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| <u>Decision Ref:</u> | 2021-0203 |
| <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> | 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 €21,000.05 on that mortgage loan account. The mortgage loan was secured on the Complainant's private dwelling house.

The loan amount was €211,500 and the term of the loan was 20 years. The mortgage loan offer was signed by the Complainant on **15 June 2004** and detailed that the interest rate applicable to the loan was a 24 month discounted variable rate, to revert to the prevailing home loan variable rate thereafter.

The mortgage loan account was redeemed in full on **22 December 2016** following the sale of the security property.

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

The Provider wrote to the Complainant on **22 January 2018** advising her of the failure on the mortgage loan account.

It detailed how it “got things wrong” as follows;

“In our review, we found that when you moved to a fixed rate from a tracker rate we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate. Because of this, you may have had an expectation that a tracker rate would be available to you at the end of the fixed period. The language used by us in your documentation may have been confusing as to whether it was a variable interest rate which varied upwards or downwards tracking the ECB Rate or a variable interest rate which varied upwards or downwards at our discretion.”

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

*“How this failure affected you
As a result of our failure, we can confirm that you were charged an incorrect interest rate between 22 Mar 2010 and 20 Dec 2016.”*

The Provider made an offer of redress and compensation to the Complainant in its letter dated **22 January 2018**. The offer of €25,255.06 made by the Provider to the Complainant comprised of the following;

1. Redress of €22,050.05 covering;
 - Total interest overpaid
 - Interest to reflect the time value of money
2. Compensation of €2,205.01 for the Provider’s failure
3. Independent Professional Advice payment of €1,000.

The Complainant signed the Acceptance Form on **20 January 2018** and the redress and compensation offer was paid into the Complainant’s nominated account.

In **April 2018** the Complainant appealed the redress and compensation offering to the Independent Appeals Panel. The Appeals Panel decided to uphold the appeal on **28 June 2018** and awarded additional compensation of €3,000 for the following reasons;

“Having carefully considered the Customer’s appeal and the information provided by the Customer in its entirety, the Panel decided that the Customer did not demonstrate that she was compelled to sell the property at [Property address] as a consequence of the Bank’s overcharging.

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However, the Panel decided that, having regard to the level of overpayment and its impact on the Customer, it would be appropriate to provide additional compensation of €3,000.”

The Complainant signed the **Appeal Payment Instruction Form** on **10 July 2018**.

The Complainant also signed a **Vouched Expenses Claim Form** for the amount of €1,137.75 on **10 July 2018**. This amount was duly paid by the Provider.

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

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

The Complainant’s Case

The Complainant submits that *“the compensation offer from the Bank of €2,205 is derisory and it does not reflect the impact that this has had on my life and the loss of my home and the financial losses and expenses incurred as a result.”*

The Complainant submits that the mortgage loan account ending **5754** which is the subject of this complaint was drawn down in **2004**. She states that this mortgage was taken out in her sole name following her separation from her husband and the transfer of the security property, which was the family home, into her sole name.

She details that she drew down a top-up mortgage loan (account ending **4234**) in the amount of €25,000 in **2005** which *“does not come under the redress scheme”*.

The Complainant outlines that in **2010** when the fixed interest rate period on her mortgage loan account expired, she was not offered a tracker rate. She states that *“If I was on the tracker rate from 2010 as I was entitled to then the monthly mortgage payments would have been significantly lower by an average of approximately €260 a month. The level of mortgage repayments which I had to make from 2010 caused me significant financial hardship during the years 2010 – 2016 and I had no option but to sell the house in late 2016 in order to be able to manage my finances.*

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The level of mortgage payments I had to make was unsustainable given my limited income.” She further submits that if she “had been paying an average of €260 less each month, this would have significantly improved my disposable income and it is very likely that selling the house would not have become necessary.”

The Complainant submits that she took early retirement in **2012** after 33 years of service, as *“working in the [Complainant’s place of employment] was difficult and stressful and I availed of the opportunity to retire early. I had also developed [Redacted illness] 6 years earlier at a particularly stressful time in work and was out of work for six months and on medication for many years so I did not want a repeat of that difficult time so I decided to take the early retirement option when it came up.”*

The Complainant outlines that she continued to work on a part-time basis and from **2013** she *“located my private practice at my house ... and continued to operate my business from there until December 2016.”* She submits that *“I was dependent on my private practice for my income as the vast majority of my pension payments serviced the mortgage. Despite working long hours in my practice, I found it very difficult to meet the mortgage repayments and have enough to live on thereafter.”*

The Complainant submits that *“In the years prior to selling my house, I had many discussions with family about whether I could keep working at the rate that I was for the remaining 10 years of my mortgage. I feared I would not be able to do that and my quality of life was negatively affected by the stress of working long hours and the worry of needing to meet the mortgage repayments.”*

The Complainant outlines that in **2016** she considered whether *“to seek assistance from [the Provider] to extend the mortgage or have interest only for a while.”* She details that *“Despite the financial pressure, I had not allowed any lapse in payments or been in arrears at any time but I was finding things very difficult. I had also voluntarily paid an extra €50 each month to try and reduce the term of the mortgage so that it could be paid off sooner.”*

She outlines that she contacted the Provider to enquire about the process of applying for assistance in **mid-2016** but ultimately she did not follow up or return the completed forms to the Provider, following advice from her accountant regarding *“concerns about a negative impact on my credit rating should I pursue this course of action”*.

The Complainant submits that *“Reluctantly, I applied for and attended an interview for a job in [Location]. My only motivation for this application was to try and meet my mortgage repayments. I was subsequently offered the position, but experienced high levels of stress at the thoughts of taking it on.*

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The position carried a high degree of responsibility and long hours travelling to and from the location, and ethically I would need to have enough energy and interest to provide the best service that I could which I didn't feel that I had so I turned down the position." She further details that "I feared that taking on such a position at my stage in life and given my medical issues was not wise as it would have increased my stress levels even more."

The Complainant outlines that she then decided to try to sell the house and downsize to a smaller house. She details that *"the net proceeds would not be enough to purchase another home without me obtaining additional finance by way of a new mortgage. In order to buy a house I would need to get a small mortgage and at the time, I spoke with my local branch of the [Provider] to discuss applying for a small mortgage of around €50,000".* She details that she identified a house to purchase for €80,000, but the sale fell through when she was outbid. She states however that *"I had a buyer for my own house at this time and as it was a difficult time in the housing market I decided to sell the house so that I could get rid of the mortgage burden and I moved in with family where I still reside. I have not been able to buy a house since."*

The Complainant outlines that she sold the mortgaged property in **December 2016**. She details that *"The stress and pressure of having to meet the monthly mortgage payment was the single most significant factor in my decision to sell the house in late 2016. The decision was very difficult for me as it was my home since [almost 40 years] and I had spent considerable money on the property over the years in converting part of the house from which to operate my business."* She details in this regard that she had *"upgraded and maintained"* the house and garden over the years. She further details that *"The house had been insulated to a high standard a couple of years before it was sold, I had put in a laundry room in the garden to facilitate a waiting area for clients in the house – it was extended in 2004 and it was a very modern, comfortable home but more importantly, it was my home. It was structured so that I could provide a separate entrance for clients and have my private practice attached to, but not impeding on the main part of the house itself."*

The Complainant further details that *"By selling the house I also lost my place of business and I had to move my business to a shared rented office which costs €160 per month in rent plus rates and electricity. This is an additional cost which I did not have when I had my own house."* She outlines that in **2017** *"the monthly rent was €120 plus €20 per month in utilities"* and from **January 2018** *"the monthly rent has increased to €160 plus €20 per month for utilities. I therefore estimate the costs incurred for rental to be in the region of €2,220.00 and this was as a direct result of the loss of my home which was also my place of work."*

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The Complainant details that *“One of the options I strongly considered at the time was to rent out my house for a while so as not to lose my home and be able to move back in at a later stage. However, the difference between my mortgage repayments and the potential rental income at that time would have meant that I would still have to pay around €500 / €600 per month as a top up. This combined with renting an office for my private practice would result in a monthly payment of at least €660 or more which didn’t make financial sense or provide any real solution.”* She submits that if the mortgage account had been on the correct interest rate at that time *“the difference would have been smaller and this option would have been more viable”*.

The Complainant submits that she is aware that *“keeping up my mortgage repayments and not falling into arrears can mask the reality of my experience over the past number of years as outlined above. It was at a considerable personal expense that I maintained the mortgage payments and my quality of life suffered as a result. I was forced to sell my home in order to get out from under the mortgage. If the correct mortgage repayments were in place then it would have been much more affordable for me and I would not have had to sell my home.”*

She further states that since she sold the house in **2016** that *“house prices have increased since then and I feel that some compensation should also be provided for the equity that I have lost in the property as a result of the sale and subsequent rise in house prices. Houses similar to my own are now selling for €50k more than when I sold mine. Smaller houses in the area, similar to the one I wished to purchase, are also €50k more expensive now.”* She states that at this moment *“I do not have a home of my own and it is increasingly difficult to me to afford a home given the rising house prices and my limited income and my age.”*

The Complainant is also seeking compensation in respect of the *“costs incurred by having to sell my home included the legal and auctioneer’s costs”*.

The Complainant further submits that €1,000 for independent professional advice *“is not sufficient”*. She states that her *“legal costs will be in the region of €2,000 plus vat and I expect all my legal costs to be paid by [the Provider] in this instance as the advice needed is as a direct result of the incorrect action by the bank.”*

The Complainant outlines that the additional compensation awarded by the Appeals Panel is *“inadequate to reflect the impact that this unknown over-payment has had on my life”*. She is seeking to *“appeal the level of compensation payment and apply for appropriate redress to reflect the losses incurred and the potentially different outcome that would have been possible.”*

The Provider's Case

The Provider submits that the Complainant drew down a mortgage in the amount of €211,500.00 for a term of 20 years on **30 June 2004**, under a Mortgage Loan Offer Letter dated **21 April 2004** which the Complainant signed and accepted on **15 June 2004**. The Provider details that the Offer Letter provided for a standard variable interest rate at 3.60%, discounted for 2 years by 0.85% to 2.75%. It submits that the Loan Offer did not contain any contractual entitlement to avail of a tracker rate at any time and relies on **General Condition 6** and **General Condition 7(b)** of the Loan Offer to support this. It states that if the offer letter was never "*amended*" the Complainant would have remained on a variable rate for the term of the loan.

The Provider submits that the Complainant made a number of changes to the interest rate applicable to the mortgage loan as follows;

- The Complainant signed and accepted a **Mortgage Form of Authorisation (MFA)** on **16 June 2006** to change to a tracker variable rate of ECB + 1.25% which was 3.75% at the time. The Provider details that the mortgage repayments increased from €1,210.55 to €1,272.14 when the tracker rate was applied.
- The Complainant signed and accepted a further **MFA** on **16 March 2007** to amend the interest rate to a three year fixed rate of 4.89%. The Provider submits that "*it is critical to note that it was the Complainant who asked the Provider to allow her fix the rate at this point.*" It further details that the repayments increased from €1,345.37 to €1,360.67 when the fixed rate was applied.
- On the expiry of the three year fixed rate the mortgage loan account defaulted to a standard variable rate of 2.7%. The Provider submits that the mortgage repayments were €1,179.79 in **March 2010**.
- In **February 2011** the Complainant's repayments were €1,273.72 on the standard variable rate of 3.45%. The Complainant contacted the Provider seeking fixed rate options and signed an MFA to fix the interest rate at 3.75%, which increased her mortgage repayments to €1,299.57.
- In **February 2013** the mortgage loan account rolled to a standard variable rate of 4.35% and the mortgage loan repayments were €1,340.72. The Complainant then signed an MFA to fix the interest rate at 4.69% which increased her repayments to €1,364.82. The Provider submits that during this fixed rate period the Complainant also requested to overpay her mortgage by €60.00 per month which further increased the repayments to €1,424.82.

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The Provider submits that as evidenced above, at each point the Complainant signed an MFA to change the interest rate, she chose to increase her repayments. It further submits that the evidence demonstrates a history of the Complainant having a preference for fixed rates and does not demonstrate that the level of mortgage payments were *“unsustainable”* as asserted by her.

The Provider outlines that the Complainant’s mortgage loan account was considered to be impacted as part of the Examination because the Provider found that when the Complainant moved to the three year fixed rate in **March 2007**, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed rate in **March 2010** and the language used by the Provider may have been confusing and misleading.

The Provider submits however that it *“has not breached any contractual obligations with the Complainant”*. It further states that there was no *“positive misrepresentation”* made by the Provider before the Complainant entered the three year fixed rate that she could move to a new tracker rate at the end of the fixed rate. It states that it does not seem to the Provider that there would have been a natural expectation to return to a tracker rate after the fixed rate ended, given that the Offer Letter did not contain any provisions relating to a tracker variable rate. It states that the failure on the Provider’s part was to identify any specific variable rate that would apply at the end of the fixed period, which it submits is *“significantly less serious a shortcoming than (say) a breach of contract or mis-selling a fixed rate through positive misrepresentation that a new tracker rate would be provided when it ended.”* The Provider further submits that the Complainant *“certainly was not a tracker customer”* when she signed and accepted the Offer Letter, so she has *“already been given the significant benefit of any doubt”* about what could have reasonably been understood by her when she moved to the 3 year fixed rate in **March 2007**.

The Provider details that it made an offer of redress and compensation to the Complainant by letter dated **22 January 2018** to restore the Complainant to the position she would have been in had she been offered and had chosen a tracker rate at a margin of 1.25% in the MFA of **March 2010**.

The Provider submits that an appeal was submitted by the Complainant to the Independent Appeals Panel. It details that a decision was issued by the Independent Appeals Panel on **28 June 2018** to partially uphold the Complainant’s appeal. The Independent Appeals Panel awarded the Complainant an additional €3,000 in compensation *“having regard to the level of overpayment and its impact on the Customer”*. The Provider submits that this complaint has *“advanced no new grounds which undermine the determination of the Appeals Panel”*.

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The Provider states that the compensation paid to date has been *“fair and reasonable”* and it does not believe that it is fair and reasonable for the Complainant to seek compensation in addition to that awarded to her by the Provider and the Appeals Panel on appeal.

The Provider submits that the sale of the Complainant’s property in **December 2016** was a *“personal decision that was not communicated to the Provider in any meaningful way”* until close to the actual closing of the sale. It states that this is in contrast to the Complainant’s submission that her decision to sell was based on *“financial hardship”* in trying to meet her mortgage repayments. The Provider states that it was not aware of any financial difficulties the Complainant had in servicing the mortgage payments at this time and it was *“of the reasonable belief that the Complainant was comfortable with the level of repayments over the term of the loan”*.

The Provider outlines that in or around **March 2010**, the Complainant sought a moratorium in mortgage repayments for a 4 month period *“to facilitate [the Complainant] taking some time off work to go travelling and visit [her] son in [Location redacted]”*. It details that the Provider complied with this request and offered the Complainant a six month period of interest only repayments, by way of **Mortgage Form of Authorisation** which the Complainant signed and accepted on **06 April 2010**. The Provider submits that this request for forbearance did not arise due to any financial hardship *“but rather to facilitate the Complainant’s desire to travel.”*

The Provider submits that by letter dated **14 January 2014** the Complainant requested that an overpayment of €60.00 per month be placed on the mortgage repayments. The Provider submits that the overpayment was applied and continued to apply until the mortgage loan account was redeemed in **December 2016**. The Provider further states that the Complainant had also requested in **April 2013** to increase the monthly repayment on her second mortgage loan account (ending **4234**) to €200.00, representing an overpayment of €45.00 per month, which continued until it was cancelled by the Complainant by letter dated **30 August 2016**.

The Provider submits that following a phone call with the Complainant on **30 September 2016** *“wherein she indicated she was to complete a Standard Financial Statement”*, she subsequently *“failed”* to complete or return the form. It refers to the Complainant’s submission that she did not return the form following advice from her accountant regarding concerns about the potential impact on her credit rating. The Provider submits that *“This is despite the fact that the Provider was willing to engage with her in relation to an alternative repayment arrangement, if one was requested and which could have assisted the Complainant in keeping the property.”*

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It submits that its internal notes of this phone call state that the Complainant was “*ok to meet repayments.*” The Provider states that the Complainant was progressing the sale of the property at this time.

The Provider states that the telephone call on **30 September 2016** “*represents the only record in respect of engagement between the parties in respect to a request for forbearance.*” It states that the Complainant gave no indication of being in any financial difficulty or had any difficulties in repaying her mortgage from **2010 – September 2016** which would necessitate the sale of the property and that the Provider “*only became aware of any financial difficulties allegedly suffered by the Complainant very shortly before the sale of the Property.*”

The Provider outlines that were the Complainant to have approached the Provider at any stage during the term of the loan seeking forbearance on the mortgage loan account due to financial difficulties, the Provider would have assessed her financial circumstances and offered an alternative repayment arrangement to her, if appropriate. It states that the Complainant, having previously sought forbearance for personal reasons on the account, was aware of this procedure. The Provider outlines however that “*no attempt was ever made by the Complainant to engage with the Provider, to avoid the sale of the Property.*” It submits that there is no record of arrears on either of the Complainant’s mortgage loan accounts and her “*payment record on them is exemplary.*”

The Provider outlines that it became aware of the Complainant’s intention to sell the property in **November 2015** when her representative requested to take up the title deeds. The Provider submits that “*no rationale for her intention to sell the property at this stage was given*” and that it “*would be unreasonable to suggest that the Provider should infer that the sale was due to financial difficulties, particularly where the mortgage loan account was being fully serviced.*”

The Provider outlines that it received a letter from the Complainant’s representative dated **18 July 2016** advising that “*the sale of the property has not been agreed, and requesting to continue to hold deeds*”. It submits that the Provider received a letter from the Complainant’s representative confirming that a sale had been agreed on **02 November 2016**. It details that the Provider supplied redemption figures to the Complainant’s representative by letter dated **09 November 2016**. The Provider outlines that it received correspondence dated **22 December 2016** from the Complainant’s representative advising of the completion of the sale of the property on **21 December 2016**.

The Provider submits that it *“cannot be fairly or reasonably contended that the decision to sell the Property was caused by the lack of a tracker rate. The possible connection between the tracker issue and the Complainants personal decision is too remote for it to be justly linked to the conduct complained of”*. The Provider details that the Complainant began the process of selling the property in or around **November 2015** when her solicitor requested the Title Deeds. It states that *“it can be fairly said”* that the Complainant chose to sell the property *“as opposed to taking steps to, at the very least, investigate other avenues to relieve the alleged financial difficulties suffered.”*

The Provider submits that *“Given the personal choice by the Complainant to sell the Property, it flows that any ‘missed’ increase in the value of the Property is due to that decision to complete the sale in December 2016 and not later.”* The Provider details that the Complainant requested the title deeds to the property some 13 months prior to the sale of the property and the property was on the market for at least 12 months. It submits that the Complainant herself submitted that it was a difficult time to sell in the housing market. It states that *“This missed opportunity to avail of better value in the property was not caused by the tracker issue. It was caused by the personal decision to sell the property in December 2016.”*

The Provider refers to the Complainant’s decision to enter early retirement in **2012** as a result of a *“difficult and stressful”* time at her then place of employment. It states that it appears from the Complainant’s own submissions that her decision to sell the property arose from *“circumstances entirely personal to her and unconnected to the disputed rate. In no place, does the Complainant mention interest cost or the absence of a tracker rate as a factor.”*

The Provider details that the mortgage loan account was redeemed at €101,972.94 and the Complainant’s top up mortgage loan account, which was also secured on the property, was redeemed in the amount of €24,229.84, meaning the total redemption figure paid to the Provider was €126,202.78. The Provider submits that the sale price was removed from its copy of the Contract for Sale and it refers to the Property Price Register *“which evidences that the Property was sold for €194,950 on 21 December 2016.”* It details that *“As a result of the sale of the Property, the Complainant had surplus funds of €68,747.22”*.

The Provider does not accept that the Complainant should be compensated in order to assist her in purchasing a new property, to reimburse her for legal and auctioneer fees, or to reimburse her for the expense of renting a new office space. It submits that these heads of compensation arose as a direct result of the Complainant’s personal decision to sell the property in **December 2016**.

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It further submits that the Complainant did not advise the Provider that she was using her home as a business premises at any stage during the term of the mortgage.

The Provider submits that the Complainant is effectively seeking the sum of €1,000.00 'top up' of the contribution to legal fees given by the Provider to the Complainant as part of the redress and compensation package. The Provider states that in the first instance it is *"unreasonable for it to be expected to pay estimated costs as envisaged by the Complainant. These expenses by their nature cannot rightly be quantified"* and it argues that the Provider should not be subject to having to provide compensation to the Complainant in an *"unquantifiable amount."* It submits that notwithstanding this, the Complainant *"has no entitlement for compensation under this heading."*

The Provider submits that there is a facility for a 'top up' of legal fees incurred by a customer impacted by the Examination, above the amount provided for in the redress and compensation package, to a limit of €2,500.00. It details that this top up will only be considered where the extra expenses are vouched. It submits that there was no request made by the Complainant for a top up and no expenses have been vouched. It submits that in this respect the *"Complainant had an opportunity to seek to recoup some of her legal fees, and failed to do so."*

The Provider further details that the Appeals Panel will similarly consider vouched expenses in making an award and the Complainant submitted vouches for expenses in the sum of €1,137.75 and these were approved by the Appeals Panel and paid by the Provider on **19 July 2018**.

The Provider submits that *"the FSPO does not have the power to make an award of costs in respect of a complaint such as this"* and the *"FSPO should not consider giving any award in respect of this heading, given the Complainant's failure to vouch any expenses she alleges to have occurred initially, and having received further expenses from the Independent Appeals Panel"*.

The Provider further states that the FSPO does not have the power to order a reward for such things as *"personal stress and hardship"* or that the Complainant suffered considerable personal expense during the impacted period, as these are not in the nature of a *"loss, expense or inconvenience"* mentioned in Section **60(4)(d) of the Financial Services and Pensions Ombudsman Act 2017**. It submits that the *"only viable measure of compensation for the lost use of money is (in the Provider's view) interest"*.

The Provider submits that the FSPO does not have the power to make an award for “stress” as it is not a “loss or expense” and the Provider does not believe that the Complainant has “demonstrated any inconvenience.” The Provider further outlines that a claim for stress to succeed, for example in a court action for tort, “there must be personal (psychiatric) injury”. It refers to **Larkin v Dublin City Council [2007] IEHC 416**. It submits that the FSPO does not have the power to make an award for personal injury and refers to **Carr v Financial Services Ombudsman [2013] IEHC 182**. It further outlines that a court would not make an award for “stress arising from a breach of contract or professional negligence (with certain exceptions such as holidays or leisure or arrangements that had peace of mind as a particular aim)”. It refers to **Murray v Budds [2017] IESC 4** and **Addis v Gramophone Co Ltd [1909] AC 488** to support this.

The Provider details that it is of the “strong view that the non-availability of the tracker mortgage was not the cause of loss of ownership in the Property” and that “the consequences, are too remote from the question of tracker and dependant on any number of factors someone may consider when making the financial decision to sell their home.” It states that “it would be unfair and unreasonable to allow compensation for loss for such a remote claim and that the decision to sell the Property did not arise from the conduct complained of; or because the Provider was (e.g.) unreasonable, unjust or oppressive.”

The Complaint for Adjudication

The complaint for adjudication is that the Provider has failed to offer adequate redress and compensation in respect of its failure on the Complainant’s 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.

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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 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.

At the outset, I note that the Provider has made submissions about its view that there was no breach of contract and no misrepresentation in this matter. I will not be making any determination as to the nature of the Provider's failure as I do not think that this is necessary in the circumstances of this matter. This matter has already been considered by the Provider and I find it most unnecessary that the Provider has decided to put forward arguments as to the Complainant's entitlement to a tracker interest rate on her mortgage. The Complainant has already been put back on a tracker interest rate so the only issue for decision is whether the Provider has offered adequate compensation to the Complainant by consequence of the Provider's failure in relation to her mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainant in **January 2018**.

The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress. The redress payment of €22,050.05 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €1,050.00 to reflect the time value of money. The Provider also paid the Complainant €1,000.00 for the purposes of seeking legal advice and compensation of €2,205.01. The Appeals Panel added a further sum of €3,000 which the Provider accepted. The Complainant has retained the right to proceed with this complaint as that offer of €3,000 was not in full and final settlement of the matter. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel has already paid to the Complainant.

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

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The Complainant's mortgage loan account was drawn down in **June 2004** on a 2 year discounted variable interest rate mortgage loan of 2.75%. A Loan Offer Letter dated **21 April 2004** issued to the Complainant which detailed as follows;

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| 1. Amount of Credit Advanced | | €211,500 |
| 2. Period of Agreement | | 20 Years |
| 3. Number of Repayment Instalments | Instalment Type | 4. Amount of each Instalment |
| 24 | Variable at 2.750% | €1,146.02 |
| 216 | Variable at 3.600% | €1,227.99 |

Part 2 – The Additional Loan Details, detail as follows:

" 11. Type of Loan Repayment
12. Interest Rate: 2.750% Variable"

Part 4 – THE SPECIAL CONDITIONS detail as follows;

"...

The interest rate applicable to the loan has been discounted by 0.85% per annum on the amount of the loan for a period of 24 months from the date of the drawdown of the loan. At the end of the said discount period the reduction shall cease and the interest rate applicable to the loan shall revert to the then prevailing Home Loan variable rate."

Part 5 – THE GENERAL CONDITIONS detail as follows;

"6. Variable Interest Rates

(a) Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender's discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.

/Cont'd...

- (b) *The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*
- (c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).*

7. Fixed Interest Rates

- (a) *The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the principal sum borrowed. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. **The fixed rate of interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed rate period selected by the Borrower at the date of draw down.***
- (b) *The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate.*
- (c) *In the case of a fixed rate loan, in the event of early repayment of the Loan in whole or in part for any reason, or conversion to a variable interest rate, or other fixed rate within the initial fixed rate period or any further or subsequent fixed rate period, the Borrower will be liable to pay a sum to be calculated in accordance with the following formula: $(\text{Amount} \times (R-R1) \times \text{Time})$ divided by 36500 and for the purpose of this formula, the variables are defined as follows: "Amount" means the average balance of the amount repaid early or converted from the date of repayment or conversion to the end of the fixed rate term, allowing for scheduled repayments; in the case of an endowment loan, this will equal the full amount of the early repayment conversion.*

/Cont'd...

“R” means the cost of funds for the Lender for fixed rate periods as incorporated in the existing interest rate applying to the Loan. “R1” means the interest rate available to the Lender for funds placed in the money market on the date of early repayment or conversion for the remainder of the relevant fixed rate period. “Time” means the number of days from the date of early repayment or conversion to the end of the relevant fixed rate period.

- (d) At the Borrower’s request, the Lender may, at its absolute discretion agree to add any sum payable in accordance with clause 7(c) to the principal amount from time to time owing and this may be accommodated at the discretion of the Bank by way of: (i) an adjustment to the amount of the regular repayments during the remaining term of the Loan;*
- or (ii) an adjustment to the number of repayments within the remaining term of the Loan AND it shall be a condition of any such adjustment that the Borrower shall immediately effect, maintain and assign to the Lender a suitably amended Life Policy (or Endowment Policy as appropriate) in respect of this additional amount.”*

The evidence shows that on the expiry of the 24 month discounted variable rate on **16 June 2006**, the Complainant signed and accepted a **Mortgage Form of Authorisation** (“MFA”) to apply a tracker rate of 3.75% (ECB + 1.25%) to the mortgage loan account, which detailed as follows;

“I acknowledge that following the acceptance by [the Provider] of this Application the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation and I accept the said conditions and agree to be bound by them.

...

If I have applied to convert to a tracker variable rate, I agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than the percentage stated on page 1 above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo rate”) for the term of the Loan. Any variation in interest rate shall be implemented by the Lender not later than close of business on the 5th working day following a change in the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rate either by notice in writing served on the Borrower, or first named borrower where there is more than one borrower, or by advertisement published in at least one national daily newspaper.

/Cont’d...

In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.”

On **16 March 2007**, the Complainant signed an **MFA** to apply a 3 year fixed interest rate of 4.89% to her mortgage loan account.

On the expiry of the fixed rate period in **March 2010**, the Complainant signed a **Mortgage Form of Authorisation** (“MFA”) on **4 March 2010** to apply a variable rate of 2.70% to the mortgage loan account. The **mortgage loan statement** shows that the variable rate of 2.70% was applied to the mortgage loan account on **22 March 2010**. It was at this time that the failure that was subsequently identified in **December 2017** as part of the Examination occurred on the Complainant’s mortgage loan account.

The evidence shows that the Complainant signed a **Mortgage Financial Review Form** on **09 March 2010** which details as follows;

“ ...

Financial Commitments (e.g. all loans including credit cards, overdrafts, store cards)

| Details (including purpose) | Balance (€) | Financial Institution | Repayments (€ monthly) |
|--------------------------------------------------------------------------|--------------------|------------------------------|-------------------------------|
| €20k used to ... for loan for car & for supporting son through college.) | 20K | [Location] Credit Union | €500 |

...

| Income (Weekly/Monthly) | € | Outgoings (Weekly/Monthly) | € |
|--------------------------------|----------|-----------------------------------|----------|
| Salary/Wages (gross) | 6, 810 | Mortgage | 1,340 |
| Unemployment Benefit | - | Credit Union Loans | 500 |
| Family Income Supplement | - | Bank/Finance Loans | - |
| Children’s Allowance | - | Maintenance Payments | - |
| Retirement Pension | - | Credit Card Payments | 50 |
| Invalidity/ Sickness Benefit | - | Any Other Credit | - |
| Carer’s Allowance | - | Store Cards | - |
| Health Board | - | | |

/Cont’d...

| | | | |
|-----------------------------------------|------|--|------|
| <i>Mortgage Interest Subsidy (TRF?)</i> | 130 | | |
| <i>Maintenance</i> | - | | |
| <i>Rental income</i> | - | | |
| <i>Dependent's Contribution</i> | - | | |
| <i>Other Income (Please specify)</i> | 100 | | |
| <i>Travelling Expenses</i> | | | |
| <i>Total gross</i> | 7040 | | 1890 |
| <i>Net</i> | 4078 | | |

...

Reason for Review (please specify and provide background as appropriate):

(Moratorium)

I wish to apply for a four month sabbatical from my mortgage repayments from June 2010 to facilitate my taking some time off work to go travelling & visit my son in [Country redacted]."

It appears from the **financial review form** that at that time the Complainant's net monthly income was €4,078.00 and she had a monthly surplus of €2,188.00. The overcharging on the Complainant's mortgage loan account did not commence until **22 March 2010** when the variable rate of 2.70% was applied. In any event the evidence shows that this forbearance request was not due to financial difficulties.

The Provider's internal note dated **24 March 2010**, details as follows;

"We have today received a financial review form for this customer. The details will be reviewed and a decision communicated by mail on the case shortly"

The Provider's internal note dated **29 March 2010 at 17:34:51pm** states as follows;

*"Moratorium Request has been declined.
LTV outside guidelines.
Interest Only X 6 Months approved instead
...
Applies to a.cs [ending] 5754 [ending] 4234"*

/Cont'd...

The Provider's internal note dated **29 March 2010** at **17:37:59pm**, details as follows;

"We regret to advise that the application for a moratorium has been declined. The estimated LTV on the security property is outside our guidelines. To assist with customers' current circumstances we are prepared to offer Interest Only for 6months on a.cs [ending] 5754 [ending] 4234"

On **06 April 2010**, the Complainant signed and accepted a **Mortgage Form of Authorisation** to apply a six month interest only period to both of her mortgage loan accounts ending **5754** and **4234**.

The Provider's internal note dated **12 April 2010**, states as follows;

"We have received the signed Mortgage Form of Authorisation for the Interest Only request on this account and the details have now been changed. Confirmation will issue shortly to the customer".

I note from the **mortgage loan statement** that the Complainant's interest only payments on the account ending **5754** between **May 2010** and **August 2010** were €444.98 on the variable interest rate of 3.20%. The variable interest rate increased to 3.45% in **August 2010** which caused the interest only repayment to increase to €479.41 between **September 2010** and **October 2010**.

The mortgage loan accounts reverted to capital and interest repayments of €1,273.72 in **November 2010**.

Between **April 2010** and **February 2011**, the overall tracker rate (ECB + 1.25% margin) that should have applied to the mortgage loan account was static at 2.25% over the time period. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below. The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.25%) had been applied to the mortgage account between **April 2010** and **February 2011**, is also represented in the table below;

/Cont'd...

| 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 |
|------------------------|------------------------------------------------------------------|---------------------------|------------------------------------------------------------|-----------------------|
| Apr 2010 | 0.45% | €1,179.79 | 1,144.52 | €35.27 |
| May 2010 – Aug 2010 | 0.95% | €444.98 | €313.02 | €131.96 |
| Sept 2010 – Oct 2010 | 1.20% | €479.41 | €313.02 | €166.39 |
| Nov 2010 - Feb 2011 | 1.20% | €1,273.72 | €1,179.19 | €94.53 |

The Provider's internal note of **14 February 2011**, states as follows;

"Please forward customer 2,3, 4, 5 year fixed rates and repayments"

The Complainant applied a 2 year fixed rate of 3.75% to the mortgage loan account in **February 2011** by way of MFA signed on **25 February 2011**.

Between **March 2011** and **February 2013**, the overall tracker rate (ECB + 1.25% margin) that should have applied to the mortgage loan account fluctuated between 2.00% and 2.75% over the time period. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below. The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.25%) had been applied to the mortgage account between **March 2011** and **February 2013**, is also represented in the table below;

/Cont'd...

| 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 |
|-------------------------------|-------------------------------------------------------------------------|----------------------------------|-------------------------------------------------------------------|------------------------------|
| Mar 2011 – Apr 2011 | 1.50% | €1,299.57 | €1,179.19 | €120.38 |
| May 2011 – July 2011 | 1.25% | €1,299.57 | €1,197.88 | €101.69 |
| Aug 2011 – Nov 2011 | 1.00% | €1,299.57 | €1,216.36 | €83.21 |
| Dec 2011 | 1.25% | €1,299.57 | €1,198.04 | €101.53 |
| Dec 2011 – Jul 2012 | 1.50% | €1,299.57 | €1,180.61 | €118.96 |
| Aug 2012 – Feb 2013 | 1.75% | €1,299.57 | €1,163.51 | €136.06 |

On the expiry of the fixed rate on **28 February 2013**, the **mortgage loan statement** shows that the variable rate of 4.35% was applied to the mortgage loan account.

On **24 February 2013**, the Complainant signed and accepted the **Mortgage Form of Authorisation** to apply a 2 year fixed rate of 4.69% to the mortgage loan account which was applied to the account on **1 March 2013**.

The Complainant sent a letter to the Provider dated **14 January 2014**, as follows;

“RE: Homeloan Account Number [ending] 5754

...

I would like to arrange to pay an extra €60 per month towards the above mortgage account.

I understand that this amount is not subject to additional fees.

Please arrange to commence this payment with effect from next month’s repayment date. I authorise the transfer of the additional €60 from my current account [ending] 3077.

/Cont’d...

Please contact me if you require any further information.”

I note from the **mortgage loan statement** that in accordance with the Complainant’s request, the monthly repayment increased from €1,364.82 to €1,424.82 in **February 2014**.

The Provider has submitted that in **April 2013** the Complainant also requested an overpayment of €45.00 on her other mortgage loan account ending **4234**. No evidence of this request has been provided to this office. Nonetheless it does not appear to be disputed between the parties that this is the case. I am of the view that the Complainant’s requests to overpay on both of her mortgage loan accounts, in **2013** and **2014** respectively, are somewhat at odds with her submission that she was struggling to meet the monthly mortgage repayments.

Between **March 2013** and **February 2015**, the overall tracker rate (ECB + 1.25% margin) fluctuated between 2.00% and 1.30% over the time period. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below. The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.25%) had been applied to the mortgage account between **March 2013** and **February 2015** is also represented in the table below;

| Date Range (inclusive) | Difference in Interest rate charged vs the tracker interest rate | Actual monthly repayments | Monthly repayments if the mortgage was on the Tracker Rate | Overpayment per month |
|-------------------------------|-------------------------------------------------------------------------|----------------------------------|-------------------------------------------------------------------|------------------------------|
| Mar 2013 – May 2013 | 2.69% | €1,364.82 | €1,163.51 | €201.31 |
| Jun 2013 – Nov 2013 | 2.94% | €1,364.82 | €1,147.74 | €217.08 |
| Dec 2013 – Jan 2014 | 3.19% | €1,364.82 | €1,133.21 | €231.61 |
| Feb 2014 – June 2014 | 3.19% | €1,424.82 | €1,133.21 | €291.61 |
| Jul 2014 – | 3.29% | €1,424.82 | €1,127.47 | €297.35 |

/Cont’d...

| | | | | |
|-------------------------|-------|-----------|-----------|---------|
| Sept 2014 | | | | |
| Sept 2014 – Feb 2015 | 3.39% | €1,424.82 | €1,122.02 | €302.80 |

I note that the monthly overpayments on the mortgage loan account were gradually increasing from €201.31 in **March 2013** to €302.80 in **February 2015**. These are significant sums to overpay on a monthly basis.

The **mortgage loan statement** shows that on the expiry of the fixed rate in **March 2015**, a variable rate of 4.5% was applied to the mortgage loan account which continued to apply to the mortgage loan account until the date of redemption on **21 December 2016**.

The Complainant signed and accepted a **Mortgage Form of Authorisation** on **20 July 2015** seeking to apply a 2 year fixed rate of 3.750%. It is not clear to me why the fixed rate was not applied in accordance with the signed **MFA**. In any event this matter does not appear to be in dispute between the parties. The variable rate continued to apply to the mortgage loan account until the mortgage loan account was redeemed on **21 December 2016**.

The Complainant's representative wrote to the Provider by letter dated **11 November 2015**, which details as follows;

"We enclose Authority completed by [the Complainant] in respect of a proposed sale of her house at [Location].

Please supply us with the deeds and redemption figures. We undertake to hold same on accountable trust receipt pending discharge by us of the full amount due."

Having regard to the above correspondence it appears that the Complainant was contemplating the sale of the property in **November 2015**.

It appears from the Complainant's submissions that she met with her accountant on **9 March 2016**. A letter dated **26 March 2018** has been provided in evidence from the Complainant's accountant to Complainant's legal representative, which outlines details of this meeting and details as follows;

"I refer to the above named mutual client.

[The Complainant] has requested that I write to you to outline a discussion that I had with her in 2016 concerning her home loan.

Please note that I did not keep contemporaneous notes of this meeting however I can confirm that I met with [the Complainant] on the 9th March 2016 to attend to her 2015 income tax returns.

During the course of this meeting I recall having a brief discussion with [the Complainant] in relation to her [Provider] mortgage and in particular her continuous struggle to meet the monthly repayments. We discussed the potential consequences of [the Complainant] falling into arrears on her loan and the difficulties that she may face in trying to restructure the term of her mortgage with her lender.

[The Complainant] was to revert to me should she require any further assistance in relation to this matter.

Please do not hesitate to contact me should you have any further queries in relation to this matter.”

The Complainant’s representative wrote to the Provider again by letter dated **18 July 2016**, which details as follows;

“We refer to the above matter and to your letter dated 12 July 2016.

Please note that our client has not yet agreed the sale of the property and we envisaged holding the title deeds for approximately another three months pending a sale.

We will update you as soon as a sale of the property is agreed.”

The Complainant wrote to the Provider on **30 August 2016** in relation to her other mortgage loan account ending **4234**, as follows;

“I wish to cancel the arrangement currently in place at present whereby I have agreed a monthly payment of 200 euros to this account and wish to revert to the existing repayments, without a top up commencing on the next repayment date.

Please arrange to discontinue this additional payment with effect from next month’s repayment date.

I authorise the discontinuation of additional payments to this account from my current account [ending] 3077.

/Cont’d...

Please contact me if you require any further information.”

The Provider’s internal email dated **30 September 2016**, details as follows;

“...spoke with [Complainant] total arr[ear]s: zero. Cust[omer] adv[ised] in difficulty with meeting repayments. in process of completing sfs, adv of balances across a/c. cust[omer] ok to meet repayments until something in place. Adv[ised] of option to suspend dd or realign repayment dates. adv of C/R. cust ok to complete sfs herself. d/f to monitor for return of sfs.”

It does not appear to me from the documentation that has been furnished in evidence, that the Complainant ever raised any concerns with the Provider in respect of any cash flow difficulties or concerns she may have had in meeting the mortgage repayments during the period of the overcharge, prior to the telephone call which took place on **30 September 2016**. That is not to say that the Complainant did not experience cash flow problems during this six year period. However the contemporaneous evidence does not support the Complainant’s position that she was struggling to meet the repayments at this time. It appears from the Provider’s internal note of **30 September** that the Complainant confirmed at the time that she was not in danger of going into arrears.

I note that the Complainant has submitted that ultimately she did not return the **Standard Financial Statement (SFS)** to the Provider in **2016** as her accountant raised concerns regarding the potential impact on her credit rating. I note from the evidence that the Complainant did not seek to engage, at all, with the Provider to explore any further options with the Provider which would enable her to alleviate her financial difficulties and also retain the property.

The Complainant’s representative sent the Provider a letter dated **02 November 2016**, detailing as follows;

“Please find enclosed the QUED form duly completed and we would be obliged if you could please confirm the redemption figures for the above mortgage account.

We confirm that we continue to hold the title deeds on ATR and our client has now agreed the sale of the property.”

A redemption figure of €102,788.23 was outlined in the Provider’s letter of **09 November 2016**. A further redemption figure of €101,811.48 was outlined in the Provider’s letter of **13 December 2016**.

/Cont’d...

The Complainant's representative sent the Provider a letter dated **22 December 2016** which stated;

"We refer to the above matter and to previous correspondence.

Please note the sale of the property was completed on the 21 December 2016 and we redeemed both mortgage accounts in full.

Please arrange for the E-Discharge to be completed and confirm that our undertaking in this matter is now discharged.

We look forward to hearing from you."

The Provider wrote to the Complainant by letter dated **22 December 2016** stating that she had "now paid off her mortgage" accounts ending **4234** and **5754** with the Provider.

The Complainant submitted the document titled **Closing Statement** dated **21 December 2016** into evidence, which details as follows;

"CLOSING STATEMENT

[COMPLAINANT]

SALE OF [PROPERTY]

| | |
|--------------------------|-------------|
| Sale price | 194950 |
| Less | <u>9748</u> |
| Sum held by [Auctioneer] | 185202 |
| add LPT refund | <u>232</u> |
| Balance held by [Legal] | 185434 |

LESS

| | |
|-----------------------------------|------------------|
| [Solicitor] legal fees | 1906.5 |
| [Provider] Loan acc [ending 4234] | 24229.84 |
| [Provider] loan acc [ending 5754] | <u>101972.94</u> |

BALANCE TO [THE COMPLAINANT] 128109.28
57324.72"

It appears from the **Closing Statement** that the property was sold for €194,950.00, which redeemed both mortgage loan accounts and left the Complainant with a surplus of funds of €57,324.72 once her legal fees of €1,906.50 were paid.

/Cont'd...

Between **March 2015** and **December 2016**, the overall tracker rate (ECB + 1.25% margin) fluctuated between 1.25% and 1.30% over the time period. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below. The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.25%) had been applied to the mortgage account between **March 2015** and **December 2016** is also represented in the table below;

| Date Range (inclusive) | Difference in Interest rate charged vs the tracker interest rate | Actual monthly repayments | Monthly repayments if the mortgage was on the Tracker Rate | Overpayment per month |
|-------------------------------|-------------------------------------------------------------------------|----------------------------------|-------------------------------------------------------------------|------------------------------|
| Mar 2015 | 3.20% | €1,424.82 | €1,122.02 | €302.80 |
| Apr 2015 – Feb 2016 | 3.20% | €1,403.94 | €1,122.02 | €281.92 |
| Mar 2016 - | 3.25% | €1,403.94 | €1,122.02 | €281.92 |
| Apr 2016 – Dec 2016 | 3.25% | €1,403.94 | €1,119.91 | €284.03 |

I note that the overcharge on the Complainant's mortgage loan account occurred over approximately a six year period (**April 2010 – December 2016**). The period that is most significant is the period which led up to the sale of the Complainant's property in **December 2016** as the Complainant has sought additional compensation because she is of the view that the sale of the property would not have taken place had the mortgage loan been on the tracker rate of interest at the time.

However, I cannot accept that the sale of the property was solely attributable to the incorrect interest rate being charged on the mortgage loan account at that point in time. I accept that the level of mortgage repayments would have been a factor in the Complainant's decision to sell the mortgaged property at the time, however I am of the view that the evidence shows there were other factors outside of the interest rate applying to the mortgage account that influenced the sale of the property.

/Cont'd...

However, it is clear that throughout the six-year period, when the Provider overcharged her on her mortgage, the Complainant was denied the opportunity of making informed decisions about her finances and her future as she did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan because of the conduct of the Provider.

The evidence shows that the overcharging in the period between **2010** and **2016** gradually increased because of the incorrect interest rate being applied to the mortgage account. The overcharging by the Provider rose from €94.53 in **November 2010**, to €136.06 by **August 2012** and upwards to €302.80 by **September 2014**. At the time the mortgage loan account was redeemed in **December 2016** the monthly overcharging by the Provider was €284.03. These are significant amounts to have to overpay on a monthly basis, particularly given the Complainant's circumstances at that time.

The Provider, in its response to this Office, has stated that it does not believe that the Complainant has "*demonstrated any inconvenience.*" I am at a loss to know how any reasonable person, having properly considered this complaint, and the particular circumstances of the Complainant, could make such a statement. It is worrying in the extreme that the Provider seems to be completely unable to understand the consequence of overcharging the Complainant sums of up to €300 per month at an already difficult and pivotal time in her life. This shows a complete lack of understanding or empathy by the Provider of the impact and consequences of its conduct in overcharging the Complainant.

I have no doubt that the Complainant suffered inconvenience as a result of the Provider's overcharging. In this regard, I find it extraordinary that the Provider has stated that it does not believe that the Complainant has demonstrated any inconvenience. I would also inform the Provider that I do not accept its assertions in relation to the matters and conduct for which I can direct compensation. Nor do I accept the Provider's view that the only viable measure of compensation for the lost use of money is interest.

I am of the view that the interest overcharge of €21,000.05 between **March 2010** and **December 2016** is a significant sum and the conduct of the Provider in overcharging the Complainant during this period is most unsatisfactory and caused serious inconvenience for the Complainant.

I note that the Complainant has received compensation of €5,205.01 including the Independent Appeals Panel award of €3,000. This compensation was paid together with redress of €22,050.05.

/Cont'd...

In the particular circumstances of this complaint, I do not believe this amount of compensation to be reasonable in the circumstances. I believe a sum of €8,000 to be more appropriate.

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

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (b)** on the basis that the Provider's conduct is unreasonable.

I direct pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay the sum of €8,000 to the Complainant, to be paid 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, this sum of €8,000 is to include any amount already paid by the Provider on foot of the conduct complained of.

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

21 June 2021

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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.

