An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0178
Sector:	Banking
Product / Service:	Tracker Mortgage
Conduct(s) complained of:	Failure to offer appropriate compensation or redress CBI Examination
Outcome:	Upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the Complainant's three mortgage loan accounts held with the Provider and the overcharge of interest in the amount of €81,469.32 on the mortgage loan accounts.

The Complainant's three mortgage loan accounts are/were held as follows:

- Mortgage loan account ending ***5391*** was drawn down in **2001** in the amount of €102,927.74 on a staff preferential rate fixed at 4% for a term of 30 years. This mortgage loan account was secured on the Complainant's principal private residence and was redeemed in full on **18 June 2018**.
- Mortgage loan account ending ***3763*** was drawn down in **2003** in the amount of €66,000.00 on a variable rate for a term of 20 years. This mortgage loan account was secured on the Complainant's principal private residence and was redeemed in full on **18 June 2018**.
- Mortgage loan account ending ***7489*** was drawn down in **2006** in the amount of €350,000.00 on an initial 24-month discounted tracker interest rate of ECB + 1.15% for a term of 25 years. This mortgage account is secured on the Complainant's Buy-to-Let property.

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

The Provider wrote to the Complainant in **December 2017** in relation to the three mortgage loan accounts advising him of the failures that had occurred on the mortgage loan accounts. The Provider detailed how it *"got things wrong"* as follows;

> *"In our review, we found that when you moved from a tracker rate to the staff non-standard variable rate and then a fixed rate, we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate and the language used by us in communications to you may have been confusing and/or misleading."*

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

> *"As a result of our failure, we can confirm that you were charged an incorrect interest rate between 16 Feb 2009 and 28 Nov 2017."*

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

	Account ending *7489*	**Account ending *3763***	**Account ending *5391***
Redress covering; (a) Total Interest Overpaid. (b) Interest to reflect time value of money.	€68,042.63	€2,980.33	€14,519.83
Compensation	€6,804.26	€650.00	€1,451.98
Independent Professional Advice Payment	€500.00	€250.00	€250.00
Total	**€75,346.89**	**€3,880.33**	**€16,221.81**

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The Complainant's three mortgage loan accounts were restored to a tracker interest rate of ECB + 1.25% (account ending ***7489***), ECB + 1.10% (account ending ***3763***) and ECB + 0.85% (account ending ***5391***) on **29 November 2017**.
The Complainant signed the **Acceptance Forms** on **17 December 2017** and the amount of €95,449.03 was paid into the Complainant's nominated bank account.

On **31 January 2018** the Provider advised the Complainant that it was increasing the independent professional advice payment in respect of mortgage account ending ***3763*** to €750.00.

The Complainant appealed the redress and compensation offerings to the Independent Appeals Panel. The basis of the Complainant's appeal was the inadequacy of the redress and compensation offering.

On **20 September 2018** the Appeals Panel decided to partially uphold the Complainant's appeal for the following reasons;

> *"…the Panel has determined that the Customer has not demonstrated he was compelled to sell the property at [Complainant's BTL property] in June 2014 as a consequence of the [Provider's] overcharging or by Fitness and Probity considerations.*
>
> *In reaching this determination the Appeals Panel had regard to the accommodation provided to the Customer by the [Provider], particularly in the Mortgage Form of Authorisation dated 9 July 2013 whereby the term of mortgage loan account 489 was extended to 2047 and the monthly repayments on that account were fixed until 12 September 2015.*
>
> *However, the Appeals Panel acknowledges that the significant level of overcharging over a sustained period undoubtedly caused considerable personal and financial stress to the Customer, as articulated in his appeal and at the Oral Hearing. The Appeals panel therefore determined that this warrants the payment of compensation by [the Provider] to the Customer."*

The Appeals Panel awarded additional compensation as follows;

	Additional Compensation Awarded
Mortgage loan account ending ***7489***	€10,000.00
Mortgage loan account ending ***5391***	€5,000.00
Mortgage loan account ending ***3763***	€3,000.00

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The Complainant signed the Acceptance Form in **October 2018** and the amount of €18,000.00 was paid into the Complainant's nominated bank account.

As the Complainant has been through the Provider's internal appeals process and the Appeal Panel's award was not in full and final settlement, this office was in a position to progress the investigation and adjudication of the complaint.

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

<u>The Complainant's Case</u>

The Complainant submits that his mortgage loan accounts ending ***5391*** and ***3763*** were both secured on his primary residence (PDH) and his mortgage loan account ending ***7489*** was secured on his Buy-to-Let (BTL) property. He details that all three mortgage loan accounts were drawn down on tracker rates of interest.

The Complainant outlines that in **2007** the Provider *"pro actively advertised a reduced two year fixed rate specific to Staff which was lower than the tracker at the time and was attractive."* He details that he opted to apply the staff fixed rate to his mortgage loan accounts on the understanding that he *"would revert back to my Tracker products on all three Accounts at the end of the fixed term 2 year period."* He states however that *"18 Months into the two year product [the Provider] Pulled the tracker product".* He outlines that "*when the two year term was up I was not allowed go back to my tracker product which was in my letter of offers originally on the three loans*". He states that instead the Provider "*forced me onto variable rate mortgages on all 3 accounts*."

The Complainant details that in **2009** his BTL mortgage loan account ending ***7489*** *"was becoming unsustainable due to the Rates being increased by [the Provider] yet the ECB rate was coming down. I approached [the Provider] as I did not want to go into Arrears on any of my loans. [Provider employee name] was the Advisor dealing with my staff accounts at that point."* He asserts that the Provider's employee *"categorically did advise me that I had no choice but to sell [the BTL property] as under Fitness and Probity I would be see[n] as non compliant if my Mortgages went into arrears."*

The Complainant states that *"I felt under pressure to take the advice as my job/career was very important to me as I was just on the first step of the [….] ladder … From then on I requested forbearance and interest only options on the [XXXX] 7489 mortgage as I felt it was my only option given the clear direction I was given at that first meeting".*

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The Complainant further submits that the meeting with the Provider's employee took place in a hotel in circumstances where the Provider's employee had *"suggested we meet in a hotel in [Location] as she said coming into me you might not want other staff coming to the conclusion you were in trouble financially".*

The Complainant does not accept the Provider's submission that it only implemented Fitness and Probity requirements in **2011**. He states that *"Staff were advised in 2009 of the upcoming obligations of fitness and probity that would come upon us in 2010. Like all new regulations being implemented [the Provider] would have a lead in time to ensure compliance and it is not correct to say it was not on the banks agenda in 2009 in preparation for it being becoming policy in 2010."*

The Complainant states that he is aware that other employees of the Provider who were in financial difficulty *"…would have to give updates to the bank on how they were going to rectify their loans/ Mortgages. Effectively their careers were shelfed [sic] and they were taken out of customer facing roles and roles where staff reported into them due to them not [being] deemed fit to carry out these roles at the time due to their own personal financial difficulties … The Bank did remove people from roles so the threat of this happening as I stated was very much a reality and can be verified with names of people who were removed from their banking roles in [the Provider]."* He further states *"If you need names of individuals who were removed from role by [the Provider] for non compliance under fitness and probity I can provide them. I can also provide a sworn affidavit from one of the banks regional managers who under the banks instructions removed staff from role for this reason."*

He outlines that his reasons for seeking alternative repayment arrangements on his mortgage loan account ending ***7489*** were always *"not to go into arrears"* and to *"Not effect my career progression".* He states that *"The Bank keep saying that my mortgages were never in arrears. The reason for this is that it was down to my diligence in constantly making sure that I sought further extensions to interest only and on some occasions Interest and Part Capital repayment to keep myself compliant under Fitness and Probity until the property got sold."*

The Complainant details that the Provider accommodated his requests for interest only repayment periods "*only if I agreed to sell [the BTL property] … We had hit recession and properties were selling no where so I had to show each time I went back to get Interest only part renewed that I was actively trying to sell the property. For two years prior to the property selling I was being charged 5.5% of an interest rates on 350k of a mortgage whereby I should have being charged 1.5%. The overcharging mounted annually to 13.9k per year on the three mortgages I was being overcharged on."*

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The Complainant details that in **July 2013** the term of the mortgage loan account ending ***7489*** was extended until **2047** and the repayments were fixed at €1,500.00 per month until **September 2015** to facilitate the sale of the BTL property. The Complainant submits that *"even at that the repayments on the Buy to Let were €500 a month more than they should have [been] had the correct rate [been] applied ie the tracker rate 1.5% as opposed to the 5.5.% rate they were charging me and excluding the other two mortgages which I was being over charged on as well."*

The Complainant outlines that the Buy-to-Let property securing mortgage account ending ***7489*** was sold in **June 2014**. He submits that "*prior to the forced sale of the Buy to Let in June 2014 I was being overcharged by €14,643.12 per year in interest*." The Complainant details that if not for the overcharging on the account he *"would have kept the property and I would have had clear affordability to do this".* The Complainant outlines that he sold the property at a loss of over €125,000 and has been left with a residual debt to pay on that property. He submits that he is *"still left paying a debt which presently stands at €123,323.22 on a property I no longer own."* He further submits that he is *"at a loss of rental income of 1600 monthly due to being forced to sell."*

The Complainant details that *"I felt stressed and pressured into selling my property [Address redacted] as a result of [the Provider's] Actions under Fitness and Probity and the removing of the tracker rate option".* He further states that *"The Bank say it was always my intention to sell the property. What person would sell a property in the height of a recession and have a loss of 125k on it unless they were under pressure to service this loan."*

He further details that at the time he sold the BTL property in **2014** *"I had another mortgage with [the Provider] which had under 3 years left to run to be fully repaid-this was another buy to let property in [Location] and the bank could see there was clear line of sight three years on there would be additional income coming in from this property also which they also held as security if needed down the line."*

The Complainant further submits that *"Had I this overcharged monies prior to the property being sold ie say one month beforehand I would have had 70k odd refunded to me to fund the meter and cover any short fall from Rental income coming in to mortgage repayment required and I would not have had to sell the property."*

The Complainant is seeking the following;

a) The residual debt on mortgage loan account ending ***7489*** to be cleared of approximately €123,323.22; and

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b) Compensation of €100,000 for the loss of rental income.

The Provider's Case

The Provider has outlined as follows in relation to the Complainant's three mortgage loan accounts;

1. Mortgage loan account ending *5391*

- The Complainant drew down a mortgage of £85,000 (€107,927.74) on **25 May 2001** for a term of 30 years under **Mortgage Loan Offer Letter** dated 1**7 November 2000** which was signed and accepted by the Complainant on **20 November 2000**. The mortgage loan was to purchase the Complainant's principal residence.
- The offer letter detailed that the interest rate applicable to the loan was a *"Staff Preferential Rate which is fixed at 4%".*
- On **14 July 2004** the mortgage loan account was moved to a staff tracker rate of ECB + 1.1%. The Provider states that it does not have a copy of this rate change and relies on its internal **Rate History.**
- On **13 December 2005** the margin of the tracker rate was reduced to 0.85%. The Provider states that it does not have a copy of this rate change and relies on its internal **Rate History.**
- The Complainant signed and accepted an MFA on **30 August 2006** to change to a Staff Non-Standard Variable Rate Mortgage, which was a non-tracker variable rate without temporal limit that is, no end. The Provider states that in its view *"this MFA definitely ended any contractual right to a tracker rate or the option to move to one in the future."* The Provider details that in **2006** the staff non-standard variable rate was 3.5% while the tracker rate on mortgage loan account ending ***5391*** was 3.85%. The Provider submits that this explains the Complainant's decision to convert his mortgage loan account from the tracker rate at that time.
- The Complainant signed and accepted an MFA on **15 January 2007** to change to a Staff 2 Year Fixed Rate Mortgage of 3.95%.
- The Complainant signed and accepted an MFA on **9 February 2010** to fix the rate for *"2 Year Fixed (PDH)"* at 3.15%.
- The Complainant signed and accepted an MFA on **24 June 2013** to apply a *"Staff Rate 4.00% (BIK Applies)".*
- The Complainant signed and accepted an MFA on **9 February 2015** to apply a *"5 Year Fixed LTV <75%"* at 3.95%
- The Complainant signed and accepted an MFA on **12 June 2015** to apply a *"3 Year Fixed LTV <=60%"* at 3.6%

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- The mortgage loan account was redeemed on **18 June 2018** when the secured property was sold.

2. Mortgage loan account ending *3763*

- The Complainant drew down a mortgage of €66,000 on **16 April 2003** for a term of 20 years under a **Mortgage Loan Offer Letter** dated **17 February 2004** signed and accepted by the Complainant on **25 February 2003.** The purpose of the loan was to assist in an equity release on the Complainant's principal residence.
- The interest rate applicable was a standard variable rate. The Provider details that there was no contractual entitlement in the Offer Letter for a tracker interest rate.
- The Provider details that on **14 July 2004** the mortgage account moved to a staff tracker rate of ECB + 1.1%. It states that it does not hold a copy of this rate change and relies on screenshots from its internal **Rate History.**
- The Complainant signed and accepted an MFA on **30 August 2006** to change to a Staff Non-Standard Variable Rate. The Provider states that in its view *"this MFA definitively ended any contractual right to a tracker rate or the option to move to one in the future."* The Provider details that in **2006** the staff non-standard variable rate was 3.5% while the tracker rate on mortgage loan account ending ***3763*** was 4.1%. The Provider submits that this explains the Complainant's decision to convert his mortgage loan account from the tracker rate at that time.
- The Complainant signed and accepted an MFA on **15 January 2007** to change to a Staff Two Year Fixed Rate Mortgage of 3.95%. On expiry of the fixed rate period the mortgage account rolled to a standard variable rate.
- The Complainant signed and accepted an MFA on **9 February 2010** to fix the rate for *"2 Year Fixed (PDH)"* at 3.15%.
- The Complainant signed and accepted an MFA on **9 February 2015** to *"5 Year Fixed LTV <75%"* at 3.95%.
- The Complainant signed and accepted an MFA on **12 June 2015** to *"3 Year Fixed LTV <=60%"* at 3.6%.
- The mortgage loan account was redeemed on **18 June 2018** when the secured property was sold.

3. Mortgage loan account ending *7489*

- The Complainant drew down the mortgage loan account ending ***7489*** on **27 November 2006** for the loan amount of €350,000 over a term of 25 years, pursuant to a **Mortgage Loan Offer Letter** dated **3 November 2006** which was signed and accepted by the Complainant on **9 November 2006**

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- The interest rate applicable to the loan would *"…be no more than 1.25% above the European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the loan … For the first 24 months from the date of draw down the interest rate as outlined in (a) above shall be discounted by 0.10% and shall be no more than 1.15% above the Repo rate and shall be subject to the terms and conditions outlined in (a) above. At the end of the 24 month discount period the interest rate applicable to the loan shall revert to the rate as outlined in (a) above i.e. not more than 1.25% above the Repo rate".*
- The mortgage loan account ending ***7489*** initially drew down on a tracker rate of 4.4% on **27 November 2006**. However the Provider submits that the mortgage account was only on a tracker rate *"for a mere 7 days"*.
- On **24 November 2006** the Complainant had signed and accepted a **Mortgage Form Authorisation** ("MFA") to change to a Staff Non-Standard Variable Rate Mortgage at a rate of 3.5%, which was applied on **4 December 2006.** The Provider states that *"In the Provider's view this MFA definitively ended the contractual right to a tracker rate or the option to move to one in the future."* The Provider submits that the staff non-standard variable rate was 3.5% while the tracker rate was 4.4%. It submits that this readily explains why the Complainant opted to convert this mortgage account to a more favourable rate.
- The Complainant signed and accepted an MFA on **15 January 2007** to change to a Staff 2 Year Fixed Rate Mortgage of 3.95%. It details that on expiry of the fixed rate period the mortgage loan account rolled to the standard variable rate.
- The Complainant signed and accepted an MFA on **12 February 2010** to fix the rate for *"2 Year Fixed RIL"* at 4.85%.
- The Complainant signed and accepted an MFA on **27 February 2014** to apply a *"New Staff LTVBTL Variable Rate"* of 4.99% to the mortgage loan account.

The Provider outlines that it included the Complainant's mortgage loan accounts in the Examination because they were formerly on a tracker interest rate. The Provider submits that when the mortgage loan accounts moved from a tracker rate to the staff non-standard variable rate and then to a fixed rate, the Provider failed to provide *"sufficient clarity as to what would happen at the end of that fixed rate"* and the language used by the Provider may have been "*confusing or misleading*".

The Provider details that it has restored the Complainant's mortgage loan accounts to tracker interest rates. The Provider submits that the Complainant was refunded a *"lump sum payment*" equivalent to the interest overcharge which amounted to the difference between the monthly amounts that the Complainant was charged and the monthly amounts he should have been charged *"had the relevant issue identified not occurred*".

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It states that this included a payment to reflect the time value of money *"to reflect additional financial loss suffered … for not having access to the money that was used to pay interest at the incorrect rate".* The Provider submits that the Appeals Panel awarded an additional sum of €18,000 in compensation which *"reflects the nature and severity of the impact with reference to a number of factors as a direct result of the Providers failure and this complaint has advanced no new grounds which undermine the determination of the Independent Appeals Panel."*

The Provider submits that *"The Complainant has offered no evidence to support the contention that the tracker issue was in any way the proximate cause of the Complainant's personal decision to sell this investment property".*

The Provider outlines that immediately prior to the Complainant moving off the staff 2 year fixed rate, he reduced his repayments to interest only for a period of 12 months by MFA signed on **27 January 2009**. The Provider states that if the mortgage loan account ending ***7489*** was on a tracker rate at this point in time, the rate would have been 3.75% (ECB rate of 2.50% plus a margin of 1.25%). Instead it was on a 2 year fixed rate of 3.95% "*of [the Complainant's] own volition*". The Provider details that its records show that in the Complainant stated that his request for forbearance was to "*bridge the gap between rental income and mtg repayment*" and that he intended to put the property on the market. It states that "*At no point, did the Complainant state that this alternative repayment arrangement was sought because of the absence of a tracker rate*" and *"it is unsustainable for the Complainant to claim he had to sell the property at [Redacted] because he was denied a tracker rate."*

The Provider contends that *"The Complainant's proposed intention to sell this investment property was a constant feature throughout his multiple applications for forbearance on mortgage account [ending] 7489."* The Provider submits that the Complainant's BTL property was put on the market in **June 2010** and only sold in **June 2014**. It details that on multiple occasions the Complainant advised the Provider that there was a downturn which prevented him from selling the property. It states that this is evident in the **Mortgage Financial Review Forms** dated **08 December 2010** and **26 May 2011,** the **Standard Financial Statements** dated **23 April 2012** and **28 May 2013** and the Complainant's letter to the Provider dated **19 March 2014**.

The Provider details that it offered the Complainant the following forbearance on the mortgage account ending ***7489*** between **January 2009** and **July 2013**;

- 12 months interest only payments which was accepted by way of MFA signed on **27 January 2009**

- 12 months interest only payments which was accepted by way of MFA signed on **18 January 2010**
- 6 months interest only payments which was accepted by way of MFA signed on **19 January 2011**
- 12 months reduced repayments of €1,500.00 which was accepted by way of MFA signed on **18 July 2011**
- 12 months reduced repayments of €1,500.00 which was accepted by way of MFA signed on **21 May 2012**
- 36 months reduced repayments of €1,500.00 which was accepted by way of MFA signed on **27 August 2012** which commenced on **5 September 2012** and *"overrode the previous approval"*
- 16 year term extension which was accepted by way of MFA signed by the Complainant on **16 July 2013**

The Provider submits that "*it is not for the Provider to presume what personal considerations affected this decision to sell the property*. *However, it was not the case that the Complainant's decision to sell the property was as a result of the effect of him not being on the tracker rate offered to him in November 2006. His intention, which he maintained to the Provider at all times forbearance was sought, was recorded before the issue arose".* The Provider further submits that the Complainant opted to sell the property even after he accepted a 16 year term extension which in the Provider's view, facilitated the retention of the property. The Provider states that its view is that the consequences that is, loss in value and loss of income from the difference between the rent receivable and mortgage payable for the same period, *"are too remote from the question of tracker and dependent on any number of factors someone may consider when making the financial decision to sell an investment property."*

The Provider further submits that the Complainant's decision to sell the BTL property *"cannot reasonably be attributed to Fitness and Probity concerns."* It states that "*the statutory requirement of Bank employees to have a reasonable level of fitness and probity was provided for in Part 3 of the Central Bank Reform Act 2010, which was commenced by S.I 469 on 1 October 2010*." It details that the Complainant first indicated his intention to sell the property in **January 2009**, which pre-dates any Fitness and Probity considerations he may have had by almost 2 years. The Provider states that it is therefore *"clear"* that the intention to sell the BTL property *"was not driven by fitness and probity concerns".*

The Provider asserts that Fitness and Probity considerations were not in consideration by the Provider in **2009** and that "*this matter has been confirmed by Senior Regional Management of the Provider, the Providers Group Legal Services Department and the Providers Group Human Resources Department*.

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In fact … there was an implementation period by the Central Bank, and that Fitness and Probity was not in full implementation by the Provider until January 2011. This is some 2 years after the Complainant had made his decision, and his decision alone, to sell the security property".

The Provider *"entirely refutes"* the Complainant's assertion that the Provider *"forced"* him to sell the BTL property. It states in this regard that the Complainant has offered only a *"bare assertion, with no specifics whatsoever."* It further states that it "*holds no evidence of a meeting between the Complainant and representatives of the Provider to discuss issues surrounding the Complainant's fitness and probity and notes that evidence of same has not been submitted by the Complainant*." The Provider states that it *"never provided any direction to any member of its staff to "remove people from roles in financial difficulty.""* It *"categorically denies"* the assertion that this is what happened on a *"regular basis"*. It submits that the Provider gave assistance and support to any members of staff who were in financial difficulty and that *"this is evidenced by the numerous alternative repayment arrangements which were offered and accepted by the Complainant".*

The Provider further submits that any attempt by the Complainant to characterise the outstanding mortgage balance on account ending ***7489*** as "*residual debt*" is *"entirely disingenuous".* It states that the security for this loan comprises two properties; the BTL property that was sold and the Complainant's principal private residence. It states that therefore there remains security in the form of the remaining property over which the loan is secured. It further submits that *"it is not a resolution policy employed by the Provider to provide mortgage debt forgiveness such as is sought by the Complainant*. *Lending is granted on a "full recourse" basis, which means that the borrower is personally liable for the total debt, regardless of the value of the property."*

<u>The Complaint for Adjudication</u>

The complaint for adjudication is that the Provider has not offered adequate redress and compensation to the Complainant by consequence of the Provider's failure in relation to his mortgage loan accounts.

<u>Decision</u>

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.

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

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

At the outset I note that the Provider had initially made submissions about its view that there was no breach of contract and no misrepresentation in this matter. However, the Provider subsequently withdrew these arguments. I welcome this, as such arguments were irrelevant in circumstances where the Provider had already accepted the Complainant's entitlement to a tracker rate of interest. I do not propose to consider or comment further on these submissions in this decision. The issue for decision is whether the Provider has offered adequate compensation to the Complainant by consequence of the Provider's failure in relation to his mortgage loan accounts. This failure has been admitted by the Provider in its letter to the Complainant in **December 2017.**

The impacted period extended over eight years and nine months, from **February 2009** to **November 2017**. The interest overcharged by the Provider on the Complainant's mortgage loan accounts from **February 2009**, to the date that the mortgage loans were redressed in **November 2017** was €81,469.32. This amounts to an overcharge of interest on average of €775.89 per month during that period on the mortgage loan accounts.

The redress payment of €85,542.79 reflects the amount of interest overpaid on the mortgage loan accounts and includes a payment of €4,073.47 to reflect the time value of money. The Provider also paid the Complainant €1,500.00 for the purposes of seeking legal advice and compensation of €8,906.24.

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The Provider submits that the Appeals Panel added a further sum of €18,000.00 which the Provider is bound by. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel have already provided for and was paid by the Provider to the Complainant.

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

This complaint concerns three of the Complainant's mortgage loan accounts, detailed as follows;

- Mortgage loan account ending ***5391*** which was drawn down in **2001** in the amount of £85,000 (€107,927.74) for a term of 30 years, commencing on a staff preferential rate of 4%. This mortgage loan was secured on the Complainant's principal private residence.

- Mortgage loan account ending ***3763*** which was drawn down in **2003** in the amount of €66,000 for a term of 20 years, commencing on a standard variable rate. This mortgage loan was secured on the Complainant's principal private residence.

- Mortgage loan account ending ***7489*** which was drawn down in **2006** in the amount of €350,000 for a term of 25 years, commencing on a tracker rate of 4.4% (ECB + 1.25%). This mortgage loan was secured on the Complainant's principal private property and residential investment property.

I note that the Complainant also has a mortgage loan account ending ***0394*** with the Provider, which does not form part of this complaint but is referred to in his submissions. It appears that this mortgage account was secured on another Buy to Let property of the Complainant's.

It appears that on **14 July 2004** the Complainant applied a staff tracker interest rate of ECB + 1.10% to the mortgage loan accounts ending ***3763*** and ***5391***. It appears that in **December 2005** the tracker rate margin on the mortgage loan account ending ***5391*** was reduced to 0.85%. While no evidence has been provided evidencing these rate changes, it is not disputed between the parties that this is what occurred.

I have considered the Provider's intranet **staff notice.** I note that **18 August 2006** has been handwritten on the document provided in evidence.

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This document details as follows;

> *"New Staff Non-Standard Variable Rate Mortgage – rate 3.50%*
> *…*
>
> *This mortgage rate is available for all new and existing mortgage business and includes both PDH (Private Dwelling House) and RIL (Residential Investment Lending).*
>
> *As you will be aware, we currently offer staff a choice of two preferential mortgage rates – 3.00% or 4.00% (note the 3% preferential rate currently attracts benefit in kind) and a PDH tracker mortgage at ECB + 0.85%, currently 3.85%.*
>
> *[The Provider] are delighted to offer you our new staff non-standard variable rate mortgage at just 3.50% currently.*
> *…"*

On **30 August 2006**, the Complainant signed **Mortgage Forms of Authorisation** to apply the staff non-standard variable rate to the mortgage loan accounts ending ***3763*** and ***5391***.

On **24 November 2006**, the Complainant signed and accepted a **Mortgage Form of Authorisation** to apply a staff non-standard variable rate of 3.50% to the mortgage loan account ending ***7489***.

The Provider's intranet **staff notice** dated **21 December 2006** outlines as follows;

> *"Staff 2 Year Fixed Rate*
> *…*
>
> *This product is available on both PDH and RIL mortgages/properties in the Republic of Ireland.*
> *…"*

On **15 January 2007**, the Complainant signed and accepted **Mortgage Forms of Authorisations** applying a staff 2 year fixed interest rate of 3.95% to the mortgage loan accounts ending ***7489***, ***3763*** and ***5391***.

/Cont'd…

An undated letter from the Complainant to the Provider has been furnished in evidence which details as follows;

> *"As per fax already sent*
> *…*
> *Re: A/C [ending] 7489*
> *Opting for Interest Only.*
> *Many Thanks"*

I note that the Provider's internal note dated **20 January 2009** in relation to the Complainant's mortgage loan account ending ***7489,*** details as follows;

> *"..*
>
> *Period of 'Interest Only' requested: 24 months*
> *…*
>
> *Recommendation/other information: I would like to apply for interest only on this property for 24 months. Rents have gone down in [City] due to more rental properties on the market as the foreign (polish and Brazilian) workers are gone one of [City] so less demand for the above Property. I am going putting property on the market also for sale and will be renting it in the interim but would need the interest only option to bridge the gap between rental income and mtg repayment commencing 14th Feb 2009 as this is when the fixed rate is up."*

The Provider's internal note of **21 January 2009** details;

> *"LTV too high to consider request*
>
> *LTV needs to be 65% or less"*

The Provider's internal note dated **22 January 2009** details that *"12 mts int only agreed".*

The Complainant signed and accepted the **Mortgage Form of Authorisation Application For Change To Interest Only Loan** on **27 January 2009** to apply a 12 month period of interest only payments on the mortgage loan account ending ***7489.***

The interest only repayments on the mortgage loan account ending ***7489*** were implemented prior to the overcharging on the mortgage account which commenced in **February 2009**.

/Cont'd…

Based on the evidence before me I do not accept that there is any link between the Provider's failure on the mortgage loan account and the Complainant's request for interest only repayments in **January 2009**. Rather I am of the view that the Complainant would have made this request in any event owing to his pre-existing financial circumstances and in particular the lack of rental income on the BTL property. It appears to me that the Complainant was already contemplating the sale of the BTL property securing mortgage account ending ***7489*** in **January 2009**.

The Complainant has submitted that a meeting took place in a hotel between him and an employee of the Provider in **2009** during which that employee *"categorically did advise me that I had no choice but to sell [the BTL property] as under Fitness and Probity I would be see[n] as non compliant if my Mortgages went into arrears."*

I have not been provided with any evidence from either party which documents this meeting. I have also not been provided with any evidence in support of the Complainant's submission that he was advised by the Provider in **2009** to sell the property in order to comply with Fitness and Probity requirements.

In this regard I note that the Fitness and Probity regime was introduced by the Central Bank of Ireland under the **Central Bank Reform Act 2010** which commenced on **01 October 2010.**

I also note that the Complainant has submitted that other employees of the Provider who found themselves in financial difficulty were "*removed from their banking roles*" with the Provider as a result. Again, I have not been provided with any evidence to support this or indeed any evidence that this occurred as a result of the implementation of Fitness and Probity requirements by the Provider on its employees. In any event, it is important for the Complainant to understand that the financial circumstances of other employees of the Provider are not relevant to and have no bearing on this complaint. The Complainants' mortgage loans are governed by the terms and conditions of the Complainants' mortgage loans alone. In adjudicating on this complaint, it is not relevant to consider other third parties' mortgage loans or other loans held with the Provider.

However, I accept that being unable to meet repayments in respect of financial commitments can have implications for employees of financial service providers.
On the expiry of the two year fixed rate period in **February 2009**, a standard variable rate was applied to the mortgage loan accounts ending ***7489***, ***3763*** and ***5391***.

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It was at this time that the failures that were subsequently identified in **December 2017** as part of the Examination occurred on the Complainant's mortgage loan accounts ending ***7489***, ***5391*** and ***3763***.

The tracker interest rate that should have been applied to mortgage loan account ending ***7489*** from **February 2009** was ECB + 1.25%. Between **February 2009** and **January 2010**, the overall tracker (ECB + margin) rate fluctuated between a rate of 2.25% and 3.25%. The difference in the variable interest rate actually charged to the mortgage loan fluctuated between 4.10% and 4.35%.

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 + 1.25%) had been applied to mortgage loan account ending ***7489*** between **February 2009** and **January 2010**, is represented in the table below.

The tracker interest rate that should have been applied to mortgage account ending ***3763*** from **February 2009** was ECB + 1.10%. Between **February 2009** and **January 2010,** the overall tracker (ECB + margin) rate fluctuated between a rate of 2.10% and 3.10%. The difference in the variable interest rate actually charged to the mortgage loan fluctuated between 2.25% and 3.25%. 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 + 1.10%) had been applied to mortgage account ending ***3763*** between **February 2009** and **January 2010**, is also represented in the table below.

The tracker interest rate that should have been applied to mortgage account ending ***5391*** from **February 2009** was ECB + 0.85%. Between **February 2009** and **January 2010,** the overall tracker (ECB + margin) rate fluctuated between a rate of 1.85% and 2.85%. The difference in the variable interest rate actually charged to the mortgage loan fluctuated between 2.25% and 3.25%. 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 + 1.10%) had been applied to mortgage account ending ***5391*** between **February 2009** and **January 2010**, is also represented in the table below.

Date	**Overpayment per month**			
	A/C 5391	***A/C 3763***	***A/C 7489***	***Total***
Feb 2009	€18.48	€1.80	€194.40	**€214.68**
Mar 2009	€18.23	€1.89	€441.80	**€461.92**
April 2009	€17.71	€1.77	€510.94	**€530.42**
May 2009	€17.47	€1.76	€579.77	**€599.00**

/Cont'd…

Jun 2009 – Dec 2009	€17.47	€1.76	€510.30	**€529.53**
Jan 2010	€17.47	€1.76	-	**€19.23**

As is evidenced in the table above, between **February 2009** and **December 2009** the overpayments rose from €214.68 per month to €599.00 per month.

The Provider's internal notes of **12 January 2010** detail;

12 Jan 2010	*"We refer to recent Financial Review Form. Request for interest only has been declined, however, as an alternative, we can accept reduced fixed repayments of EUR 1300 on this account for the next 6 Months."*
12 Jan 2010	*"FIXED REPAYMENTS OF 1300 APPROVED FOR 12 MONTHS NOT 6"*

It appears from the Provider's internal notes that a **Financial Review Form** was completed by the Complainant in or around **January 2010**, however a copy of this form has not been provided in evidence.

The Provider wrote to the Complainant by letter dated **13 January 2010** which detailed as follows;

> *"We refer to your recent request to vary the terms of your mortgage and convert your Loan account to interest only. We regret we are not in a position to approve your request as it is outside our current criteria. However, we are pleased to offer you an alternative of reduced repayments. Your monthly payments will be reduced to EUR 1300 per month for the next 12 months.*
> *…"*

The Complainant signed and accepted the enclosed **Mortgage Form of Authorisation Application For Change To Interest Only Loan** on **18 January 2010** to apply reduced repayments of €1,300.00 to the mortgage loan account ending ***7489*** for a 12 month period.

I note from the **mortgage loan statements** that the mortgage loan accounts were moved in **February 2010** to a 2 year fixed rate of 4.85% (account ending ***7489***) and 3.15% (accounts ending ***5391*** and ***3763***) respectively.

/Cont'd…

Prior to the expiry of the fixed repayment period on mortgage account ending ***7489***, the Complainant completed a **Financial Review Form** dated **08 December 2010** which detailed as follows;

Income (Weekly/monthly)	*€*	*Outgoings (Weekly/Monthly)*	*€*
Salary/Wages after Budget	*3,000*	*Mortgage*	*3608.90*
Social Welfare Payments…	*Nil*	*Credit Union Loans*	*200*
Retirement Pension	*Nil*	*Bank/Finance Loans*	*226.91*
Rental Income	*€2,850*	*Maintenance Payments*	
Maintenance	*Nil*	*Credit Card Payments*	*213-*
Mortgage Interest subsidy	*Nil*	*Any other Credit*	
Other income (Please specify)	*Nil*	*Store Cards*	
		Petrol to Work	*320-*
Total	*5,850*		*4,568.81*

In response to the question "***Please provide any other information which you believe to be relevant to above***" the Complainant outlined as follows;

> *"House for Sale: Will reduce price in Spring 2011 if required to sell. City centre Property so believe it will but taking time in current climate. I also moved work location in August 2010 & commute [time] per day to & from work costing €320- per month on petrol.*
>
> ***Reason for review (please specify and provide background as appropriate):***
> *I have had int only on this property for 2 years. Prop is for sale, changed auctioneers last June to try and progress sale to clear mtg. As of yet no luck, Auctioneer would be hopeful in Spring 2011 to sell.*
>
> *Need 12 mths int only as at present do not have any capacity to contribute to capital with floods last year I had to put in new drainage system 8k & I had to get a Loan from CR Union which I will have paid Dec 2014 then if a house is not sold can contribute then to capital part of mtg."*

The Provider wrote to the Complainant by letter dated **15 January 2011** to offer him a 6 month period of interest only repayments on mortgage account ending ***7489.***

/Cont'd…

The Provider's internal note of **17 January 2011** details;

> *"The customers request for Interest Only on this account has been approved and a Mortgage Form of Authorisation (MFA) has been issued directly to them. Once we receive the signed MFA, we can update the mortgage account."*

The Complainant signed and accepted the **Mortgage Form of Authorisation** to effect this on **19 January 2011**.

Between **February 2010** and **July 2011** the overall tracker (ECB + margin) rate for mortgage loan account ending ***7489*** fluctuated between 2.25% and 2.50%. The fixed interest rate actually charged to the mortgage loan was 4.85%. 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 + 1.25%) had been applied to mortgage loan account ending ***7489*** between **February 2010** and **July 2011**, is represented in the table below.

Between **February 2010** and **July 2011** the overall tracker (ECB + margin) rate for mortgage loan account ending ***3763*** fluctuated between 2.10% and 2.60%. The fixed interest rate actually charged to the mortgage loan was 3.15%. 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 + 1.10%) had been applied to mortgage loan account ending ***3763*** between **February 2010** and **July 2011**, is represented in the table below.

Between **February 2010** and **July 2011** the overall tracker (ECB + margin) rate for mortgage loan account ending ***5391*** fluctuated between 1.85% and 2.10%. The fixed interest rate actually charged to the mortgage loan was 3.15%. 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 + 0.85%) had been applied to mortgage loan account ending ***5391*** between **February 2010** and **July 2011**, is represented in the table below:

Date	**Overpayment per month**			
	A/C 5391	***A/C 3763***	***A/C 7489***	***Total***
Feb 2010	€56.49	€1.76	-	**€58.25**
Mar 2010 – Aug 2010	€56.49	€11.32	€39.40	**€107.21**
Sept 2010	-	€11.32	-	**€11.32**

/Cont'd…

Oct 2010 – Apr 2011	€57.85	€11.32	€38.65	**€107.82**
May 2011 – Jul 2011	€46.61	€9.19	€38.65	**€94.45**

Prior to the expiry of the 6 month interest only period, on **26 May 2011** the Complainant completed a **Buy to Let Mortgage Financial Review Form** in relation to his mortgage account ending ***7489*** which details as follows;

"Income (Weekly/monthly)	*€*	*Outgoings (Weekly/Monthly)*	*€*
Salary/Wages after Budget	*3,210-*	*Mortgage*	*3608.90*
Social Welfare Payments (e.g unemployment, children's allowance, family income support etc)	*Nil*	*Credit Union Loans*	*200-*
Retirement Pension	*Nil*	*Bank/Finance Loans*	*226.91*
Rental Income	*2,500*	*Maintenance Payments*	
Maintenance	*Nil*	*Credit Card Payments*	*300.00*
Mortgage Interest subsidy	*Nil*	*Any other Credit*	
Other income (Please specify)	*Nil*	*Store Cards*	
		Petrol to Work	*335.00*
Total	*5,710*		*4670.81*

In response to the question "***Please provide any other information which you believe to be relevant to above"*** the Complainant has written *"House for sale – I have reduced asking price to try & secure a sale of 330k. Auctioneer has had viewing but no offers & he says it's the current climate no investment properties are moving but he says when they do start to move it will definitely sell – City Centre location. Will continue to push for a sale. I also moved work location in August 2010 & I have a [time] per day commute costing me €335 per month now on petrol which I had not this cost before."*

In response to the question ***"Reasons for review (please specify and provide background as appropriate)"*** the Complainant has written "*I have had interest only on this loan for 2 years. Property is for sale. Have moved Auctioneers & reduced selling price to try get a quick sale.*

/Cont'd…

Property will sell as it is in good area & city centre once market picks up I am looking for 12 months further interest only as at present I do not have the capacity to contribute to capital reduction due to reduced rents & increase in cost of travelling a longer distance to work. I also have a credit union loan I am repaying for flood damage last winter."

The form recorded that the Complainant's outgoings included the monthly mortgage loan payments of €3,608.90 and payment of other monthly debt and expenses totalling €1,061.91.

The Provider's internal notes on **14 June 2011** detail as follows;

14 June 2011	*"Interest only declined. Alternative solution offered for fixed repayments. We have agreed to accept 1500 from customers for the next 12 Months, a/c to be set to i/o but direct debit to be set to 1500 pm – the surplus above int only to be put towards the capital balance."*
14 June 2011	*"We refer to recent Financial Review Form. Request for interest only has been declined, however, as an alternative, we can accept reduced fixed repayments of EUR 1500 on this account for the next 12 Months."*

The Provider's internal note dated **16 June 2011** details the following;

> *"Customer would like to appeal the decision to increase their repayments from 1338.65 per month to 1500 per month for 12 months. At the present level 1338.65 he is struggling to make this repayment every month. Rent income on the property has gone down from 1300 per month to 900 per month and he is robbing peter to pay paul monthly to maintain these repayments of 1338.65. He is doing everything he can to sell the property. It is [city] centre located and in a good area in the city. Investment market is dead at present but it will sell but he needs our support for more time. He has kept up all the agreed repayments on this mtg to date and is keeping his other loans with [the Provider]. He will not be able to manage an increase and we would not want to see him going into arrears. He is bank staff and needs our support for the 12 mth interest only request as he does not have the capacity to increase the repayment to 1500 per month as there is nowhere to go for the extra repayment on top of the present 1338.65 he is paying.*

/Cont'd…

Requesting to relook at this and give him more time to try and sell the property so that he can clear the mortgage with us. It will sell but will take more time in present climate."

The Provider issued the Complainant a letter dated **16 June 2011** offering him reduced repayments of €1,500.00 for a 12 month period.

The Provider's internal note of **29 June 2011** details as follows;

"[Complainant] said he wanted to discuss his acc..he had appealed I.O. decline & declined again. Said he had h[ou]se up for sale, it will be sold but he does not know when & he does not want to fall into arr[ear]s. He says E1338.65 is the very best he can do & annoyed we won't extend I.O. as he has the prop[erty] for sale. He wanted it noted that he had been in touch & not happy with situation he is in. I told him I would log call … I feel he will write in again."

The Provider's internal notes on the following dates, outline as follows;

6 July 2011	*"Note customer is saving 200pm to cr union-recommend he suspend this until loan cleared as this is also 200pm. Referring appeal but I see nothing here to warrant recommending anything else here apart from what was previously agreed."*
7 July 2011	*"Spoke with [Complainant] and the 200 savings is being withdrawn from the savings in the cr union monthly to use for his day to day expenses. It goes in but comes out in the same month and he can show evidence of this. He pays the 200 off the loan and other 200 is not built up in savings as his own current account needs it as can be seen coming up the 23rd of the month before payday as after all his loan repayments living expenses he needs this 200 and can't afford to build it up in savings in the cr union and hasn't. Can we look at supporting him as he genuinely does not have the affordability for the 1500 per month."*

A **Financial Appeals Review Form** dated **15 July 2011** has been provided in evidence and details as follows;

"Staff app[ea]l. Trying to sell BTL and has changed agent/reduced asking price.
…

/Cont'd…

Final Recommendation

…

Recommend further 6M IO. Customer to offload other BTL property. If sale doesn't progress within 6M or we can take unencumbered BTL [Address] as additional security. Property currently listed online f[or] sale asking €298k"

The Provider's internal notes on the following dates, detail as follows;

15 July 2011	*"Appeal assessed and referred to management.* *Decision to remain as per initial decision"*
21 July 2011	*"6 months int only approved. MFA will issue shortly. Unless property sold on expiry will seek A) capital element on expiry B) additional security. Please ensure [Complainant] is aware of this."*
22 July 2011	*"Customer has decided to accept the repayment of E1500 for 12 months and MFA has [been] sent in re this as opposed to the interest only option for 6 months. The E1500 is part cap reduction also.* *He is going to rent out a room in his own PDH to make up the difference from int only to the 1500 per month required. No further action needed on this [mail] as MFA has [been] submitted and signed by customer."*

The Complainant accepted and signed the **Mortgage Form of Authorisation** to accept a 12 month period of fixed repayments of €1,500.00 per month for mortgage account ending ***7489*** on **18 July 2011**.

The **mortgage loan statements** show that on the expiry of the two year fixed interest rate in **February 2012** the mortgage loan accounts rolled onto the standard variable rate of 5.00% (account ending ***7489***) and 3.85% (accounts ending ***3763*** and ***5391***).

Between **August 2011** and **July 2012** the overall tracker (ECB + margin) rate for mortgage loan account ending ***7489*** fluctuated between 2.75% and 2.25%. The interest rate actually charged to the mortgage loan fluctuated between 4.85% and 5.00%. 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 + 1.25%) had been applied to mortgage loan account ending ***7489*** between **August 2011** and **July 2012**, is represented in the table below.

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Between **August 2011** and **July 2012** the overall tracker (ECB + margin) rate for mortgage loan account ending ***3763*** fluctuated between 2.60% and 2.10%. The interest rate actually charged to the mortgage loan fluctuated between 3.85% and 3.15%. 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 + 1.10%) had been applied to mortgage loan account ending ***3763*** between **August 2011** and **July 2012**, is represented in the table below.

Between **August 2011** and **July 2012** the overall tracker (ECB + margin) rate for mortgage loan account ending ***5391*** fluctuated between 2.35% and 1.85%. The interest rate actually charged to the mortgage loan fluctuated between 3.85% and 3.15%. 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 + 0.85%) had been applied to mortgage loan account ending ***5391*** between **August 2011** and **July 2012**, is represented in the table below:

Date	**Overpayment per month**			
	A/C 5391	***A/C 3763***	***A/C 7489***	***Total***
Aug 2011 – Nov 2011	€36.74	€6.75	0	**€45.93**
Dec 2011	€46.54	€9.17	0	**€55.71**
Jan 2012	€55.99	€11.47	0	**€67.46**
Feb 2012	€55.99	€18.26	0	**€74.25**
Mar 2012 – Jun 2012	€85.01	€18.26	0	**€103.27**
Jul 2012	€85.01	€20.51	0	**€105.52**

As is evidenced in the table above, there were no overpayments recorded on the mortgage account ending ***4879*** between **August 2011** and **July 2012** during the period the account was on fixed monthly repayments of €1,500.00.

Prior to the expiry of the 12 month fixed repayment period, the Complainant completed a **Standard Financial Statement** dated **23 April 2012.** The **"Reason(s) for Review/Arrears"** was stated to be *"Cannot afford to go back on full repayment in July. Looking for a further 12 months @ 1500 per month".*

/Cont'd…

The SFS detailed that the Complainant's total monthly income was €6,393.00 and his monthly household expenditure was €1,907.00. The Complainant's monthly debt repayments totalled €1,672.00. This left a monthly surplus of €2,814.00.

The Complainant also wrote an undated letter to the Provider which detailed;

> *"I am looking for a further 12 month extension of the present agreement €1500 per month. The house is still on the market with [Auctioneer] in [City name] but no offers on it. I've had several viewings but very few looking from the investment market which is probably what it most suits.*
>
> *I am renting all year round to [University] students from Sept to May and then on a reduced rent for the summer months to foreign student coming to [city name] to work for the summer. All three RILs are rented in this way so the monthly rent I have put on the SFS is taking the rent for the year and averaging it out on a monthly basis.*
>
> *I have gone to [third party Provider] looking for 3 month break on the mortgage I have with them as this house needs to be painted and repair work needs to be done on it during the summer when the present tenants move out in 4 weeks time…*
>
> *My main domestic expense is car fuel. I travel an hour to work daily and an hour home in the evening and this is costing nearly €400 per month on fuel.*
>
> *I will have the [other BTL property] mortgage [account ending **0394**] cleared in full in 5 years time so the very worst case scenario this would relieve a lot of pressure then but I would definitely hope to have the [BTL property securing account ending **7489**] sold long before then which is the mortgage I am looking for further forbearance on."*

The Provider issued the Complainant a letter dated **14 May 2012** offering him reduced repayments of €1,500.00 for a further period of 12 months on mortgage account ending ***7489.*** The Complainant accepted and signed the **Mortgage Form of Authorisation Application For Reduced Repayment** to effect this on **21 May 2012**.

The Complainant emailed the Provider on **27 July 2012** in relation to the mortgage account ending ***7489*** as follows;

> *"Wondering can I avail of the long term interest only option that is launched today on the recent mortgage that I got interest only approved for 12 months on. As it was a recent application I was thinking better do it now as I might [have] to go*

/Cont'd…

> *through the SFS process now again as you would have all my most update[d] details rather than waiting another year and would naturally have to go through the process again.*
>
> *Looking for a long term solution as if I cannot sell at least I know where I am with the repayments for the next few years. I definetely [sic] want to sell the property but it is a waiting game as its now two years on the market and no offers. The resolution in 5 years' time from the bank's point of view would be [mortgage loan account ending **0394**] would be cleared by then and short term loans would be cleared and there would be additional rental income 520 and loan repayments ie 526 I could at this point put towards the [BTL property] mortgage [ending **7489**]."*

The Provider's internal note dated **17 August 2012** details as follows;

> *"Decision for NON CCMA ref [ending] 7489- 3 years fixed payment E1,500pm MFA TEXT: Reduced payment effective from 5/9/12".*

The Provider issued the Complainant a letter dated **22 August 2012** offering him reduced repayments of €1,500.00 for a period of 36 months on his mortgage account ending ***7489***. The Complainant signed and accepted the **Agreement to Amend Your Mortgage Loan Offer Reduced Regular Instalments** on **27 August 2012** which stated *"**Facility to commence 05/09/12 and overrides any previous approval".*

The Complainant completed a further **Standard Financial Statement** dated **28 May 2013** in respect of his mortgage loan account ending ***7489***. The **"Reason(s) for Review/Arrears"** was stated to be *"Looking for restructure of above mortgage on [BTL] property Ref [ending] 7489".*

The Complainants' total monthly income was detailed as €6,167.00 and his total monthly expenditure was €1,965.00. His monthly debt repayments being paid totalled €4,522.00. This left a monthly deficit of €320.00.

The Complainant stated as follows in response to the question *"**Please provide details of any steps you have already taken to reduce your monthly expenditure and the savings you have achieved":***

> *"I have restructured the RIL on [Buy to let property] twice – Int only repayment…*
> *Cancelled Gym membership.*
> *No holidays for past two years.*

/Cont'd…

> *Every euro is being accounted for. At the end of each month it's a case of robbing Peter to pay Paul. No savings – can't afford to build any up. Some Months before pay day I resort to Credit Card for basic living expenses.*
> *I do all painting on properties and some maintenance where before would have paid Painters to do this work."*

The Complainant stated the following in response to the question *"**Please provide details of any steps you propose to take to reduce your monthly expenditure and the savings you expect to achieve":***

> *"I have [BTL property] on market for past two & half years. Lots of viewings but Auctioneer says price of €230k too high. It puts people off. Will continue to try & sell but difficult.*
>
> *What I would propose if I could is park 100k of this mtg make full cap & int repayments on 230k over 25 yrs from now. My aim is to sell property but need to put some money approx. 10k into it to intice [sic] buyers".*

On **24 June 2013**, the Complainant signed and accepted a **Mortgage Form of Authorisation** to apply a staff rate of 4.00% to mortgage loan account ending ***5391***.

The Provider's internal notes on the following dates, detail as follows;

20 June 2013	*"Decision for Non- CCMA ref [ending 7489] – AGREE TERM EXTENSION NOW 10 NOV 2047 & FIXED REPAYS OF E1510 FROM JULY TO NOVEMBER 2013 INCLUSIVE* *CONDITIONS for MFA:* *This arrangement supercedes [sic] previous forbearance arrangement"*
4 July 2013	*"Final Decision for Non- CCMA ref [ending 7489] – Agree Term Extension to Nov 2047.* *…* *Disregard [mail] on 20/06/13 – Existing forbearance arrangement to stay in place as per [mail] on 17/08/12 re 3 years fixed repayments e1500p, (reduced repayment effective from 05/09/12) along with new term extension to Nov 2047"*

The Provider issued the Complainant a letter dated **09 July 2013** detailing as follows;

/Cont'd…

"We have determined that the most appropriate option for you in your current circumstances is to allow you extend the period of your mortgage loan for 192 months to a new loan maturity date of 5/11/2047."

The Complainant accepted and signed the **Mortgage Form of Authorisation Application To Extend Term** on **16 July 2013** to extend the period of the mortgage loan account ending ***7489*** for 192 months to a new loan maturity date of **5 November 2047**. The form detailed as follows;

> *"**Special Conditions***
> *Existing forbearance arrangement to stay in place until 12/09/2015. Fixed repayments at e1500pm (reduced repayment effective or the Interest Only amount if higher) along with new term extension to Nov 2047."*

Between **August 2012** and **February 2014** the overall tracker (ECB + margin) rate for mortgage loan account ending ***7489*** fluctuated between 2.00% and 1.50%. The interest rate actually charged to the mortgage loan fluctuated between 5.00% and 5.50%. 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 + 1.25%) had been applied to mortgage loan account ending ***7489*** between **August 2012** and **February 2014**, is represented in the table below.

Between **August 2012** and **February 2014** the overall tracker (ECB + margin) rate for mortgage loan account ending ***3763*** fluctuated between 1.85% and 1.35%. The interest rate actually charged to the mortgage loan fluctuated between 3.85% and 4.85%. 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 + 1.10%) had been applied to mortgage loan account ending ***3763*** between **August 2012** and **February 2014**, is represented in the table below.

Between **August 2012** and **February 2014** the overall tracker (ECB + margin) rate for mortgage loan account ending ***5391*** fluctuated between 1.60% and 1.10%. The interest rate actually charged to the mortgage loan fluctuated between 3.85% and 4.35%. 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 + 0.85%) had been applied to mortgage loan account ending ***5391*** between **August 2012** and **February 2014**, is represented in the table below:

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	Overpayment per month			
Date	***A/C 5391***	***A/C 3763***	***A/C 7489***	***Total***
Aug 2012 – Sept 2012	€94.24	€20.51	0	**€114.75**
Oct 2012	€94.24	€24.95	0	**€119.19**
Nov 2012 – Apr 2013	€116.01	€24.95	€7.82	**€148.78**
May 2013	€116.01	€27.01	€7.82	**€150.84**
Jun 2013	€124.72	€27.01	€7.82	**€159.55**
Jul 2013	€110.14	€27.01	€7.82	**€144.97**
Aug 2013 – Oct 2013	€110.14	€27.01	€8.22	**€145.37**
Nov 2013	€110.14	€28.89	€8.22	**€147.25**
Dec 2013 – Feb 2014	€118.38	€28.89	€8.22	**€155.49**
Jan 2014	€118.38	€28.89	€8.22	**€155.49**
Feb 2014	€118.38	€28.89	€8.22	**€155.49**

The **mortgage loan statement** shows that in **February 2014** the mortgage account ending ***7489*** was moved to a new staff variable rate of 4.99%.

The Provider's internal notes from **March 2014** detail as follows;

7 March 2014	*"Customer has had property for sale for the past 3 years. He has now got an offer of 200k on the property.* *He wants to accept this offer request to allow sale to go through and he will reduce the mortgage by the proceeds of the sale and continue with repayments on the balance ie 127k over the term already on this mortgage.* *Security proposed is the collateral security which already exists on this mortgage a charge over another property [other BTL property address] 21k remaining on mtg with property value 190k. There is three years remaining on this mtg. If sale is permitted the shortfall will be 127k over remaining term 33 years cap and interest repayment 643.59 per month which customer is willing to commit to. He is [Provider employee] in [Location]. Requesting approval for the above to accept offer of 200k on property."*

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12 March 2014	*"I have referred this to Sale at Shortfall team."*
12 March 2014	*"SAS Team have advised;* *"The branch will have to refer this through SFS assessment to seek approval for the sale as per the new procedures …""*

The Complainant sent a letter to the Provider dated **19 March 2014**, which details as follows;

> *"I have a property in [city name] that has [been] for sale for the past three years. I have had over 60 viewings no offer up to now. I have an offer for 205k which I would like to accept. The mortgage on the property is with [the Provider] Balance 326k Mortgage reference number [mortgage account ending 7489].*
>
> *What I am proposing is to term out the balance 126k approx. over the remaining term of the existing mortgage 33 years and [the Provider] hold onto the collateral security a legal charge on another RIL I have [other Buy to Let property] The balance on this mortgage is 21k with 4 years to run MSC Ref number [ending* ***0394****].*
>
> *The value on this property is 190k it's a three bed terraced house in city centre. I have a personal loan due to clear in July 226 per month. I save 200 per month with the cr union and I pay 380 into the [Provider's] staff holiday fund all of which would support repayments on the shortfall of the sale of the above property I am looking to sell…"*

The Complainant completed a **Standard Financial Statement** dated **18 March 2014**. The *"Reason for Review/Arrears"* was stated to be *"Looking to sell RIL [Address] + continue with negative equity over remaining existing term with a charge on another [Location] property already held: [Address]".*

The SFS detailed that the Complainant's monthly income was €5,908.00 and his monthly expenditure was €1,391.65. The Complainant's monthly debt repayments were €3,372.19. This left a monthly surplus of €1,144.16.

The Complainant detailed as follows in the SFS;

> *"I pay €380 per month into the staff holiday fund. This will cease in Nov 2014. I pay €200 into Cr union savings that I can reduce to €100. Total saving €706 to fund the*

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> *negative equity repayment. Also in 4 years time property @ [other BTL property] will be paid off and this will provide added comfort."*

The evidence shows that the Complainant's solicitor wrote to the Provider by letter dated **20 March 2014** requesting the title documents for the mortgaged property on Accountable Trust Receipt.

The Provider wrote to the Complainant on **14 April 2014** as follows;

> *"Our credit department have now confirmed the capital reduction required is €200,900.00 to be lodged to account [ending] 7489, in order to release the property at [Address] from the security held."*

The **mortgage loan statement** shows that the Complainant made a part redemption of €200,900.00 to the mortgage account ending ***7489*** on **6 June 2014**. This reduced the outstanding mortgage loan balance from €327,790.15 to €126,890.15.

I note from the evidence that the Complainant signed **Mortgage Forms of Authorisations** to amend the interest rates on mortgage accounts ending ***5391*** and ***3763*** as follows on the following dates;

- On **9 February 2015** to apply a 5 year fixed rate of 3.95%
- On **12 June 2015** to apply a 3 year fixed rate of 3.6%.

Between **March 2014** and **November 2017** the overall tracker (ECB + margin) rate for mortgage loan account ending ***7489*** fluctuated between 1.50% and 1.25%. The staff fixed interest rate actually charged to the mortgage loan was 4.99%.

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 + 1.25%) had been applied to mortgage loan account ending ***7489*** between **March 2014** and **November 2017**, is represented in the table below.

Between **March 2014** and **November 2017** the overall tracker (ECB + margin) rate for mortgage loan account ending ***3763*** fluctuated between 1.35% and 1.10%. The interest rate actually charged to the mortgage loan fluctuated between 4.35% and 3.60%. 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 + 1.10%) had been

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applied to mortgage loan account ending ***3763*** between **March 2014** and **November 2017**, is represented in the table below.

Between **March 2014** and **November 2017** the overall tracker (ECB + margin) rate for mortgage loan account ending ***5391*** fluctuated between 1.10% and 0.85%. The interest rate actually charged to the mortgage loan fluctuated between 4.00% and 3.60%.

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 + 0.85%) had been applied to mortgage loan account ending ***5391*** between **March 2014** and **November 2017**, is represented in the table below:

Date	**Overpayment per month**			
	A/C 5391	***A/C 3763***	***A/C 7489***	**Total**
Mar 2014	€118.38	€28.89	€1,145.26	**€1,292.53**
Apr 2014 – May 2014	€117.34	€28.89	€1,008.19	**€1,154.42**
Jun 2014	€117.34	€29.63	€434.91	**€581.88**
Jul 2014 – Aug 2014	€120.57	€29.63	€434.91	**€585.11**
Sept 2014	€120.57	€30.34	€442.39	**€593.30**
Oct 2014 – Jan 2015	€123.71	€30.34	€442.39	**€596.44**
Feb 2015	€123.71	€27.47	€442.51	**€593.69**
Mar 2015 – May 2015	€122.00	€27.47	€442.51	**€591.98**
Jun 2015	€122.00	€25.06	€442.51	**€589.57**
Jul 2015 – Sept 2015	€109.74	€25.06	€442.51	**€577.31**
Oct 2015 – Feb 2016	€109.74	€25.06	€392.63	**€527.43**
Mar 2016	€109.74	€25.33	€392.63	**€527.70**
Apr 2016 – Nov 2017	€111.11	€25.33	€394.72	**€531.16**

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It is evident from the above table that the cumulative monthly overpayments on the mortgage loan accounts during this period were significant, fluctuating between €1,292.53 and €527.70.

It is important to observe that the evidence supports the Complainant's position that he did prioritise his mortgage loan payments at all times during the impacted period.

However there is no evidence that the Complainant was *"forced"* to sell the BTL property by the Provider in **2014** in order to comply with Fitness and Probity requirements, or that the sale was caused by the overcharging of interest on the Complainant's mortgage loan accounts.

The evidence shows that at all times the suggestion to sell the property was one that was under consideration by the Complainant and not one that was enforced by the Provider. Further the contemporaneous evidence shows that the fall in rents associated with the Buy to Let Property had an impact on the Complainant's income from that property. The difficulties in this respect are noted in the Complainant's various requests for forbearance.

While it may be the case that the Fitness and Probity requirements were matters that were in the Complainant's mind, and certainly these are reasonable considerations for an individual such as the Complainant, who is in the employment of a financial service provider, to have when he was making decisions with respect to his mortgage loans and prioritising the repayments on his mortgage loans, there is however no evidence that the Provider raised these Fitness and Probity requirements with the Complainant at all within the context of the ongoing engagements with the Provider on mortgage account ending ***7489***.

That being said, I recognise that the overpayments on the Complainant's mortgage loan accounts had a significant direct impact on the funds that the Complainant had available to him to service his mortgage loans, and other expenses, during this time period.

I am of the view that an overpayment of interest on average of €775.89 per month for a period of 105 months is significant. Throughout this period, the Complainant was denied the opportunity of making informed decisions about his finances as he did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan accounts.

During this time, the Complainant was challenged financially as he was servicing a number of mortgage loans. I have no doubt that the number of mortgage loans held in and of itself placed a strain on the Complainant's finances and it cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused additional

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hardship and serious inconvenience to the Complainant during this period. I am of the view that the evidence supports the Complainant's position that the overcharge on the Complainant's mortgage loan accounts impacted the Complainant's financial position and ability to service his debts. It is evident from the Complainant's submissions that it has been a source of major inconvenience during the impacted period and the Complainant was required to engage with the Provider to seek a number of forbearance arrangements to be in a position to continue to service mortgage loan account ending ***7489*** and prevent arrears arising.

Taking into consideration all of the evidence before me in terms of the level of overcharging and the extended period over which the overcharging occurred, the impact such overcharging had on the Complainant, I am of the view that the level of compensation offered of €26,906.24 is not sufficient or reasonable to compensate the Complainant for the inconvenience suffered by the Complainant during the impacted period.

Therefore, I uphold this complaint and direct that pursuant to **Section 60(4)** of the ***Financial Services and Pensions Ombudsman Act 2017***, the Provider pay a sum of €50,000 compensation to the Complainant in respect of the loss, expense and inconvenience the Complainant has suffered. For the avoidance of doubt, the total sum of compensation of €50,000 is <u>inclusive</u> of the €26,906.24 compensation already paid to the Complainant for the Provider's failure.

For the reasons set out in this Decision, I uphold this complaint.

<u>Conclusion</u>

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld, on the grounds prescribed in ***Section 60(2) (g).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment in the sum of €50,000 to the Complainant for the inconvenience he has suffered, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. For the avoidance of doubt, the total sum of compensation of €50,000 is <u>inclusive</u> of the €26,906.24 compensation already paid to the Complainant for the Provider's failure.

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I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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

2 June 2021

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

(a) ensures that—

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

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

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