



<u>Decision Ref:</u>	2021-0200
<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>	Partially upheld

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

This complaint relates to a mortgage loan account held by the Complainant with the Provider and an overcharge of interest in the amount of €30,599.69 on that mortgage loan account. The mortgage loan account was secured on the Complainant's primary dwelling house.

The loan amount was €200,000 and the term of the loan was €25 years. The Loan Offer dated **17 July 2007** detailed that the interest rate applicable to the loan was a tracker interest rate of ECB + 0.95%. The mortgage loan account was redeemed in full by the Complainant on **12 February 2016**.

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

The Provider wrote to the Complainant on **09 December 2016** advising him of the failure. The Provider detailed "*the circumstances that caused this failure to happen*" as follows;

"When you took out your top up loan your letter of offer said we would give you a tracker rate, but due to a manual error, we mistakenly didn't do that."

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

“What does this mean for you?”

Now that we have completed the detailed review of your mortgage account we have been able to calculate the redress and compensation that is due from 09/08/2007, which was when your account was first impacted.”

The Provider made an offer of redress and compensation to the Complainant. The offer of €38,561.62 made by the Provider to the Complainant comprised the following;

1. Redress of €30,599.69 covering;
 - The amount overpaid while on the incorrect rate up to the point the security property was sold
 - Interest to reflect Time Value of Money
2. Compensation of €6,731.93 for the failure on the mortgage loan account.
3. Independent Professional Advice payment of €1,230.

The Provider issued a further letter to the Complainant on **08 March 2017** which detailed as follows:

*“We recently wrote to you regarding the Tracker Mortgage Review and advised that if the Irish Credit Bureau (ICB) record on account [ending **1804**] required adjustment, we would write to you again.*

...

We have now completed a review of the repayment record that we reported to the ICB for this mortgage account and identified that we overstated the arrears.

We apologise for this and confirm that any arrears on the current ICB record which were overstated as a result of our failure have been amended and compensation for this error forms part of the Redress and Compensation payment. Please refer to the Redress and Compensation letter which contains details of the independent appeals process that is available to you.”

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In **March 2017**, the Complainant appealed the redress and compensation offering to the Independent Appeals Panel. The Appeals Panel rejected the Complainant's appeal on **27 March 2018** on the basis that it did not agree that the financial and non-financial losses being claimed by the Complainant arose as a result of the failure of the Provider to apply the correct interest rate to the mortgage loan account.

As the Complainant completed the Provider's internal appeals process, this office was in a position to progress the investigation and adjudication of the complaint.

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

The Complainant's Case

The Complainant submits that the level of compensation offered by the Provider *"does not go far enough given the financial stress that I have been under since the beginning of 2014."*

The Complainant details that in **2014** he requested a 12-month moratorium on the mortgage loan in circumstances where he was dealing with a marriage separation at the time. He outlines that *"As part of the process, it was necessary for me to move out of my home for a period of time, expected to be 12 months, resulting in additional monthly expenses of rent on top of ongoing legal expenses etc. It was also clear at that stage that any separation agreement was likely to result in my estranged wife receiving her share of the value of the house. Given that I did not have the resources to pay this, it was clear that the sale of the house was inevitable. At the time, the mortgage outstanding was approximately €164,000 and the value of the property was estimated at between €700,000 and €750,000. My loan repayment at the time was €1,270 per month."*

The Complainant submits that despite his *"unblemished repayment record"* the Provider refused his request for a 12-month moratorium and instead offered him interest only repayments for a 12-month period in **April 2014**. He submits interest only repayments were *"never going to be suitable to me in my particular situation, and when I moved out and started paying rent of €1,375 pm, I had absolutely no option but to stop making repayments on the mortgage. Payment of rent plus interest payments, plus utilities for 2 properties, while trying to fund ongoing legal expenses to do with the separation was never going to be possible."*

He further states that *“I had other personal funding available to me, which I was not going to use to maintain mortgage payments, including interest payments, to the Bank at that time. This situation is irrelevant to the bigger question about the new circumstances as now known - providing me with a real option to retain my home.”*

The Complainant submits that subsequently in **2016** he learned that *“during the time I was pleading and arguing my case for a 12 month payment holiday, I was actually in a large “overpayment” position with the Bank because of the Bank’s own error.”* He states that *“Had it been known that (1) I had overpaid interest on my mortgage and was in fact in a interest credit situation and (2) should have been on a lower tracker interest rate which could have been maintained for the duration of the loan, then a different set of options were open to me. The obvious one being the retention of my home.”*

The Complainant outlines that *“when the interest-only option was offered to me in April 2014, it would have resulted in payments of approx €600 being due. I now find that if the tracker rate was correctly applied, I would have been paying approx €140 pm. As stated above, it was impossible for me to make interest only payments of €600 at the time, but I could have found a way to pay €140 pm to keep my credit record in order”.*

The Complainant has submitted that he *“discussed with my Sister and Brother in Law the proposition of buying my ex w[i]fe out of the house, in order to retain it. They had signalled their agreement to the idea and willingness to support me. Had a tracker mortgage with a lower interest rate been in place, this would have made a significant difference, in the context of the decision making process then and certainty on this element relating to the outstanding loan against the property. Additionally it had been discussed that they would advance me a personal loan, pending some of these potential opportunities below coming to fruition and increasing my cashflow and availability of funds. It was also known to me during the Judicial Separation proceedings that a job opportunity in the Private Sector was in the pipeline, which would have increased my level of remuneration by circa 60% -to a level of nearly €180K per annum. This would also have allowed me to access a tax free lump sum of Circa €160K at age 60 and a pension of €50K per annum. These benefits were legally protected, as flowing exclusively to me, when I retired or existed early. Again all options to be brought together, as part of buying out my ex wife’s payout associated with the family home. As you will appreciate, there had to [be] confidentiality, discretion, choreography and timing associated with how such moves would surface.”*

The Complainant details that his Irish Credit Bureau (ICB) rating was negatively affected when he stopped making repayments on the mortgage loan in **2014**, which caused him *“huge hardship and inconvenience”* when he sought a new mortgage loan to purchase his current family home.

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He details that he *“almost secured loan approval secured from [Provider], based on my repayment ability, but was told that my recent Credit Record/Status had ultimately resulted in their refusal of my application. My application with [third party Provider] took a long protracted journey, with many hurdles. At one stage it looked as if it also was going to meet with refusal ... All these difficulties due the attitude of [the Provider] and the mistakes they made, when in fact I was in credit with my repayments etc.”*

The Complainant submits that the Provider’s *“negligence and [the] errors resulting, are directly linked”* to the sale of the property in **February 2016**. He states that if he had been aware of the Provider’s error at the time of the sale, he *“would have been in a position to explore buying out the Family home from the other party involved, retaining a tracker mortgage and entering into other arrangements financially to make this happen.”* He details that *“as a consequence of having to sell one house and buy another, a range of additional costs and overheads were generated for me”* as follows;

- *“Solicitors fees arising from [the security property] sale - €1523*
- *Estate Agents fees arising from the house sale - €7995*
- *Certification and other expenses linked to sale - €3817*
- *Stamp duty arising from new buy - €4950*
- *Solicitors fees arising from new buying - €2200*
- *Professional fees and expenses linked to new buy - €5500*
- *Rental costs between house sale and house purchase - €7350*
- *Furniture removal and storage - €3420”*

The Complainant submits that *“The Bank's compensatory response in this case pales into insignificance when one looks at the domino effect on me and my children now and into the future. I should have been able to retain my home, which would have been a much more valuable asset into the future relative to the property I now have. I have incurred costs in the sale of [the property], which could have been avoided. I could have had the benefit of a lower interest rate tracker product for its full lifetime, instead of what I now have. Finally the stress and hardship I have had to ensure [sic] from the Banks actions and failure to do the right thing, have added significantly to all that I had to carry through a difficult Family Law Separation.”*

The Provider’s Case

The Provider submits that in **December 2016** a sum of €38,561.62 was paid to the Complainant in redress and compensation. It states that the overcharge of interest of €29,318.19 has been refunded to the Complainant and a Time Value of Money (“TVM”) payment of €1,281.50 was made so the Complainant was not *“out of pocket”*.

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The Provider submits that the redress and compensation payment included a compensation payment of €6,731.93, to compensate for potential inconvenience, harm, personal suffering or hardship. It states that the standard compensation is 15% however in this case, where the account related to a home ("PDH") which has been sold, it applied an increased percentage of compensation of 22% of the interest overcharged plus the TVM amount. It outlines that a payment towards professional advice of €1,230.00 was also made so that the customer could have an advisor bring him through the detail of the Redress and Compensation letter dated **09 December 2016**.

The Provider submits that the criteria considered by the Provider align to the principles of redress outlined under the Central Bank's Tracker Mortgage Review guidelines, in particular that redress will result in impacted customers being returned to the position they should have been in if the issue had not occurred and compensation is to be reasonable and reflect the detriment involved. It submits that the process for calculating redress and compensation has been assured by an external independent third party in accordance with the Central Bank's guidelines.

The Provider states that *"rigorous measures to ensure fairness and consistency have been applied to each stage of the Tracker Mortgage Review Process."* It notes that the Independent Appeal Panel agreed that the payments made to the Complainant by way of Redress and Compensation were *"adequate"* and in such circumstances, the Provider submits that these payments are *"fair and reasonable."*

The Provider states that in **March 2017** it wrote to the Complainant to state that the Provider had overstated the arrears repayment record to the ICB for the mortgage loan account and amended the ICB record accordingly. It states that compensation for this error has been made as part of the redress and compensation payment already issued.

The Provider submits that prior to his marital separation the Complainant had been making capital and interest repayments on the mortgage loan account. The Provider details that the Complainant informed the Provider by email in **December 2013** that he had initiated family law proceedings and was seeking alternative accommodation outside the family home, and that due to recent costs and new overheads to come he had *"cancelled the mortgage repayments"* with effect from **January 2014**.

The Provider acknowledges that it was a *"difficult time"* in the Complainant's life and that *"there would have been financial pressures arising from his marital separation, associated legal expenses and additional monthly outgoings in relation to a second property."*

It states however that it does not agree with the Complainant's assertion that there was "no option but to stop making mortgage repayments" and that the Provider "did facilitate and engage in all measures of forbearance available at the request of the Complainant." It details that the Complainant's **Standard Financial Statement** received by the Provider on **01 March 2014** showed that the Complainant "had capacity to pay the monthly interest repayment portion for the mortgage loan account."

The Provider further states that it "did not and does not offer capital and interest moratoriums as a forbearance measure". It details that following an assessment of the financial information provided by the Complainant, it approved and applied forbearance in the form of a 12-month interest only repayment arrangement to the account from **May 2014** to **April 2015**. It states that the Complainant did not adhere to the arrangement and did not make any repayments to the mortgage account for a period of 13 months, from **January 2014** to **January 2015** inclusive.

The Provider has outlined the following interactions with the Complainant:

- The Complainant informed the Provider in **May 2014** that he intended to sell the property and requested a mortgage "pause" for a "short unspecified period".
- The Provider contacted the Complainant in **June 2014** to clarify that interest only payments must be made on the mortgage while the property sale was in progress and to ask him to provide a letter from his auctioneer evidencing that the property was on the market.
- The Complainant sent the Provider a letter from his auctioneer on **21 July 2014** confirming that the property was due to go on the market in the next few weeks.
- The Complainant wrote to the Provider on **29 September 2014** confirming that the property was on the market for sale
- The Provider contacted the Complainant on **1 October 2014** due to the increasing arrears on the account to inform him that he would be deemed non-cooperating under the **Code of Conduct on Mortgage Arrears (CCMA)** unless he either contacted the Provider with a proposal to clear the arrears or provided a new completed SFS.
- The Complainant contacted the Provider on **13 October 2014** enclosing a copy of the auctioneers' brochure and advising that he would be unable to pay the mortgage interest prior to the completed sale
- The Complainant wrote to the Provider on **15 January 2015** stating that he would restructure other financial commitments and commence interest only payments from **February 2015**.

The Provider outlines that the Complainant's solicitor's letter dated **16 March 2015** details that the costs incurred as a result of the Complainant vacating the family home and other costs associated with his marital separation, were the reasons the Complainant was unable to continue to pay the mortgage loan repayments.

Regarding the reporting of arrears which occurred on the mortgage loan account, the Provider submits that it is obliged to report the performance of Credit Agreements to the Irish Credit Bureau ("ICB"). It states that the decision to stop making mortgage repayments during the period **January 2014 to January 2015** was "*entirely the Complainant's decision*" which subsequently affected his credit history with the ICB.

The Provider outlines that it declined the Complainant's application for mortgage credit in **March 2015** because he had failed to make any payments to his existing mortgage loan account for a period of 13 months. It submits that when reviewing any application for lending, it is required to carry out a risk assessment which includes a review of a borrower's previous lending history. The Provider states that it cannot comment on the procedures used by other financial institutions to assess mortgage applications as it is not privy to any mortgage applications from other institutions being declined or refused credit. The Provider submits that no evidence has been submitted to evidence that the Complainant was refused loans on the basis of the Provider's credit history reports to the ICB.

The Provider states that the Complainant provided an up to date SFS in **March 2015** and the Provider granted him a further six month interest only period from **June 2015 to November 2015**.

The Provider states that on **12 February 2016** the mortgage loan account was closed and cleared in full, including the accumulated arrears of €13,000, by way of lodgement of €164,671.17, being part net sale proceeds of the property.

The Provider states it does not accept the Complainant's assertion that additional compensation should be paid for the costs associated with the sale of the security property as the Provider has determined that "*the error on the account did not cause the sale of the property.*" The Provider states that the Complainant has submitted that "*it was clear that the sale of the house was inevitable*". It states that the **Terms of Settlement** dated **03 February 2015** ruled by the Family Law Court, stated that the family home was for sale. Accordingly the Provider is of the view that "*the property was already voluntarily put on the market for sale by the Complainant*".

The Provider states that it did not at any point advise or inform the Complainant to sell the property. It further outlines that the Complainant at no point during “*numerous discussions with the Bank*” alluded to an interest in or enquired to the Provider about the possibility to “*buy out*” his ex-spouse prior to the sale of the property.

The Provider submits that the information provided by the Complainant in the **Standard Financial Statement** dated **19 November 2015**, evidences that the Complainant could not have afforded to make capital and interest repayments on his existing mortgage and on the additional mortgage required to buy out his ex-wife. It details that this this would also have been the case if the mortgage loan account had been on the correct tracker rate and if both mortgage loan accounts extended to age 71 beyond the normal retirement age for Public Sector employees of 65. The Provider notes that the **SFS** provided in **November 2015** does not list any other assets and does not include a value for pension funds or any entitlement to draw funds from a pension prior to retirement.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has incorrectly failed to offer adequate redress and compensation to the Complainant by consequence of the Provider’s failure in relation to his mortgage loan account.

Decision

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

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

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

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A Preliminary Decision was issued to the parties on 26 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.

The impacted period extended over some 8 years and 6 months, from **9 August 2007** to **12 February 2016** when the mortgage loan account was redeemed. The interest overcharged by the Provider on the Complainant's mortgage loan account from **August 2007**, to the date that the mortgage loan was redressed in **February 2016** was €29,318.19. This amounts to an overcharge of interest on average of €287.43 per month during that period on the mortgage loan account.

The Provider has detailed that the redress payment of €30,559.69 reflects the amount of interest overpaid on the mortgage loan account (€29,318.19) and includes a payment to reflect the time value of money (€1,281.50). The Provider also paid the Complainant compensation of €6,731.93 and an additional €1,230.00 for the purposes of seeking legal advice. The Provider submits that the Appeals Panel did not uphold the Complainant's appeal. The Provider is of the view that the redress and compensation paid is fair and reasonable and the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider has already paid to the Complainant.

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

A **Loan Offer** dated **17 July 2007** issued to the Complainant which detailed as follows:

<i>Loan Amount</i>		<i>€200,000.00</i>
<i>Loan Term</i>		<i>25 years</i>
<i>Interest Rate</i>	<i>(Variable)</i>	<i>5.25%</i>
<i>Loan Type</i>		<i>Annuity</i>

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The rate of interest on this loan will be ECB + 0.95% & will be adjusted after drawdown of Top-Up loan cheque."

The **Terms and Conditions** attached to the mortgage loan offer detailed as follows with regard to the applicable interest rate;

"The rate of interest applicable to the loan will be the rate prevailing on the date the loan is issued. The rate of interest quoted on this loan offer letter is the relevant rate prevailing at today's date, and may change before the loan is issued."

In its letter to the Complainant dated **9 December 2016**, the Provider admitted that when the Complainant took out the mortgage loan the *"letter of offer said we would give you a tracker rate, but due to a manual error, we mistakenly didn't do that."* Consequently, the failure that was subsequently identified in **December 2016** as part of the Examination, occurred on the Complainant's mortgage loan account. from the date of drawdown in **August 2007**.

I note that the Provider wrote to the Complainant by letter dated **26 May 2008** as follows;

"Thank you for taking the time to speak with me today, as promised I am outlining the actions that I will be taking as a result of the discussion we had.

I have enclosed a fixed rate application form along with a tracker rate application form for your attention. When you decide on the option you would like to proceed with please complete and return the relevant form to the address enclosed. I will then be adjusting the rate on your mortgage account XXXX1804 to reflect a new tracker rate of 1.1% + ECB. Or one of the following fixed rates – 5.43% for 3 years, 5.58% for 5 years or 5.44% for 10 years.

..."

It does not appear based on the evidence before me, that either a fixed rate or tracker interest rate was applied to the mortgage loan account at that time. I note from the **mortgage loan statement** that the mortgage loan account remained on the variable interest rate.

The Complainant wrote to the Provider by letter dated **17 November 2008** as follows;

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*With effect from December 2008, I would like to increase my monthly repayments to spread the current loan over 19 years ie Dec 2008 to Nov 2027.
..."*

The Provider replied on **21 November 2008** as follows;

"I am writing to you to confirm that the term remaining on your loan account has been reduced at your request.

*In order to repay your loan by the end of November 2027, your monthly payment has been increased to EUR 1,102.89 with effect from December 2008.
..."*

I note from the **mortgage loan statement** that the mortgage repayment was **€1,102.89** from **December 2008**.

In the period between **August 2007** and **December 2013**, the Provider's standard variable rate that was applied to the Complainant's mortgage loan account ranged between 2.63% and 5.88%. The tracker interest rate that would have been applied was ECB + 0.95%. Between **August 2007** and **December 2013**, the overall tracker rate (ECB + margin) fluctuated between a rate of 1.20% and 5.20%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged on the tracker interest rate is represented 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 + 0.95%) had been applied to the mortgage account between **August 2007** and **December 2013**, is represented in the table below at column 4:

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
Aug 2007	0.00%	€0.00	€0.00	€0.00
Sep 2007 – Apr 2008	0.30%	Between €180.99 and €852.85	Between €175.69 and €831.92	Between €5.30 and €20.93

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May 2008 – Jun 2008	0.38%	Between €859.60 and €890.09	Between €831.92 and €861.55	Between €27.68 and €28.54
Jul 2008	0.58%	€944.73	€897.09	€47.64
Aug 2008 – May 2009	0.68%	Between €979.85 and €1,060.99	Between €916.45 and €1,001.84	Between €59.15 and €63.40
Jun 2009 – Apr 2010	0.68%	€970.29	€912.22	€58.07
May 2010 – Jul 2010	1.28%	€1,018.38	€912.22	€106.16
Aug 2010 - Mar 2011	1.88%	€1,067.23	€912.22	€155.01
Apr 2011	2.48%	€1,115.70	€912.22	€203.48
May 2011 – Sep 2011	2.23%	Between €1,258.22 and €1,281.01	Between €1,049.94 and €1,070.37	Between €208.28 and €210.64
Oct 2011 – Dec 2011	2.48%	Between €1,281.20 and €1,303.83	Between €1,050.19 and €1,070.37	Between €231.01 and €233.46
Jan 2012 – Jul 2012	2.38%	€1,250.06	€1,030.50	€219.56
Aug 2012 – May 2013	2.68%	€1,250.06	€1,011.36	€238.70
Jun 2013 – Nov 2013	3.13%	€1,270.52	€993.11	€277.41
Dec 2013	3.38%	€1,270.52	€975.87	€294.65

I note that during the period between **August 2007** and **December 2013**, the Complainant was overcharged the sum of €10,868.24 by the Provider which was an overcharge of approximately €144.90 per month. The overcharge gradually rose from €47.64 in **July 2008**, to €155.01 in **August 2010** and to €294.65 in **December 2013**. These are significant sums to overpay on a monthly basis.

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The Complainant emailed the Provider on **31 December 2013** and outlined as follows:

"I refer to previous conversations between us, in which I updated you that there were marital difficulties between [the Complainant's ex-wife] & myself. I initiated Separation Proceedings earlier in 2013 & these are due to come before the Courts for a date scheduled in February 2014. I have decided to seek accommodation outside of [the security property]. Unfortunately given recent costs & new overheads to come, I have had to cancel the [third party Provider] mortgage transfer payment to [the Provider] [with effect] January 2014. I sincerely regret having to do this & will contact you directly. As you know I have a proven track record with mortgage repayments with [the Provider] for over 20+ years & this is a decision I haven't taken lightly in all the circumstances.

I wanted to alert you before it comes clear in the first week of January. I will contact you on Thursday this week, to further discuss matters. Apologies for the situation I now find myself in."

The **mortgage loan statements** show that the Complainant ceased making monthly repayments on the mortgage loan account in **January 2014**.

The Provider emailed the Complainant on **8 January 2014** as follows;

"As discussed, please find a Standard Financial Statement (SFS) and an interest only request form attached below."

The Complainant responded to the Provider by email on **17 January 2014**:

"I refer to your mail below & my thanks for your advise (sic) & understanding when we spoke earlier this month on the phone. By way of update, it has been a 'roller coaster' since then on a personal level ... I have been looking after my [number of] kids while try[ing] to keep things going on the workfront. Hence I haven't been back to you.

I have made arrangements to take a rented apartment from the start of next month & am currently working out the costs & overheads arising from that together with other costs associated with the separation proceedings. I will factor all of this into

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the form you sent me as I get visibility on it. However this will probably be clearer next month.

As I said to you when we last spoke, the intention is that the [security property] will be sold as part of the separation proceedings. The value of the outstanding mortgage, relative to the value of the property does not, as I see it, present a real risk to [the Provider]. The last valuation from [Valuer] put the property at a value of circa €825k & maybe higher in a 2013 context. It is expected that the value would rise in 2014.

As I said to you, I sincerely regret that I have had to take the steps I have this month on the mortgage repayments, given my proven track record with the [Provider] for well over 20 years. Apologies again.

I will revert to [you] ASAP. I hope this update is helpful in keeping you in the loop.”

It is clear that in **January 2014**, the Complainant had made a decision to sell the mortgaged property the subject of this complaint, due to the ongoing separation proceedings between the Complainant and his then wife.

The Complainant emailed the Provider again on an unspecified date as follows:

“I am currently engaged with my legal team in relation to separation proceedings between [the Complainant’s ex-wife] & myself. Can I get an update from you on the current monthly repayment figure on my mortgage, if it was interest ONLY, relative to the full amount. Perhaps you could mail me with both sets of figures please at your earliest convenience please. I will, as per my last email, revert to you with a completed form as the relevant information is becoming clearer. Thanks again for your assistance in this matter.”

The Provider emailed the Complainant on **24 January 2014** as follows;

*“Your current monthly mortgage repayment is **€1270.52**.*

*This is made up of capital €672.51 and Interest of **€598.01**.*

*Should you wish to apply for interest only you would only be charge[d] the interest element of **€598.01**”*

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The Complainant sent a further email to the Provider on **4 February 2014** which outlined as follows:

"I have moved into an apartment at the start of February, in the context of my earlier update on the legal separation proceedings currently in train.

As you will appreciate this is a very difficult time on a number of fronts. I am completing the forms you forwarded me in January, as I have visibility on some of the new costs presenting.

I will have completed documentation with you shortly. Apologies again for the inconvenience caused by these developments for the [Provider]. Thanks again for your assistance to date."

The Complainant emailed the Provider again on **21 February 2014** as follows:

"Further to my last email, I wish to let you know that I will furnish the completed forms to your office next week regarding my current mortgage challenges.

I now have some additional visibility on new overheads arising from the accommodation move.

For information it was agreed at the last case progression hearing, through the Court Registrar that [the security property] would be put on the market. At this point the practicalities of that are the subject of exchanges between the solicitors. Hence as I mentioned before the expected sale price of the house relative to the outstanding mortgage will not present a real risk to the [Provider]. (Previous figures presented refer).

Again apologies for the inconvenience caused. I await hearing from you when the completed documents have been received by you & the internal process within [the Provider] advances."

The Complainant completed and signed the **Standard Financial Statement** on **1 March 2014** which outlined that the "Reason(s) for Review/Arrears" was:

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*“Financial challenges linked to judicial separation
Proceedings underway & temporary accommodation costs/overheads”*

Section G: Financial Statement Summary detailed as follows;

<i>Total Monthly Income</i>	€4990.00
<i>Less Total Monthly Expenditure</i>	€5233.69
<i>Sub-Total</i>	-€243.69
<i>Less Mortgage Repayments Due</i>	<i>*To be confirmed currently by [the Provider]</i>
<i>Less Other Monthly Debt Due</i>	€2000.00

It was detailed in the SFS that the Complainant’s temporary rental accommodation would cost him €1,375.00 per month from **February 2014**.

The Complainant completed and signed an **interest only request form** on **1 March 2014** which stated as follows:

“Please amend my above loan to interest only for a period of 12 months.”

The Provider issued a letter to the Complainant on **15 April 2014** which detailed:

“ ...

Following assessment of your case we are offering you the following alternative repayment arrangement which we believe is both appropriate and sustainable.

...

The alternative repayment arrangement being offered which has provisionally been put in place as of the date of this letter is as detailed below:

- *Type of arrangement* *INTEREST ONLY REPAYMENTS*
- *Revised repayment* *€604.88*
- *Repayment effective from* *MAY 2014*
- *Term* *12 months*

Please note that following the expiry of this alternative repayment arrangement, your account will revert to full capital and interest repayments in accordance with the original terms and conditions of your accepted facility letter(s) unless otherwise agreed by us.

The advantages of the alternative repayment arrangement are

- *You will not be required to make a full capital and interest repayment in relation to this mortgage account during the period of the alternative repayment arrangement.*
- *The reduction of monthly repayments will enable you to address your financial circumstances during the period mentioned above, may assist you in clearing existing arrears on this account and enable you to return to full capital & interest on expiry of the alternative repayment arrangement.*
- *During this period of the alternative repayment arrangement your mortgage account will not fall into further arrears providing you continue to repay the agreed monthly repayment.*

The disadvantages of the alternative repayment arrangement are:

- *Where the alternative repayment arrangement amount is below the amount of interest charged the balance outstanding will increase during the period, as full interest will continue to accrue on the account.*
- *Alternative repayment arrangements may be affordable for you in the short term but could be more expensive over the life of the loan.*
- *On expiry of the alternative repayment arrangement your capital and interest repayments will be recalculated to ensure the loan balance will be cleared in full by your existing mortgage expiry date, excluding existing arrears.*
- *Repayment of capital and interest over the shorter remaining period will mean higher repayment than your previous capital and interest repayment.*

If your personal or financial situation improves or deteriorates during the alternative repayment arrangement you are required to notify us immediately and provide an updated Standard Financial Statement and supporting documentation to allow a further review to be carried out.

At least 30 calendar days prior to the expiry of the alternative repayment arrangement (as detailed above) we will contact you to discuss your financial circumstances and to confirm that you are on course to return to full capital and interest repayments. In the event that you are not we will then carry out a further

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assessment of your financial circumstances in order to determine the appropriate solution for you.

You are required to formally accept or decline this offer within 20 business days of the date of this letter. Should you choose to decline this offer, any repayment made under the above alternative repayment arrangement will be reversed and full capital and interest repayments in accordance with the original terms and conditions of your accepted facility letter(s) will be reapplied to your account. You will be issued with a further letter detailing the options available to you.

If you fail to respond to this letter within 20 business days of the date of this letter, you will be deemed to have accepted the offer and the above alternative repayment arrangement will remain in place.”

It does not appear from the evidence that the Complainant signed and returned either the **Acceptance Option form** or the **Decline Option form**.

I note from the **mortgage loan statement** that the interest only repayments were applied to the mortgage account from **31 January 2014**. However, the monthly interest only repayments were not being paid by the Complainant.

A copy of an undated letter from the Complainant to the Provider has been furnished in evidence. The Provider has submitted that it received this letter on **12 May 2014**. In the letter the Complainant outlined as follows:

“I wish to update you, consistent with information I have provided to the [Provider’s Branch]. A Judicial Separation Court Case is scheduled for hearing on 4th June. An agreement has been reached in advance, to sell the property at [address of mortgaged property] & an estate agent is currently being engaged. As indicated in my documentation furnished to you of the [Provider’s Branch], the value of the outstanding loan is less than 20% of the potential value of the property. The intention is that the sale of the house will facilitate the payment of the outstanding mortgage. It is intended that this will be completed within a short timeframe.

As you can see from my financial details, already provided, I have additional financial expenses arising from my current separation accommodation arrangements etc. & legal fees. Accordingly I am requesting a mortgage “pause” for

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a short period to allow the sale of the house be completed & the “interest only” amount arising for this period could be paid along with the existing [illegible] outstanding amount, from the sale of the house. As indicated, the indications are that the value would be in the region of €825k or above for the property.

I would appreciate favourable consideration of the above proposal. Any documentation confirming the commitments on the sale of this house or other legal confirmation can be provided.”

I note that the Complainant’s solicitor wrote to the Provider on **27 May 2014** enclosing a signed Letter of Authority to take up the title deeds on Accountable Trust Receipt.

The Complainant’s solicitor wrote to the Provider again on **30 May 2014** requesting up to date redemption figures in respect of the mortgage loan account. The Provider replied by letter dated **3 June 2014**, confirming that the amount required to redeem the mortgage account on that date was €159,737.63.

The Complainant wrote to the Provider on **21 June 2014** stating;

“Further to a phone call from your office during the week of the update I provided, I enclose a letter from [auctioneer] (as promised).”

The enclosed letter from the auctioneer dated **19 June 2014** detailed;

“I write to confirm that we have been instructed to sell the above property by private treaty and I confirm that the estimated open market value is in the €825,000 to €850,000 price bracket.

At present, a number of prerequisites for the sale are currently being addressed ... which we would envisage would be in the next few weeks.

The property itself is in good condition and we would anticipate strong demand ...”

The Complainant wrote to the Provider by letter dated **29 September 2014** as follows:

“I wish to update you as follows: All preparations for the sale of the property have been completed & the house is on the market for sale through [the auctioneers] from earlier this month. There have been a number of viewings at this point & interest is being shown by some potential buyers.

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It is hoped that an early sale will be achieved & in that context the repayment of the mortgage in full, together with arrears outstanding, at an early date.

Your understanding & patience in what has been a difficult & stressful time for me is appreciated.”

The Provider issued a letter to the Complainant on **01 October 2014** which stated:

“We note that, you have not provided us with a completed Standard Financial Statement (SFS) with supporting documentation despite our previous requests for the information.

Therefore we are unable to assess your mortgage account through the Mortgage Arrears Resolution Process. In addition, your account still remains in arrears.

You will therefore be considered not co-operating after 20 business days from the date of this letter if you do not:

- (i) Make contact with us immediately with an acceptable proposal to clear the outstanding arrears on your mortgage account or:*
- (ii) Provide a fully completed Standard Financial Statement which shows full and accurate details of income, expenditure, assets and liabilities. This must include all relevant supporting documentation including 3 months recent bank statements for all bank accounts you hold, proof of income such as payslips, social welfare receipts, revenue balancing statement or company accounts.*

We require you to maintain contact with us in order to resolve your arrears position and to provide us with information as maybe requested by us from time to time. In the event that you fail in respect to any of these ongoing requirements then, you may be classified as not co-operating without further notice to you.

If you are classified as a ‘not cooperating’ borrower you will be outside the protection of the Mortgage Arrears Resolution Process (MARP). We can commence legal proceedings immediately to repossess your property. In the event that we commence such proceedings, you will be responsible for the legal costs estimated at €4,500 and costs associated with the disposal of the property. However this amount could be higher or lower depending on the legal action taken. You will also remain liable for any outstanding debt, including any accrued interest, charges, legal, selling and other related costs.

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Classification as not co-operating may affect your eligibility for inclusion in a Personal Insolvency Arrangement in the future under the Personal Insolvency Act 2012. Information on the Insolvency Service of Ireland can be found at www.isi.gov.ie.

We recommend that you now consider seeking independent legal and/or financial advice in relation to the contents of this letter e.g. The Money Advice and Budgeting Service (MABS).

If you wish to avoid being classified as a not co-operating borrower and want to work together with us to find a way forward please undertake either of the actions listed above. An SFS can be downloaded from [the Provider's website] or you can contact the Arrears Support Unit on [Provider's telephone number] (available 9am-5.30pm Monday to Friday) to arrange for a copy to be forwarded to you."

The Complainant responded by letter dated **13 October 2014** as follows:

"I wrote to you late last month with an update on the situation regarding the sale of the house. Hence I was surprised to receive your letter dated 1/10/14 (copy attached). [The auctioneer] are actively involved in the sales campaign currently & I enclose a copy of the brochure for your information.

I previously furnished a completed SFS to you together with supporting documents attached. I was unaware that there was any documentation outstanding from me at this point. You might advise me further on this matter.

Again to repeat the key point made by me is in earlier discussions & correspondence the outstanding loan & arrears represents [illegible] 20% of the potential sale value of the property. The priority from the sale of the house is to discharge the full amount owing to [the Provider].

Unfortunately, the personal circumstances giving rise to this situation of the new pay of the mortgage are regrettable & unforeseen. As you are aware my track record with [the Provider] has been strong & without difficulty as a customer.

I sincerely hope this overall matter can be resolved as soon as possible with the sale of [the security property]."

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The Complainant sent the Provider a further letter on **30 November 2014** outlining that the auctioneer “*continue to actively market the property*”.

On **15 January 2015** the Complainant issued a letter to the Provider which detailed as follows:

“Further to my last update, [the auctioneers] are continuing to actively market & show the property to potential clients/buyers. This has picked up again following the Christmas break.

In the meantime, due to a restructuring of other financial commitments, I have put in place arrangements through my bank, [separate Provider], to commence the interest only repayments monthly, as specified in your November 2014 letter i.e. €556.38. This will transfer the [Provider] at the start of February 2015 & I will endeavour to maintain this until the house sale is finalised. At which time as stated in my letter dated 30th Nov 2014, the total situation can be dealt with.”

The Provider emailed the Complainant on **28 January 2015** as follows;

“(1) Your full mortgage repayment today would be €1,307 approx if you were not on Interest Only.

(2) As of today ... the total amount owing on your mortgage is €164,511.20. This figure is inclusive of arrears today of €10,309.44.

...”

The Complainant’s solicitor wrote to the Provider on **28 January 2015** requesting up to date redemption figures in respect of the mortgage loan account. The Provider replied by letter dated **30 January 2015** outlining that the amount required to redeem the mortgage on that date was €164,550.65.

I note from the **mortgage loan statements** that the Complainant began to pay the interest only repayments on the mortgage account from **3 February 2015** onwards.

A copy of the **Terms of Settlement** filed in the Circuit Court on **04 February 2015** has been provided in evidence which outlines as follows:

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“13. The [Complainant] shall pay the sum of €1,000 per month to the [Complainant’s ex-wife] by way of a contribution to the Respondent’s rental expenses pending the sale of the family home.

14. The family home of the parties situate at [Address of mortgaged property] is currently for sale and the parties herein agree to the disposal of the net proceeds of sale, net of the mortgage, costs of sale, auctioneers expenses and expenses directed by the Court and a sum of no more than €7,000 in respect of ongoing costs of [Redacted] ... to be apportioned 48% to the [Complainant] and 52% to the [Complainant’s ex-wife]”

The Complainant wrote to the Provider by letter dated **13 March 2015** enclosing a completed **Standard Financial Statement** signed by the Complainant on **13 March 2015**

Section G: Financial Statement Summary set out the following information:

<i>Total Monthly Income</i>	<i>€4,471.00</i>
<i>Less Total Monthly Expenditure</i>	<i>€5,008.00</i>
<i>Sub-Total</i>	<i>€537 -</i>
<i>...</i>	

The Complainant outlined as follows in the SFS:

“Monthly Expenditure profile will change with the sale of [the security property] & acquiring smaller property”

A copy of a letter from the Complainant’s solicitor on **16 March 2015** has been provided in evidence and outlines as follows:

“In 2013, [the Complainant] sought, as the Applicant, to expedite Judicial Separation proceedings. On advice from us, his solicitors, we recommended that he should vacate the family home and secure alternative accommodation, as it was anticipated that these proceedings would intensify and it would be unwise for him to remain in the family home, in all the circumstances. In February 2014, he rented an Apartment close by in [redacted] to be near his children and to maintain access to them.

Unfortunately the set up costs, ongoing rental and other overheads associated with this separate accommodation meant that he was unable to continue to pay the

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monthly mortgage repayments on [the address of the security property] from February 2014. During this time he was also providing financial support to his then wife, for her and the children, including running costs relating to [the security property].

Additionally during that period, he was incurring professional & legal costs associated with the Judicial Separation proceedings. Based on the above, [the Complainant] was unable to discharge the normal monthly mortgage repayments or an interest only arrangement. A mortgage moratorium was not available through [the Provider].

Arising from various Court proceedings in the second six months of 2014, he secured exclusive access to [the security property], with the children and moved to terminate the Apartment lease and restructure his financial arrangements.

In this context, he confirmed his intention to [the Provider] in January 2015 to commence Interest only payments on the mortgage and this is currently taking place. The property is on the market for sale and the outstanding mortgage together with arrears will be discharged as priority from the sale and are potentially less than 25% of the expected sale price. During this time [the Complainant] has continually communicated with [the Provider]. Over a period of, in excess of 25 years, prior to this current difficulty, [the Complainant] has had an unblemished track record with the [Provider]. His local Branch Management has been very understanding of this situation and circumstances.”

During the period between **January 2014** and **April 2015**, the Provider’s standard variable rate that was applied to the Complainant’s mortgage loan account ranged between 4.33% and 4.58%. The tracker interest rate that would have been applied was ECB + 0.95%. Between **January 2014** and **April 2015**, the overall tracker rate (ECB + margin) fluctuated between a rate of 1.00% and 1.20%.

The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged on the tracker interest rate is represented in column 2 of the table below.

The difference in monthly repayments charged and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 0.95%) had been applied to the mortgage account between **January 2014** and **April 2015**, is represented in the table below at column 4:

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Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments Charged	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Jan 2014 – Apr 2014	3.38%	Between €598.01 and €604.88	Between €139.15 and €139.56	Between €458.86 and €465.32
May 2014 – Jun 2014	3.38%	€587.80	€146.66	€441.14
Jul 2014 – Nov 2014	3.48%	€587.80	Between €122.19 and €134.43	Between €465.61 and €453.37
Dec 2014 – Apr 2015	3.33%	€556.38	€122.19	€434.19

The Provider wrote to the Complainant on **08 April 2015** which detailed as follows:

“We confirm that the Interest Only facility on the above loan will expire at the end of this month. On this date, your loan will convert to an annuity and repayments from next month onwards will be based on €154,373.68 (your current loan balance), calculated over the remaining term of the loan.

We have set out your new repayment details below. This new total repayment is effective from 7 May 2015

Total Balance	Term Remaining	Interest Rate	Monthly Repayment	Insurance	Total Repayment
€154,373.68	12 yrs. 7mths	4.33%	€1,327.83	0.00	€1,327.83”

The Provider wrote to the Complainant on **20 May 2015** as follows:

“...

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Following assessment of your case we are offering you the following alternative repayment arrangement which we believe is both appropriate and sustainable.

The reason why this offer is considered both appropriate and sustainable for you is that you will not be required to make full capital and interest repayments in accordance with the original terms and conditions of your accepted facility letter(s) for the period detailed below.

The alternative repayment arrangement being offered which has provisionally been put in place as of the date of this letter is as detailed below:

- *Type of arrangement* *Interest Only*
- *Revised repayment* *€554.38*
- *Repayment effective from* *01/06/2015*
- *Term* *06 months*

Please note that following the expiry of this alternative repayment arrangement, your account will revert to full capital and interest repayments in accordance with the original terms and conditions of your accepted facility letter(s) unless otherwise agreed by us.

...

If you fail to respond to this letter within 20 business days of the date of this letter, you will be deemed to have accepted the offer and the above alternative repayment arrangement will remain in place."

The Provider emailed the Complainant on **25 May 2015** as follows;

"A rate reduction of 0.25% will come into effect for the 1st of June. This will reduce your full mortgage repayment to €1,300 approx. The repayment will now be made up of capital €794 and Interest of €506 approx.

I would however recommend that you continue with the current direct credit of €556 as this will look more favourably when we look at representing your mortgage application for further assessment in the coming months."

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The Provider issued a further letter to the Complainant on **05 June 2015** which outlined as follows:

“We confirm that the above mortgage account has been converted to interest only as requested.

The adjustment has been backdated to June 2015. Please note we have credited your loan account with €757.30 in respect of this backdating.

The interest only period will end in November 2015.

The table below outlines the revised status of your loan from July 2015.

<i>Current Loan Capital Balance</i>	<i>Current Rate</i>	<i>Term</i>	<i>Monthly Repayment</i>	<i>Add Insurance</i>	<i>Less Tax Relief at Source*</i>	<i>Total Monthly Repayment</i>
<i>€153,640.08</i>	<i>3.95%</i>	<i>149 mths</i>	<i>€503.24</i>	<i>€0.00</i>	<i>€0.00</i>	<i>€503.24”</i>

The Complainant emailed the Provider on **18 July 2015** as follows:

“By way of update, the house has gone Sale Agreed through [the auctioneers] at €725k & the other formalities are moving forward.

I have indicated to the Auctioneers I want to move from [the security property] to a newly purchased house so as to avoid further difficulties & disturbance for the kids, given everything else going on for them. I intend expediting my efforts to acquire a house that will accommodate the kids & I.

Accordingly I need my loan approval request reactivated & progressed please as a priority. As you are aware I have continued payments each month on the agreed interest only basis. Also as recommended, I did not adjust the mortgage payment downwards to reflect the lower interest rate introduced.

Can we talk early next week on reactivating my request & acquiring ‘loan approved’ status so I’m in a position to finalise a purchase of a suitable house (for which I am now actively looking). Many thanks for all your assistance & advise (sic) to date.”

The Complainant’s solicitor wrote to the Provider on **11 August 2015** to request up to date redemption figures for the mortgage loan account. The Provider replied by letter dated **14**

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August 2015 outlining that the amount required to redeem the mortgage loan account on that date was €164,371.09.

The Provider issued a letter to the Complainant on **29 September 2015** detailing that the arrears on the mortgage loan stood at €10,907.30 on that date.

The Complainant responded to the Provider by letter dated **16 October 2015** outlining as follows:

"I refer to your letter dated 29' Sept (copy attached) & I wish to update you, as follows. Last week a closing date was agreed with the purchaser for 5th February '16, with the additional provision, that an earlier date can be utilised by me, by giving 2 weeks notice so an actual closing date could be earlier than 5th Feb 2016. This was inserted to allow earlier closing, if I succeed in purchasing another property before then.

Accordingly I would request the continuation of the 'interest only' arrangement beyond November for a very short period, based on the above. As previously confirmed, all outstanding monies due on the mortgage & arrears will be paid to [the Provider] now, no later than February 2016.

I would appreciate your favourable consideration of this extended 'interest only' arrangement of tangible time linked commitment to 'close out' the current mortgage."

The Provider issued a further letter to the Complainant on **05 November 2015** regarding the arrears of €10,8250.00 on the mortgage loan account.

The Complainant completed another **Standard Financial Statement** on **19 November 2015**, in which he outlined:

"[The security property] is sold, see 4A for €725K & contracts signed. Closing date is 5/2/16 at latest, likely to be last week in Jan 2016. Therefore 2 more monthly payments under current arrangement are requested. Mortgage loan outstanding including arrears will be paid in total to [the Provider] in Jan 2016"

Section G: Financial Statement Summary set out the following:

<i>Total Monthly Income</i>	<i>€4,698.00</i>
<i>Less Total Monthly Expenditure</i>	<i>€4,743.00</i>

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<i>Sub-Total</i>	-€45
...	

Between **May 2015** and **February 2016** the Provider's standard variable rate that was applied to the Complainant's mortgage loan account ranged between 4.33% and 3.70%.

The tracker interest rate that would have been applied was ECB + 0.95%. Between **May 2015** and **February 2016**, the overall tracker rate (ECB + margin) was 1.00%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged on the tracker interest rate is represented in column 2 of the table below.

The difference in monthly repayments charged and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 0.95%) had been applied to the mortgage account between **May 2015** and **February 2016**, is represented in the table below at column 4:

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
May 2015	3.33%	€1,327.83	€1,033.60	€294.23
Jun 2015	2.95%	€1,299.51	€1,033.60	€265.91
Jul 2015 – Sep 2015	2.95%	€503.24	€121.27	€381.97
Oct 2015 – Nov 2015	2.70%	€474.08	€121.27	€352.81
Dec 2015 – Feb 2016	2.70%	€1,324.48	€1,072.57	€251.91

It appears from the **mortgage loan statements** that interest only repayments continued to apply to the account from **December 2015** until the mortgage account was redeemed in full in **February 2016**.

I note that the Provider wrote to the Complainant's solicitor on **27 January 2016** outlining that the amount required to redeem the mortgage on that date was €164,400.77. The Complainant's solicitor wrote again to the Provider on **08 February 2016** requesting up to date redemption figures in respect of the Complainant's mortgage loan account. The

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Provider responded to the Complainant's solicitor on **10 February 2016** outlining that the amount required to redeem the mortgage loan account on that date was €164,620.54.

The Complainant's solicitor wrote to the Provider on **11 February 2016** to confirm that the sale of the property had closed and enclosing a cheque for €164,671.17 "*in remittance of the monies outstanding to you in respect of the above mortgage account*".

I note from the **mortgage loan statement** that the redemption payment of €164,671.17 was lodged on **12 February 2016** and the mortgage loan was redeemed in full on that date.

The Complainant has submitted that if he had been aware of the Provider's failure on the mortgage loan account in **2016** he could have explored other options to retain the property, including "*buying out*" his ex-wife.

I note that the Complainant's sister swore a **Statutory Declaration** on **26 January 2018** which has been provided in evidence and outlines as follows:

"I gave [the Complainant] commitment that I was prepared to advance him a personal loan(s) to be repaid a later date, when other funding sources became available to him. This could potentially have been triggered as follows. This included €100,000 which represented his potential portion of the sale of our Mothers house in [Location]. A separate document is available which indicates the value of the property at €150,000 approximately. I was prepared to allow him use the balance of €50,000 from the sale as a personal loan from me.

In addition, I was committed to providing a further €50,000 separately in the form of an additional personal loan to facilitate him, in buying out [the Complainant's ex-wife's] share in the property."

It does not appear that the Complainant ultimately opted to borrow monies from his sister as outlined above. There is no evidence before me that the Complainant ever approached the Provider to outline any proposal which would allow him to retain the property and "*buy out*" his ex-wife. The Complainant's position from **January 2014** was that the property would have to be sold due to the ongoing separation proceedings.

I am of the view that the Complainant made the decision to sell the property of his own accord, albeit without being fully informed by the Provider that a tracker interest rate should apply to the mortgage loan account. I accept that there is no evidence that the Provider advised the Complainant that this course of action was necessary or advisable. The evidence shows that the Complainant's decision to sell the property was influenced by factors other than the interest rate applying to the mortgage loan account, namely his

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separation from his ex-wife. However, I also accept that the Complainant was making overpayments on the mortgage loan at the time due to the Provider's overcharging at the time the property was sold, when he would not have been doing so if the correct interest rate was applied to the mortgage loan. Therefore, he was not in possession of all of the necessary information when he agreed to this course of action.

The Complainant has submitted that he had *"huge difficulties obtaining a loan because of my credit rating"*. It appears that the Complainant applied to the Provider for a new mortgage in or around **March 2015** and this application was refused by the Provider on the basis that the Complainant had failed to make any repayments on the mortgage loan between **January 2014** and **January 2015**. No documentary evidence of this mortgage application has been submitted in evidence. Nonetheless it does not appear to be disputed between the parties that this is what occurred.

It is clear that the Complainant was either unable or unwilling to meet the monthly repayments on the mortgage account from **January 2014** onwards. I note that the Complainant has submitted that *"I had other personal funding available to me, which I was not going to use to maintain mortgage payments, including interest payments, to the Bank at that time."* It was certainly not a prudent move for the Complainant to stop paying his mortgage loan in circumstances where he could have continued to make payments. That said, this was once again a decision he made without the full knowledge of the very considerable overcharging by the Provider at that stage.

I note from the evidence that the Complainant obtained a mortgage loan from a third party provider to purchase a new property in **May 2016**. The Mortgage Loan Offer Letter dated **10 May 2016** provided in evidence sets out the following;

1. <i>"Amount of Credit Advanced"</i>	€190,000	
2. <i>Period of Agreement</i>	17 Years	
3. <i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	4. <i>Amount of each Instalment</i>
36	<i>Fixed at 3.450%</i>	€1,231.40
168	<i>Variable at 3.900%</i>	€1,267.31"

Part 4 – The Special Conditions detail as follows;

“ ...

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*Borrower's solicitor to: a) confirm in writing that they have carriage of sale and hold signed Contract for Sale of the Borrower's property at [Address]; and b) Undertake in writing to the Lender that the sale will close and the mortgage on that same property will be redeemed no later than 7 days after drawdown of this Loan.
..."*

The Complainant signed the **Acceptance and Consents** on **17 May 2016**.

The Complainant is seeking additional compensation in respect of the "extreme difficulty" caused to him as he tried to "work through the emotional and financial aspects of my marriage break-up, while trying to minimise the disruption to my children, while having to move out of the house I called home for the last 25 years, and while trying to keep my career on track."

It is important to recognise that had the Complainant been armed with the knowledge, at an earlier stage, that a tracker interest rate should have applied to mortgage loan account since **August 2007**, the Complainant could have been in a position whereby he could have made an accurate financial plan as to how to deal with his overall liabilities. I believe the Complainant was denied the opportunity of making a fully informed decision by the Provider's conduct.

The Provider has paid the Complainant a sum of €38,561.62 in redress and compensation which comprised €29,318.19 in respect of the overcharge of interest, a time value of money payment of €1,281.50 and compensation of €6,731.93. The impacted period extended over some 8 years and 6 months, from **9 August 2007** to **12 February 2016**. The interest overcharged by the Provider on the Complainant's mortgage loan account from **August 2007**, to the date that the mortgage loan was redressed in **February 2016** was €29,318.19. I accept that the loss of €287.43 on average per month for a period of eight years and six months is significant.

In particular, I am conscious that during the period between **January 2014** and **January 2015** when the Complainant was paying rent of €1,375.00 the overcharge on the mortgage account was approximately €450.00 per month. I am cognisant that at this time the Complainant was under considerable pressure owing to the fact that he had to move from the family home into rental accommodation and I am of the view that it would have been significant for him at that time to have that money available to him during that period.

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 inconvenience the overcharging had on the Complainant, and in particular, his ability to

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make informed decisions, I am of the view that the level of compensation offered of €6,731.93 is not sufficient or reasonable to compensate the Complainant for the serious inconvenience the Complainant suffered during the impacted period.

Therefore, I partially 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 €8,000 compensation to the Complainant in respect of the inconvenience the Complainant has suffered. For the avoidance of doubt, this €8,000 is in addition to the sum of €6,731.93 compensation already paid to the Complainant for the Provider's failure.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b) and (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 to the Complainant in the sum of €8,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. For the avoidance of doubt, this €8,000 is in addition to the sum of €6,731.93 compensation already paid to the Complainant for the Provider's failure.

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.



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**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 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.