents of the ARAs agreed between the parties are not in dispute, I am in a position to determine this complaint without sight of the MFAs and documentation regarding the details of the ARAs.

I note from the **bank statements** that the Complainant made a lump sum payment in **April 2016** in the amount of €138,726.05. I also note from the **bank statements** that that on foot of the implementation of the split mortgage, the Complainant's mortgage repayments on mortgage loan account ending **4991** were reduced to €603.37 and remained at this level until **January 2017**.

The Provider's internal notes show that a further meeting took place between the Complainant and the Provider on **8 August 2016** at the Provider's branch. The Provider's internal notes detail as follows;

"CUSTOMER MEETING....Reason: requesting 5yr I/O on Mortgage a/c [ending 9486]....Customer situation summary: Customer has proposal re [mortgage loan account ending 9486]....Summary of discussion: Met with [Complainant] ..looking for 5 yr I/O on [Impacted Property 2]..proposal is to cif mortgage on property in [location of Impacted Property 1] FR will expire next year & advised will repay funds that Solicitor can vouch for. She is now requesting I/O on [Impacted Property 2] to reduce her o/g..has separate rental a.c which shows the rental coming in for both properties ..she has also adv that she has rental...income from 2 properties in [foreign location]..one of which is being lived in by a 90yr old tenant...

she is paying her 1.2k pa..this is paid from the other rental income she is getting from her 2nd property in [foreign location]...Recommended approach and rationale: Customer to revert with payslips & reuse previous SFS...CM response to

/Cont'd...

recommended option: CustoeMr (sic.) wants proposal for I/O for 5yrs on the [Impacted Property 2]..”

The Complainant completed and submitted a further SFS on 18 August 2016.

The Complainant detailed the following under “Section B: Your Monthly Income” of the SFS:

Gross Monthly Salary (before tax and any other deductions at source)	€2,636.96		€2,636.96
Net Monthly Salary (after tax and any other deductions at source)	€2,303.82		€2,303.82

...

Monthly income from Property assets (other than primary residence) (see E5)	€1,200		€1,200
Monthly income from non-property assets (see F8)	—		
Total Monthly Income (sum of B2 to B10)			€3,503.82 ^{G1}

The Complainant has detailed under “Section C: Monthly Household Expenditure” of the SFS that her total monthly expenditure was €2,114.33.

The Complainant has detailed the following under “Section E: Property Assets (other than Primary Residence)” of the SFS;

SECTION E: Property Assets (other than Primary Residence)							
Section E1 Asset Number	Section E2 Asset Description	Section E3 Disposal Type	Section E4 Purchase Price	Section E5 Disposal Price	Section E6 Purchase Date	Section E7 Disposal Date	Section E8 Other Info
1	B.T.L.	SOLE	€185,000				€700
2	B.T.L.	SOLE	€200,000				€500

...

Property Assets (other than Primary Residence)	
Ranking	Description
1	Impacted Property 1
2	Impacted Property 2
3	

The SFS further records the “Reason(s) for review/arrears” as “PLEASE SEE ENCLOSURE”. I note that the Complainant enclosed an advertisement for a property at a price of €185,000 with a handwritten note stating “Similar Property currently for sale [Impacted Property 1 location]” with the SFS. This advertisement appears to be dated **30 August 2016**. The Complainant has also enclosed a webpage print out titled “[redacted] and Property in [foreign location]” which contains a handwritten note stating “Relates to 2 Props in [foreign location] -> Arrangement in place”.

A typed document has also been submitted in evidence by the Provider titled “[Complainant] – BTL x 2” which details as follows;

“...

Customers Proposal:

It is intended to pay off the 2 smaller loans in full with €175k[..] & with a condition that the Bank agree to the following:

- 1. Return Title Deeds of [Impacted Property 1] ; and*
- 2. To allow remaining Bank Loan of €214k approx. to become a 5yr Fxt I/O and that the bank retain the security of the [Impacted Property 2]*
- 3. After 5 years the Bank Loan will be repaid under a new capital [..] interest arrangement to be agreed ; and*
- 4. Cancel all Endowment Policies.*

Customer is proposing to introduce €175k funds from legal verifiable family funds to reduce overall amount due to [the Provider] to reduce debt on [Impacted Property 1] & offset any further debt against other property at [Impacted Property 2]. She has requested the title deeds to be released on repayment of loan in full.

This mortgage was split in Jan-amount on this property is €227,836 which would leave a shortfall of €52.8k- she is requesting that this amount be offset against the

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property in [Impacted Property 2 location]. [Complainant] has advised that there should be sufficient equity in this property to take on residual from [Impacted Property 1].

[Complainant] has explained that the property in [Impacted Property 1 location] is currently rented out & has a very difficult tenant in residence. She is anxious to have the deeds released & her rationale is due to the difficult tenant – she did not elaborate any further on this. She did advise that a property 2 doors up is currently on the market for €185k – see attached.

Customer is requesting a 5 year term of I/O on the remaining loans & residual of [Impacted Property 1] for the following reasons:

- 1) Customer owns 2 properties in [foreign location] 1) [foreign location 1] 2) [foreign location 2]- the property in [foreign location 2] is rented out @ 1.kpm & this in turn is used to pay a monthly sum to the resident in the [foreign location 1] property.
- 2) The property in [foreign location 1]...is still occupied by the original 90yr old owner - the arrangement in place is that the property will belong to [Complainant] once this occupant moves out or passes away. Whilst she is still in residence the arrangement is for [Complainant] to pay her a monthly sum of €1.2k which is paid to her from the rental received on the property in [foreign location 2]. Both these properties were purchased with the original owners in residence, a lump sum paid over, a monthly payment agreed...
- 3) Her plan is that she hopes to be in a position in 5years time to be able to rent out the [foreign location 1] property- because of it's (sic) location she should be able to get a minimum of 50k rental income and at this stage her rental income from the [location 2] property would also be generating income being paid directly to her.
- 4) [Complainant] has advised now that she is retired & her income has reduced [i]s in...receipt of her pension only.
- 5) [Complainant] has also advised over the past number of years there has been a huge draw on their income/savings as she had 2 dependents put through college & had to pay their education fees.

Nam Recommendation:

- Customer is proposing to reduce her overall debt by €175k however in doing this wants the residual balance on [Impacted Property 1] set off against

/Cont'd...

[Impacted Property 2] & the overall debt on [Impacted Property 2] to be put on I/O for 5 years to allow her increase her income by then.

Recommend approval based on facts above- providing valuation on [Impacted Property 2] is sufficient to take over residual from [Impacted Property 1]- Customer has advised that it should have sufficient equity."

Based on the above figures submitted by the Complainant in the **SFS**, the combined monthly rental income in respect of **Impacted Property 1** and **Impacted Property 2** was €1,200 (€24,000 per annum), and her total monthly income was €3,503.82. The Complainant indicated in the **SFS** dated **18 August 2016** that her total monthly household expenditure was €2,114.33 and total monthly debt repayments were €1,918.04 (to include €603.37 per month in respect of mortgage loan account ending **4991**), leaving her total monthly outgoings at €4,032.37. This resulted in a monthly deficit of €528.55.

It would appear from the evidence submitted that if mortgage loan account ending **4991** was on the correct tracker interest rate in or around **August 2016**, the monthly repayments would have been €416.30 per month, which would have reduced the Complainant's monthly deficit to €341.48. It would appear to me that the Complainant would still be in a monthly deficit even if the overcharging had not occurred, and therefore would most likely have required some sort of forbearance even if the correct interest rate had been applied to mortgage loan account ending **4991**.

I note that the Complainant proposed to introduce funds of approximately €175,000 to reduce the outstanding balance on the split mortgage loan accounts ending **4991** and **6021** which were secured against **Impacted Property 1** and offset any further debt against **Impacted Property 2**. The Complainant also requested that the Provider return the title deeds for **Impacted Property 1** once the security was released. The Complainant indicated to the Provider that the funds of €175,000 came from "legal, verifiable" family funds. It appears from the Provider's internal notes dated **9 September 2016** that the Provider was not entirely satisfied with this proposal.

The Provider's internal notes detail as follows;

"...as "[r]eleasing [Impacted Property 1] would leave us with a balance of [€]155,068.69 secured against a property worth [€]115,000.00, LTV 134.84.]For [Impacted Property 1] to be released borrower would need to reduce LTV on [Impacted Property 2] to at least 80% (balance [€]92,000.00) which would require a total capital reduction against all mortgages of [€]289,506.95. Can you please advise the borrower that the current proposal is declined. If the borrower is selling the [Impacted Property 1] and is in a position to make the reduction of

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[€]289,506.95 against the mortgages please let me know and I will assess for release of the property..."

The Complainant subsequently sent an e-mail to the Provider on **12 September 2016** making a further offer to clear the debt over **Impacted Property 2** in exchange for the title deeds and a shift to 5 year interest-only repayments on the mortgages secured with **Impacted Property 1**. In exchange, the Complainant agreed to contribute €155,000 from "family funds" and clear the debt on **Impacted Property 2**. The Complainant's email to the Provider dated **12 September 2016** details as follows;

"..Following discussions with my family, I propose to pay the sum of [€]155,000 in exchange for the full title deeds of [Impacted Property 2] and to pay a sum to reduce the balance due to [Provider] to amount to [€]200,000, to be repaid on an variable interest only basis for five years. The title deeds to [Impacted Property 1] to remain with [Provider]..."

The Provider's internal notes dated **27 September 2016** detail as follows;

"...Borrower has advised that she is receiving funds from family and she intends to lodge to the mortgages to clear [Impacted Property 2] in full (bal 155,068.69) and reduce mortgage on [Impacted Property 1] to 200k (current balance 226,438.26), total capital reduction of approx. 181,500.00. She is requesting that we then release the deeds of [Impacted Property 2] and approve interest only on the remaining mortgages for 5 years...Propose that funds are allocated as follows: Borrower to clear [account ending 6021] in full (RQ balance today 140,205.00 this includes funding fee of [€]1131.91 for breaking out of fixed rate of 6.2%) Cap reduction of remainder of available funds approx. 41,295.00 to 43764991 (account on fixed rate of 6.2%, funding fee for reduction of account on fixed rate will be approx. [€]356.52 No forbearance to be approved: [account ending 4991] to remain on c&i after capital reduction on repayments will be approx.. [€]279pm, repayments c&i. [Impacted Property 1] held as primary security.

No amendment to [account ending 9101] (repays [€]83pm) repayments c&i. [Impacted Property 1] held as primary security. No amendment to [account ending 6065] (repays [€]172pm) mortgage is on interest only until maturity as it is split portion. Mortgage to be cross secured to hold [Impacted Property 1] as security. No amendment to [account ending 9486] (repays [€]346pm) repayments c&i. Mortgage to be cross secured to hold [Impacted Property 1] as security."

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I note the Provider's internal notes dated **28 September 2016** record that the Complainant *"advised spoke to her husband and is happy to accept the offer from [Provider]"* and requested the Provider *"to issue the paper work"*. The Provider appears to have issued an amending mortgage loan offer letter detailing the new loan structure and cross security to the Complainant's solicitor in **December 2016** which was signed by the Complainant on or around **9 January 2017**. I have not been provided with a copy of the documentation that issued to the Complainant in this regard but I understand that the contents of the documentation reflect the proposal outlined above in the Provider's internal notes and is not disputed by the parties.

The **bank statements** for mortgage loan account ending **4991** and the Provider's internal notes detail a lodgement of €41,295 on **12 January 2017** which resulted in a reduction of the overall balance from €75,391.58 to €34,096.58. The Provider's internal notes indicate that an amount of €139,673.88 was lodged to mortgage loan account ending **6021**, which is not the subject of this complaint. I note that mortgage loan account ending **6021** was fully redeemed in **January 2017**. The Complainant informed the Provider at the time that these funds came from *"family funds"* that her solicitor could vouch for, however in her submissions to this office, the Complainant explains that these funds emanated from the sale of the **Rental Property**, the mortgage of which was not held by the Provider.

The Provider submits that the Complainant sold the **Rental Property** at some point in **mid-2016**. The Complainant's representative, in its post Preliminary Decision submission dated **18 March 2021**, states that the *"Rental Property was sold within three months of 2016 and the auctioneers were instructed by the [Complainant] in early January 2016 to sell. It was a very easy sale as it was in a highly sought area of the city"*. The Complainant has indicated in her submissions that when the tenants left the **Rental Property** in or around **December 2015**, it was estimated that it would cost €15,000 to renovate the **Rental Property** to the proper standard in order to be in a position to rent the property again. The Complainant states however that she had a working capital deficiency caused by the Provider's overcharge and so was *"forced"* to sell the **Rental Property** and apply the proceeds of sale towards mortgage loan accounts ending **4991** and **6021**.

The Complainant's representative, in its post Preliminary Decision submissions dated **18 March 2021**, states that the *"time of the sale of the Rental Property was during the fallout from the Banking Crises and my client believed it was prudent to sell and maintain as a priority her sterling bank credibility as a prime client. She had not enough funds in her [Provider] rent account due to [Provider] subsequent admitted overcharges"*.

In this regard, I note from the Complainant's **Rental Account bank statements** that there was a balance of €4,897.02 on **31 December 2015**. I accept that this balance may have been higher had the Complainant not been overcharged by the Provider up to this point and therefore she may have had additional monies available to her to assist with renovation and repairs.

However, it is difficult to ascertain the Complainant's true financial situation at the time she made the decision to sell the **Rental Property** (at some point between **December 2015** and **April 2016**) as she did not disclose her ownership of the **Rental Property** in any of the **SFSs** that she completed and submitted to the Provider in **2014, 2015 and 2016**. It would appear from the evidence submitted that the Provider only discovered the existence of the **Rental Property** when it checked the Complainant's history with the Irish Credit Bureau during the Complainant's application for mortgage loan account ending **9486**. The Provider queried why there was another mortgage registered in her name according to the Irish Credit Bureau to which the Complainant advised that it was actually her husband's loan.

The Complainant's representative in its post Preliminary Decision submission dated **18 March 2021**, states that the Complainant *"never stated that her husband owned any property. She knew that the bank credit check would always be carried by the provider and her name is declared as the only lawful borrower and owner. This credit check is a normal proper standard banking procedure and should have been carried out by the provider beforehand. The [Complainant] refutes these allegations"*. The Complainant's representative in its post Preliminary Decision submission dated **18 March 2021**, further explains that *"[r]ent was always paid in cash as usually there were three persons there and each one wanted their own recorded cash payment separately in case anyone else defaults. Bank direct debits were not the norms then"*. While I acknowledge that it was up to the Provider to complete the necessary credit checks, it is important to note that the Complainant did not disclose her ownership of the **Rental Property** or the monthly rental income in any of the **SFSs** that she completed. Furthermore, no evidence has been submitted to show how much money the Complainant was paying in respect of the [foreign] properties held under the Family Trust or indeed the amount of rental income received in respect of the [foreign] properties.

I note from the **bank statements** submitted in evidence that the Complainant's monthly repayments in respect of mortgage loan account ending **4991** reduced to €275.46 per month from **February 2017** on foot of the lodgement of €41,295 on **12 January 2017**. Taking into account the details submitted by the Complainant in the **SFS** in **August 2016**, the reduced monthly repayments would leave her with a reduced monthly deficit of €200.64.

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Therefore, it appears to me that following the sale of the **Rental Property** and the lodgement of a portion of the sale proceeds to mortgage loan account ending **4991** in **February 2017**, the Complainant would still have a monthly deficit of €108.21 even if the correct tracker interest rate had been applied.

The Complainant was meeting full repayments in respect of her mortgage loans with the Provider at the time the **Rental Property** was sold, albeit interest only repayments. I accept that the Complainant may not have sought to extend the interest only repayment period on her mortgage loan account ending **4991**, if the correct interest rate was applied to her mortgage loan at the time. However, even if she was making repayments on mortgage loan account ending **4991** on the correct tracker interest rate, the Complainant, based on the details supplied by her, would still likely have experienced a shortfall in her monthly income versus her expenditure in **2016**, as discussed above. It would appear to me that if the Complainant had provided details of this monthly rental income in the **SFSs** submitted to the Provider, it would likely show that she held a monthly surplus rather than the deficit discussed above for the years **2014, 2015 and 2016**.

The Complainant's representative, in its post Preliminary Decision submission dated **18 March 2021**, contends that the *"[f]orms SFSs are defective in design to serve the [Complainant] and do not serve the true position of the independent family claimant and how she lives and maintains her lifestyle and at the same time remain a prime customer with the provider. These forms are misogynist in nature for any independent woman."* It is important for the Complainant to understand that a standard financial statement is a tool used by lenders to identify a borrower's current income, living expenses along with other expenditure and financial commitments that a borrower may have. I do not consider it reasonable for the Complainant's representative to state that the form is *"misogynist"* in nature. It is a matter for each individual borrower to accurately complete a SFS to identify monthly income, monthly household expenditure, monthly debt payments, all property assets (other than primary residence) and all non-property assets so that a lender can assess a borrower's mortgage loan account for a suitable forbearance measure if necessary.

The monthly overpayments on the Complainant's mortgage ending **4991** ranged from €92.43 to €1,389.15 per month between **December 2010** and **November 2017**. If the Complainant's decision to sell the **Rental Property** was due to the overcharge of interest on mortgage loan account ending **4991**, as submitted by the Complainant, I find it difficult to understand why the Complainant agreed to only apply a very small portion of the sale proceeds to mortgage loan account ending **4991** and instead, chose to apply the majority

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of the funds to a different mortgage loan account leaving her with mortgage loan repayments at the higher interest rate on mortgage loan account ending **4991**.

It is important to note that the Complainant never discussed the sale of the **Rental Property** with the Provider during any of the meetings or telephone calls held between the parties involving the implementation of forbearance measures from **2014** to **2016**. The Complainant's representative, in its post Preliminary Decision submission dated **18 March 2021**, states that the meetings with the Provider in "*late 2016 were held after the agreed sale of Rental Property and were only for discussing which of their securities the [Provider] should retain and return to [Complainant]. Impacted Property 1 or 2*".

The Complainant completed three **SFs** in **2014**, **2015** and **2016** seeking alternative repayment arrangements on foot of which the Provider offered forbearance to the Complainant based on the financial information, which she accepted. I note that the forbearance measures proposed by the Provider did not include the sale of the **Rental Property** or indeed any of the properties held as security by the Provider. If it was the case that the Complainant disclosed details of the **Rental Property** to the Provider and explained that it was not part of her financial plan to sell this property in order to sustain her mortgage loans with the Provider, then it is possible that the Provider could have discussed other forbearance arrangements with the Complainant. However, the Complainant decided to sell the **Rental Property** in order to release equity without the knowledge of the Provider.

I note that the Complainant is seeking compensation for the forced sale of the **Rental Property** and additional compensation comprising the following;

- i. Loss of rental income from the property for 5 years: €60,000
- ii. Loss of increase in value of the property: €15,000
- iii. Interest paid on the Rental Property mortgage and various breakage/redemption fees
- iv. Interest on Credit Card held with the Provider of €4,057 (calculated at €3,000 per month at 1.591% interest per month over 85 months)
- v. "*Interest repaid to reflect value of Money*" in the amount of €4,450

I will now consider the financial losses that the Complainant submits she has incurred below;

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Loss of €60,000 to reflect the estimated loss of 5 years of rental income

The Complainant contends that she was receiving €1,100 per month from the **Rental Property** and is seeking the equivalent of 5 years' worth of rent from the Provider. However, the Complainant has not provided any evidence in the form of rent receipts or otherwise to show what the previous monthly rental income of the **Rental Property** was. I note that the Complainant did not disclose details of any rental income from the **Rental Property** in any of the **SFSs** completed by the Complainant in **2014, 2015 and 2016**. The Complainant only provided details of the rental income from **Impacted Property 1** and **Impacted Property 2**. Therefore it is difficult to ascertain the Complainant's loss if any, in this regard.

The only evidence furnished to this office that is related to rental income is the Complainant's bank statements for her rental account ending **8437** held with the Provider. It is difficult to ascertain from the bank statements provided as to which rental property specific lodgements relate to. It is also not clear whether the Complainant held any other rental accounts with any other financial service providers. On a review of the various lodgements to the Complainant's rental account, I note that lodgements derived from rental income totalled approximately €49,565 in **2015**, €41,400 in **2016** and €42,150 in **2017**. Again, it is difficult to establish whether these lodgements all relate to rental income and it is also difficult to establish the nature of all the outgoing transactions on the rental account. The closing balance on the rental account as of **31 December 2015** before the sale of the **Rental Property** was €4,897.02 and the closing balance on the rental account as of **31 December 2016** after the sale of the **Rental Property** was €12,187.22. The balance on the rental account as of **18 December 2017** was €7,804.14.

It would appear to me that the activity and transactions on the Complainant's rental account do not support her contention that she incurred a loss of approximately €12,000 per year after the sale of the **Rental Property** in **2016**. I am of the view that the evidence does not support the Complainant's claim for additional compensation in the amount of **€60,000**.

Loss in increase market value of Rental Property of €15,000 minimum from date of sale to date

The Complainant contends that she has incurred a loss of at least €15,000 on foot of the increase in market value of the **Rental Property** since it was sold in **2016**. In this regard,

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the Complainant has submitted a letter from an estate agent dated **17 January 2018** which details as follows;

“Dear [Complainant],

Further to your request we wish to confirm that your property at [address of Rental Property] was sold through our agency for €260,000 in April 2016.

We are of the opinion that if the property was offered for sale in Quarter 1, 2018 we would estimate the realisable value to be in the region of €275,000.

We are also of the opinion that the estimated realisable income would be in the region of €1,100 per month.

[...]”

It is important for the Complainant to understand that any fluctuation in the value of **Rental Property** is not something that can be accurately predicted. Moreover, the Complainant has only provided an estimated value of the **Rental Property** if it was offered for sale in the first quarter of **2018**. However, the Complainant is seeking loss of rental income for 5 years which suggests that had she not sold the **Rental Property** in **2016** she might have sold the **Rental Property** in **2021**. Therefore, any loss suffered would have to be calculated based on the projected value of the Rental Property in **2021** as opposed to **2018**.

That said, it appears from the evidence submitted that the Complainant did not disclose her ownership of the **Rental Property** to the Provider let alone engage in any substantive discussion in relation to the sale of this property with the Provider. Further, I have not been provided with any evidence of the Complainant’s communications with the **Third Party Provider** (who held a mortgage on the **Rental Property**) in relation to the sale of the **Rental Property** or whether the **Third Party Provider** deemed the sale of the **Rental Property** necessary. The Complainant had already entered a forbearance arrangement with the Provider in relation to mortgage loan accounts ending **4991** and **9486** which she was adhering to when she sold the **Rental Property**.

I have not been provided with any evidence to show that the Complainant sought additional forbearance from the Provider or indeed the **Third Party Provider** who held the mortgage of the **Rental Property** in an effort to retain that property.

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It is interesting to note that the Complainant informed the Provider when applying for mortgage loan account ending **9486** in **2007** that she intended to sell one or more of her investment properties within 10 years to clear all of her debt. In her submissions to this office, the Complainant noted that it was tax efficient to sell the **Rental Property** and this property was the “*most saleable*” property in her portfolio in **2016**. The Complainant further notes that the “[e]xisting properties secured by [the Provider] were let out and not readily available”. The Complainant’s representative, in its post Preliminary Decision submission dated **18 March 2021**, submits that “*had the impacted property 1 been available to sell without a tenant then it would have been sold instead of Rental Property. Both the Impacted Property 1 and Rental Property have similar values and losses claimed would have been likewise*”. It would appear to me that this suggests that the Complainant, as an experienced property owner, considered her property portfolio as part of her overall financial planning and decided to sell the **Rental Property** so that she could gain equity release. The Complainant’s representative, in its post Preliminary Decision submission dated **18 March 2021**, states that “[a]ny mention of projected sale of property was noted by provider in 2007 and as per the [Complainant’s] submissions was to be sold to one of her children and any fabrication in your report of release of equity is without foundation”. In this regard, it is important to note that whether or not the Complainant decided to sell one of her investment properties to one of her children, the decision to sell one of her investment properties aligns with the Complainant’s 10 year plan that she disclosed to the Provider in **2007** and this decision does not appear to have been made solely on foot of the overcharging.

The evidence shows that the Complainant chose to sell the **Rental Property** of her own volition, regardless of the overcharging by the Provider, and at no point did the Provider advise the Complainant that this course of action was necessary or advisable. I do not accept that the Provider can reasonably be held responsible for the sale of the **Rental Property** and the loss in the increase market value.

I am therefore of the view that the evidence does not support the Complainant’s claim for additional compensation in the amount of **€15,000**.

Interest paid on the Rental Property mortgage and various breakage/redemption fees

The Complainant is seeking additional compensation for interest paid and banking fees as follows;

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- i. "Switch Fees" of **€1,152** paid to the Provider; and
- ii. Compensation of **€1,645** paid to the **Third Party Provider** for additional interest and compensation of **€1,224** for "*Breaking Fund Costs*" on the mortgage secured on the **Rental Property** from **1 January 2016 to 20 July 2016** (the period during which the **Rental Property** was vacant and on the market).

The Provider details that it reversed the breakage fee of €153.02 for mortgage loan account ending **4991** on **2 November 2018** and refunded the breakage fee of €999.17 for mortgage loan account ending **6021** on **19 November 2018**. This has not been disputed by the Complainant. Therefore, I accept that the Complainant's claim for compensation in the form of "*Switch Fees*" in the amount of €1,152 has already been discharged by the Provider.

It would appear to me that the Complainant's claim for the additional banking fees arises on foot of her decision to sell the **Rental Property** in **2016** which she had mortgaged with the **Third Party Provider**. The Complainant claims that she had to pay interest to the **Third Party Provider** from **1 January 2016** to the date she redeemed the mortgage on the **Rental Property** on **20 July 2016**. The Complainant explains that this was the period during which the **Rental Property** was vacant and on the market for sale. I note however that the letter from the Complainant's estate agent states that the Rental Property was sold for €260,000 in **April 2016**. The Complainant has furnished a one page bank statement issued from the **Third Party Provider** for the period **1 January 2016 to 1 August 2016**. There is no mortgage account number or details of the **Rental Property** contained in the bank statement provided. Further, the Complainant has not provided evidence as to the monthly repayments, the applicable interest rate or the terms and conditions of the mortgage loan with the **Third Party Provider**. The amount of interest claimed by the Complainant does not align with the interest amount entries on the bank statement provided. Similarly, the amount of "*breakage fund costs*" claimed by the Complainant does not correspond with the break funding fees detailed in the bank statement submitted in evidence. In any event, it is important for the Complainant to be aware that she had an obligation to the **Third Party Provider** to pay any sums due as per the terms and conditions of her mortgage loan with the **Third Party Provider** regardless of whether or not she decided to sell the **Rental Property**.

As outlined above, I am of the view that the Provider cannot reasonably be held accountable for the Complainant's decision to sell the **Rental Property** (which is not secured against any of the mortgage loans held with the Provider). Therefore, any associated costs arising from the Complainant's decision to sell the **Rental Property** cannot

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be attributed to the Provider. Therefore, I do not accept the Complainant's claim for additional compensation in relation to interest and banking fees incurred is justified.

Interest on credit card held with the Provider of €4,057 (calculated at €3,000 per month at 1.591% interest per month over 85 months)

As previously discussed, I accept that the overcharging on the Complainant's mortgage loan account ending **4991** may have caused the Complainant to rely more on her credit card for day-to-day expenses than she may have done had those funds been available to her.

Based on the credit card statements from **May 2011** to **June 2014** supplied in evidence, it appears to me that no interest was charged on credit card purchases from **December 2011** to **November 2012**. The tables set out in earlier paragraphs show that the Complainant exceeded her credit card limit for a period of time and was charged interest ranging from 1.506% to 1.591% on purchases. Therefore, it is unclear as to why the Complainant has calculated compensation under this heading at an interest rate of 1.591% over 85 months.

While I also accept that the overcharging may have affected the Complainant's ability to repay her credit card balance, I am of the view that any such impact could only be marginal given the disparity in the level of the overcharge and the balance on her credit card.

I note that the Complainant was awarded additional compensation in the amount of €5,000 by the Independent Appeals Panel in respect of this aspect of her complaint. I accept that this is reasonable compensation.

"Time value of Money" in the amount of €4,450

The Complainant has already received a payment in the amount of €2,279.58 to reflect "*the time value of money*" in relation to the €45,653.47 of interest overpaid. The time value of money payment serves to reinstate customers for the lack of access to funds over time as a result of the Provider's failure. It appears that the Complainant's claim is for a higher time value of money payment on foot of the additional compensation for the losses that she claims she incurred as outlined in preceding paragraphs.

It is not clear how the Complainant has calculated the amount claimed of €4,450 and the Complainant has not submitted any evidence to support her claim for an additional time value of money payment. Therefore, I do not uphold the Complainant's claim for additional compensation in the amount of €4,450.

The Complainant is also seeking additional compensation or “*damages*” for 30% of the agreed sum due which the Complainant states amounts to €37,796. I am of the view that the Complainant has already received compensation in respect of the Provider’s failure on foot of the Examination. The level of compensation awarded by the Provider to date is in line with the Provider’s Redress and Compensation Framework which is based on the Central Bank’s Principles for Redress.

As set out above, the matter for determination is whether the Provider has offered adequate compensation to the Complainant by consequence of its admitted failure in relation to the Complainant’s two mortgage loan accounts.

The Complainant seeks additional compensation as she claims that she was “*forced*” to sell the **Rental Property**, mortgaged by the **Third Party Provider**, because of the Provider’s failure in respect of the mortgage loan accounts the subject of this complaint.

The Provider’s failure has been accepted by it and redress of €47,833.05 (which represents the total interest overpaid and includes a payment of €2,279.58 to reflect the time value of money) and compensation of €9,790.16 together with €500 for the purposes of seeking legal advice, has been paid to the Complainant. I accept that the Complainant was overpaying significant amounts on her mortgage loan account ending **4991** on a monthly basis for just under 7 years from **December 2010** to **November 2017** and was also overcharged for two months between **December 2009** and **January 2010** in respect of mortgage loan account ending **9486**. However, having considered the evidence and the circumstances of this complaint, I do not accept that the financial position that the Complainant found herself in when she chose to sell the **Rental Property** in **2016** was solely caused by the overcharge of interest on her mortgage loan accounts held with the Provider.

As outlined above, it appears to me that it was always the Complainant’s intention to sell one or more of her investment properties by **2017** and it was a matter for the Complainant to decide which investment property to sell. The Complainant in fact informed the Provider of her intention to sell one of her investment properties in **2007**, at a time which pre-dated the overcharging on her mortgage loan accounts. At the time of the sale of the **Rental Property**, the Complainant had retired and therefore experienced a decrease in monthly income.

The Complainant’s representative, in its post Preliminary Decision submission dated **18 March 2021**, asserts that the Complainant “*held her own independent personal current bank account with [Provider] that was used always for her own private lifestyle before and after retirement and all her pension was lodged and her own normal on-going day to day*

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expenses were recorded in that bank account. There is no evidence or reason to suspect a change in her post retirement lifestyle that gave rise to your assertion of a fabrication that she experienced a decrease in monthly income to maintain her living standards”.

The Complainant was also involved in legal proceedings with difficult tenants from **Impacted Property 1** which most likely meant that she was not receiving rental income from those tenants and also had to discharge legal fees. The Complainant’s representative, in its post Preliminary Decision submission dated **18 March 2021**, explains that the **Impacted Property 1** *“had water damage in later December, 2015 and this had to be repaired in early 2016 and insurance claims made and received and this event has given reason to cause the then sitting tenant grievance as mentioned earlier”*. The Complainant’s representative, in its post Preliminary Decision submission dated **19 March 2021**, submitted a summary of the works to be carried on the **Impacted Property 1** as a result of water damage by a hot water cylinder. The summary is dated **06 January 2016** and shows an estimate of €9,827.33 plus VAT in relation to the works carried out. The Complainant’s representative, in its post Preliminary Decision submissions dated **19 March 2021**, also submitted proof of two payments totalling €4,373.87 made by the Complainant’s insurance company in **April 2016** in settlement of the claim for the water damage.

In addition, the tenants of the **Rental Property** gave the Complainant a notice of termination and it came to light that substantial repairs and renovations would have to be done to the **Rental Property** before the property could be tenanted. Further, the [foreign] properties were not yet generating substantial rental income which is the main reason why the Complainant sought forbearance by way of interest only repayments in the **SFSs** submitted by her in **2014, 2015 and 2016**.

The Complainant’s representative, in its post Preliminary Decision submission dated **18 March 2021**, states that the *“excessive interest charged by the provider and the cause and reason to sell [t]he Rental property did and would have taken place regardless of what was entered in the Forms SFSs or the disclosure of this Rental Property and these forms have no relevance to increasing the claimant’s net real funds available to renovate the property to re-let again in January, 2016.”* The Complainant’s representative, in its post Preliminary Decision submission dated **18 March 2021**, further states that the Provider’s *“acknowledged excessive interest charges and admissions are the losses that would have not caused claimant to sell the Rental Property had these charges not occurred”*.

The Complainant never raised any issue with the interest rate applicable to the mortgage loan accounts in her many discussions with the Provider, nor at any stage during the completion of the **SFSs** in **2014, 2015 and 2016**. In addition, there is no evidence to indicate that the Complainant was unable to meet the agreed monthly mortgage

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repayments or sought additional forbearance from the Provider or indeed the **Third Party Provider** prior to the sale of the **Rental Property**.

While I appreciate that, with the benefit of hindsight, the Complainant believes that she would not have sold the **Rental Property** had she not been overcharged by the Provider, the Complainant has not submitted any evidence to support the contention that had these amounts been available to her each month, she would not have sold the **Rental Property** and that the overcharging on her mortgage loan accounts was the only factor at play in her decision making. Equally, the Complainant has not furnished any evidence to show that she has suffered any actual economic hardship or adverse financial effects on foot of the sale of the **Rental Property** which was not, in fact, mortgaged by the Provider.

In light of the above and having considered all the evidence and submissions, including the Complainant's post Preliminary Decision submissions, I accept that the evidence does not support the Complainant's claim for additional compensation of **€86,376**. I accept that the amount of compensation which has been paid by the Provider to the Complainant is reasonable in the circumstances of this particular matter.

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 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—

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(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.

