



<u>Decision Ref:</u>	2021-0220
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a mortgage loan account held by the Complainants with the Provider and an overcharge of interest in the amount of €7,127.22 on the mortgage loan account. The mortgage loan is secured on the Complainants' private dwelling house.

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

The Provider wrote to the Complainants on **6 December 2016** advising them of the failure. The Provider detailed "*the circumstances that caused this failure to happen*" as follows;

"At one point you moved your mortgage to a tracker rate. At that point we sent you a letter which set out that if you moved to a fixed rate in the future, you could opt to convert to the prevailing fixed, variable or tracker rates at the end of the fixed period, rather than the last tracker margin applied to your account. Now that we have reviewed your case, we believe that we may have incorrectly given you an expectation that you could go back to the last tracker margin applied to your account, after your fixed rate period had ended."

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

“What does this mean for you?”

Now that we have completed the detailed review of your mortgage account and reduced your interest rate, we have been able to calculate the redress and compensation that is due from 10/12/2008, which was when your account was first impacted.”

The Provider restored a tracker interest rate of ECB + 0.95% on to the Complainants' mortgage loan account on **4 August 2016**.

The Provider made an offer of redress and compensation to the Complainants. The offer of €9,889.91 made by the Provider comprised the following;

1. Redress of €7,536.40 covering;
 - The amount overpaid while on the incorrect rate of €7,127.22
 - Interest to compensate the Complainants for not having access to the money overpaid on the mortgage loan account (Time Value of Money) of €409.18
2. Compensation of €1,738.51 for the Provider's failure on the mortgage loan account.
3. Independent Professional Advice payment of €615.00.

The Complainants' mortgage loan account balance was also reduced by €4,053.64.

In **December 2017**, an appeal was submitted to the Independent Appeals Panel by the Complainants. The basis for the appeal was the Complainants' dissatisfaction with the Provider's redress and compensation offering.

The Independent Appeals Panel decided on **30 April 2018** that the appeal was partially upheld and awarded additional compensation of €3,750 to the Complainants.

The key factors in determining the decision by the Independent Appeals Panel to partially uphold the Complainants' appeal in respect of the financial losses claimed, were as follows;

"The Panel agreed that it was reasonable to conclude based on the information and documentation received from the Bank and from [Complainants] that the financial losses claimed by [Complainants] could be partially attributable to the Bank's failure on their account.

In making its decision, the Panel agreed, that [Complainants] be reimbursed the fee of €738 for professional advice received in respect of their mortgage tracker appeal in November 2017.

The Panel further agreed that [Complainants] should also be entitled to the interest on the lump sum lodgement made by them while on the incorrect rate which has been calculated at €512".

The key factors in determining the decision by the Appeals Panel to uphold the Complainants' appeal in respect of the non- financial losses claimed, were as follows;

"The Panel agreed that total additional compensation of €3,750 (to include the €738 for professional advice) be awarded to [Complainants] in addition to the Redress and Compensation payment previously issued and subject to the acceptance of the decision by [Complainants]".

The Complainants rejected the decision of the Independent Appeals Panel on **31 May 2018**.

As the Complainants have been through the Provider's internal appeals process and did not accept the decision of the Independent Appeals Panel, this office was in a position to progress the investigation and adjudication of the complaint.

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

The Complainants' Case

The Complainants submit that they have been "*only partially compensated*" for the losses they suffered as a result of the Provider's failure on their mortgage loan account and are seeking additional compensation under the following headings;

(a) Compensation of €1,990 for childcare expenses

The Complainants submit that they had to seek assistance from a family member to help care for their children between **August 2013** and **September 2016**, in circumstances where the First Complainant was unable to care for them at times due to the stress caused by the overcharging on the mortgage loan account. The Complainants note that the First Complainant was not “*mentally able*” to mind the children when the Second Complainant was working.

(b) Compensation of €1,000 for a loan in 2015

The Complainants submit that they had to borrow €1,000 from another family member in **June 2015** due to financial difficulties brought about by the overcharging on their mortgage loan account.

(c) Compensation of €750 for time spent engaging with the Provider

The Complainants submit that they are seeking to be compensated for the time they have had to spend engaging with the Provider in relation to the overcharging on their mortgage loan account as well as preparing and exchanging correspondence with the Provider as part of its internal complaints process, preparing and exchanging correspondence as part of the independent appeals process, and finally by having to submit a complaint to this Office. The Complainants submit that they first sought to engage with the Provider in this regard in **2013**. The Complainants submit that the sum of €750 represents 50 hours spent engaging with the Provider at €15 per hour.

(d) Compensation of €5,000 for payment of lump sum to the mortgage loan account in 2013

The Complainants are seeking a refund of the €5,000 lump sum payment they made to their mortgage loan account on **14 June 2013**. The Complainants submit that they made this payment to avoid falling into arrears. The Complainants submit that they made this lump sum payment “*so we could pay €400 per month*”.

The Complainants state that they were “*struggling and scared*”. The Complainants submit that if it was not for the overcharging, they would not have made this lump sum payment and they would have been able to use this money to pay for household bills and other expenses.

In this regard the Complainants submit as follows;

"We understand the bank didn't force us to lodge €5,000 into our A/C but this shows you how much pressure we were under, we were trying to figure out what would be manageable to us".

(e) Compensation for the stress and worry caused to the Complainants as a result of the overcharging

The Complainants submit that the First Complainant had to attend counselling as a result of her dealings with the Provider which were *"mentally and physically draining"* and has *"not been able to conceive because of the impact of the stress for a long period of time"*. The Complainants state that the Second Complainant suffered from a medical illness due to the stress caused by the Provider's failure. The Complainants state that they were *"struggling to pay monthly repayments"* and *"gave the bank [their] entire savings"*.

The Complainants contend that in circumstances where they were putting all their savings into their mortgage loan account, they *"went without holidays"*, *"cinema trips for the kids"* and their children have *"not been able to participate in summer camps"*. The Complainants state that they felt a *"huge sense of guilt"* by not being able to give their children *"what seemed as very normal nice treats to other families"*.

The Complainants note that the First Complainant's parent had an accident in **mid-2013** and underwent a serious operation. The Complainants also note that the First Complainant has three family members who have special needs and are in residential care, one of whom comes home at the weekends. The Complainants state that as a result of the stress that they were under, the First Complainant was unable to help her family and spent *"a lot of nights awake worrying what would happen with our mortgage"*.

The Complainants are of the view that the additional compensation of €2,500 awarded by the Independent Appeals Panel in relation to their non-financial losses is an *"insult"* to them and is an *"unreasonable sum for the hardship"* that the Provider has caused.

The Complainants further submit that the compensation offered by the Provider and the additional compensation offered by the Independent Appeals Panel *"does not even come close"* to adequately compensating them for their losses.

The Complainants assert that during the period of the overcharging they “*were living hand to mouth*” and “*worrying each month how to pay [the] mortgage*”. The Complainants submit that it “*seems that [they] are being penalised for trying to do the best [they] can and because [they] didn’t request forbearance at any point*” during the term of their mortgage loan despite having furnished the Provider with evidence of their application for supplementary welfare allowance.

The Complainants state that the First Complainant was made redundant in **2009** and has worked two days a week for the last number of years. The Complainants further state that the Second Complainant has been on a “*3 day week since 2009*”. The Complainants assert that the overcharging on their mortgage loan account “*had a big impact on [their] family financially*”.

The Complainants submit that they did not request forbearance during the impacted period because they were of the view that they would eventually have to pay back the amount with added interest. In this regard the Complainants state;

“If we asked for help and reduced our monthly repayments at the time we would have to eventually pay back what we fell behind on anyway and more interest on top if what we already owed, we were scared to go into arrears because we felt that we would only be pro-longing our debt.”

The Complainants submit that the compensation offered by the Provider is not “*fair*” and is not “*reasonable*”. The Complainants further contend that the compensation model employed by the Provider “*does not take into consideration the hardship [the Complainants] have experience[d] as a result of the banks error*”.

The Provider’s Case

The Provider submits that in **December 2016** a sum of €9,889.91 was paid to the Complainants in redress and compensation. It states that the overcharge of interest of €7,127.22 has been refunded to the Complainants and a Time Value of Money (“TVM”) payment of €409.18 was made so the Complainants were not “*out of pocket*”. In addition, a balance adjustment of €4,053.64 was undertaken on the Complainants’ mortgage loan account.

The Provider submits that the redress and compensation payment included a compensation payment of €1,728.51, to compensate for “*potential inconvenience, harm, personal suffering or hardship*”. It states that in this case, where the account relates to a private dwelling house that is not in a legal process, the percentage of compensation applied is 15% of the interest overcharged plus the TVM amount.

The Provider submits that a payment towards professional advice of €615 was also made so that the Complainants could have an advisor bring them through the detail of the Redress and Compensation letter dated **6 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 the Complainants contacted the Provider on a number of occasions during the term of their mortgage loan requesting interest rate amendments and other issues however, the Provider contends that the Complainants did not request forbearance measures at any point throughout the term of their mortgage. The Provider states that it had *"no knowledge of any financial difficulty and there is no evidence on file to indicate that the Complainants were having trouble meeting their mortgage repayments"*. The Provider explains that where customers request forbearance in cases of financial difficulty, it has a process in place for assessing each particular case, and where available, offering a number of different options with a view to putting in place a solution that is supportive and appropriate. The Provider notes that this support was *"never sought by the Complainants"* and it was *"not aware that the Complainants had any concerns with respect to paying their monthly mortgage repayments"*.

The Provider submits that it is satisfied that the redress and compensation paid is *"fair and reasonable"* and it also provided an independent appeal process in which the Complainants appealed their case.

The Provider states that the Complainants submitted an appeal to the Independent Appeals Panel. The Provider submits that the Independent Appeals Panel agreed that it was reasonable to conclude that both the financial and non-financial losses claimed by the Complainants were partially attributable to the Provider's failure on their account and the Independent Appeals Panel awarded additional compensation of €1,250 in respect of the financial losses incurred by the Complainants, comprising of €738 for professional advice and €512 in respect of the interest on the lump sum payment of €5,000 in **June 2013**.

The Provider notes that the Independent Appeals Panel also agreed to award an additional €2,500 in respect of non-financial losses suffered by the Complainants. It states that it accepts this additional award and is agreeable to pay this amount to the Complainants should the Complainants choose to accept it.

The Provider submits that the additional award of €3,750 brought the “*overall compensation (in tandem with independent professional fees) to equate to over €6,000, this being the equivalent of over 50% of the overall interest overcharge*”.

The Provider submits the following, in respect of the Complainants’ claims for financial losses;

(a) Compensation of €1,990 for childcare expenses

The Provider submits that the redress and compensation amounts were calculated using the Provider’s Compensation Model, which it submits was assured by an external third party in line with the Central Bank’s Examination Framework.

The Provider highlights that the Independent Appeals Panel agreed to award an additional €1,250 in compensation in respect of the financial losses incurred by the Complainants. The Provider submits that this amount is adequate and is agreeable to pay this amount to the Complainants together with the additional amount of €2,500 awarded by the Independent Appeals Panel in relation to non-financial losses.

(b) Compensation of €1,000 for a loan in 2015

The Provider submits that the Complainants did not request forbearance at any stage throughout the term of their mortgage loan and it had no prior knowledge of any financial difficulty. The Provider further submits that there is no evidence on its file to indicate that the Complainants were suffering from financial difficulty in **2015** or at any other stage. The Provider states that it offers a number of different options in cases of financial difficulty and these supports were never sought by the Complainants.

The Provider further reiterates that the redress and compensation amount offered to the Complainants was “*adequate*” and that the Provider is agreeable to pay the Independent Appeals Panel’s further award of €3,750 if the Complainants should choose to accept it.

(c) Compensation of €750 for time spent engaging with the Provider

The Provider states that it acknowledges that the Complainants first sought to engage with the Provider in **2013** with regard to the interest rate applied to their mortgage loan account.

The Provider submits that the compensation payment offered to the Complainants of €1,738.51 was to “*compensate for potential inconvenience, harm, personal suffering or hardship*”.

The Provider highlights that the Independent Appeals Panel agreed to award an additional €1,250 compensation in respect of financial losses incurred by the Complainants comprising of €738 for professional advice. The Provider is of the view that the redress and compensation amount is fair and reasonable.

(d) Compensation of €5,000 for the payment of lump sum to the mortgage loan account in 2013

The Provider submits that it did not require or request the Complainants to make additional lodgements, nor did it advise the Complainants to use their own funds or resources to reduce the balance of their mortgage loan account. The Provider asserts that the decision to make a capital lodgement of €5,000 towards the mortgage loan account on **14 June 2013** was “*made independently by the Complainants*”. The Provider sets out the following timeline leading up to the Complainants’ decision to make a lump sum payment on **14 June 2013**;

- **14 May 2013** – the Provider submits the First Complainant contacted the Provider seeking to fix the mortgage loan repayments at €400 per month for the following 3 years. The Provider notes that the First Complainant also enquired as to how much of a lump sum payment would be required in order to do this and what the applicable interest rate would be.
- **6 June 2013** – the Provider submits that it wrote to the Complainants providing quotes of what monthly repayments would be following the lump sum payment.
- **12 June 2013** – the Provider states the First Complainant contacted the Provider seeking to fix the monthly mortgage repayments at €400 and sought a LTV variable interest rate <50%.
- **14 June 2013** – the Provider states that the Complainants lodged €5,000 to their mortgage loan account.
- **21 June 2013** – the Provider notes that it issued a letter to the Complainants acknowledging the “*out of course*” lodgement of €5,000 and advised the Complainants that if they wished to avail of a LTV variable rate <50%, they would be required to submit an up to date valuation report of the mortgaged property.

The Provider reiterates that it had no knowledge of any financial difficulty suffered by the Complainants and it has “*no evidence*” on file to indicate that the Complainants were having any trouble meeting mortgage repayments.

The Provider submits the following in respect of the Complainants’ claims for non-financial loss;

(e) Compensation for the stress and worry caused to the Complainants as a result of the overcharging

The Provider states that the Complainants did not request forbearance at any point throughout the term of the mortgage loan. The Provider restates that the compensation payment of €1,738.51 was to compensate “*for potential inconvenience, harm, personal suffering or hardship.*” The Provider further states that the payments made by way of redress and compensation payments are “*fair and reasonable*”.

The Provider submits that it accepts the Independent Appeals Panel’s additional award of €2,500 in respect of non-financial losses and is agreeable to pay this amount to the Complainants should they accept it.

The Provider asserts that it has gone through “*rigorous measures*” to ensure that fairness and consistency have been applied during each stage of its application of the Examination and it is satisfied that the Complainants have been “*adequately compensated and redressed accordingly*”.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has not offered adequate compensation to the Complainants in respect of the Provider’s failure on their 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 Complainants were given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

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

No further submissions were received from the parties within the period permitted and I now set out below my final determination.

The Provider has detailed that the total amount of interest overcharged, €11,180.86, has been repaid in full (refund of €7,127.22 interest overpaid and mortgage adjustment of €4,053.64). The Provider has detailed that the purpose of the compensation payment of €1,738.51 is to compensate for potential inconvenience, harm, personal suffering or hardship and that this amount was calculated based on the Provider's approved Compensation Model for customers who were impacted by the tracker issue. The tracker interest rate of ECB + 0.95% has been restored to the Complainants' mortgage loan as of **August 2016**.

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

I note that the Complainants wrote to the Provider on **30 October 2007** seeking to avail of a fixed interest rate for a period of five years from **November 2007**. The Provider wrote to the Complainants on **31 October 2007** confirming that a fixed interest rate of 5.34% would apply to their mortgage loan from **31 October 2007**. The Provider's correspondence of **31 October 2007** details as follows;

"With reference to your request, I confirm that a fixed interest rate of 5.34% (including the existing interest adjustment of 0.00%) will apply to your mortgage loan from 31 October 2007 for a period of 5 years.

The Monthly repayments for the period of the fixed interest rate will be €494.23 and will be revised on its expiry in accordance with the rate then applicable.

*You will be entitled, with the Bank's prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Mortgage Loan and interest accrued to the date of repayment or by conversion to the variable interest rate then prevailing. In either of the foregoing events, or in the event of your wishing to make a partial out-of-course payment, **a prepayment/conversion premium may be payable to the Bank sufficient to compensate the Bank for the cost of replacement.** The premium will be computed on the sum of the balance outstanding as at the date of repayment/conversion and interest accrued to that date or in the event of a partial repayment by reference to the amount paid."*

The Complainants wrote to the Provider on **8 December 2008**, requesting that a variable rate of interest be applied to their mortgage loan from **December 2008**. I have not been provided with any evidence to indicate that the Complainants were required to pay a prepayment/conversion premium as per the Provider's correspondence of **31 October 2007** detailed above. It was at this time that the Provider's failure that was subsequently identified in **2016** as part of the Examination that occurred on the Complainants' mortgage loan account, in that the Provider may have given the Complainants an expectation that they could revert to the last tracker interest rate margin that applied to their mortgage loan account after the fixed interest rate period had ended.

In the period between **December 2008** and **March 2010**, the mortgage loan account was on the Provider's standard variable rate which fluctuated between 2.25% and 3.75%. The tracker interest rate that would have been applied was ECB + 0.95%. Between **December 2008** and **March 2010**, the overall tracker rate (ECB + margin) fluctuated between a rate of 1.95% and 3.75%. 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 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 + 0.95%) had been applied to the mortgage account between **December 2008** and **March 2010**, is also represented in the table below at column 5:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Dec 2008	0.30%	€453.48	€441.07	€12.41
Jan 2009	0.30%	€418.43	€405.23	€13.20
Feb- Mar 2009	0.30%	€396.00	€383.42	€12.58
Apr 2009	0.30%	€374.31	€361.71	€12.60
May 2009	0.30%	€363.75	€351.35	€12.40
Jun 2009- Mar 2010	0.30%	€353.40	€341.16	€12.24

I note from the Complainants' submissions that the First Complainant was made redundant in **2009** but has worked two days a week for the last number of years and the Second Complainant has only been working three days a week since **2009**. I accept that such changes to the Complainants' personal and financial circumstances may have had an impact their repayment capacity. I note however that during the impacted period from **December 2008** and **March 2010**, the monthly overpayments on the Complainants' mortgage loan account were small. That said, I acknowledge that the Complainants should not have been overcharged.

In the period between **April 2010** and **March 2013** the mortgage loan account was on the Provider's fixed interest rate of 3.65%. The tracker interest rate that would have been applied was ECB + 0.95%. Between **April 2010** and **March 2013**, the overall tracker rate (ECB + margin) fluctuated between a rate of 1.95% and 3.65%. 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 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 + 0.95%) had been applied to the mortgage account between **April 2010** and **March 2013**, is also represented in the table below at column 5:

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- Mar 2011	1.7%	€411.51	€341.46	€70.05
Apr 2011	1.45%	€411.51	€341.46	€70.05
May-Jun 2011	1.45%	€411.51	€350.57	€60.94
Jul 2011	1.2%	€411.51	€350.57	€60.94
Aug – Oct 2011	1.2%	€411.51	€360.09	€51.42
Nov 2011	1.45%	€411.51	€360.09	€51.42
Dec 2011- Jun 2012	1.7%	€411.51	€341.45	€70.06
Jul 2012	1.95%	€411.51	€341.45	€70.06
Aug 2012- Mar 2013	1.95%	€411.51	€332.52	€78.99

The Provider has submitted copies of two **Supplementary Welfare Allowance forms** completed by the Complainants on **13 August 2010** and **3 September 2010** in relation to an application for a housing mortgage interest supplement. I note that these forms were received by the Provider however it is unclear whether the Complainants were afforded an allowance payable towards the interest part of their mortgage at that time. I have reviewed the Complainants' mortgage loan account statements and it appears that the mortgage loan repayments were made to the Complainants' mortgage loan account in the normal course therefore it does not appear that the Complainants were afforded any allowance in this regard.

I note from the evidence submitted that the Complainants made enquiries about interest only repayments in or around **September 2010**. The Provider issued a letter to the Complainants on **07 September 2010** which details as follows;

"I acknowledge receipt of your request for interest only repayments.

Please note that your next capital and interest repayment of 4411.51 is due on the 17/09/2010. The interest portion of this repayment is €244.52.

The loan is due to expire on 19/02/2035.

Should you wish to apply for interest only facility, I enclose an application form for your attention, which should be fully completed and returned to the bank via your local branch. Your branch should be contacted if you require assistance or advice in completing this form”.

I have not been provided with any evidence to indicate that the Complainants chose to avail of an interest only repayment period in **September 2010** or at any point during the term of the mortgage loan.

I note that the monthly overpayment increased from €12.24 to €70.05 in **April 2010** and increased to €78.99 in **August 2012**. It would appear to me that given the Complainants were relying on two part-time incomes from **2009** onwards, they recognised that they might find themselves in financial difficulty in terms of meeting their mortgage repayments and therefore made enquiries with the Provider as to interest only repayments. There is no doubt that an additional €51.42 to €78.99 per month from **April 2010** to **March 2013** would have been of significant benefit to the Complainants.

In the period between **April 2013** and **July 2016**, the mortgage loan account was on the Provider’s standard variable rate which fluctuated between 0.95% and 4.40%. The tracker interest rate that would have been applied was ECB + 0.95%. Between **April 2013** and **July 2016**, the overall tracker rate (ECB + margin) fluctuated between a rate of 0.95% and 1.70%. 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 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 + 0.95%) had been applied to the mortgage account between **April 2013** and **July 2016**, is also represented in the table below at column 5;

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 2013	2.3%	€425.19	€332.86	€92.33
May 2013	2.55%	€425.19	€332.86	€92.33
Jun 2013	2.95%	€441.05	€324.33	€116.72
Jul -Oct 2013	2.95%	€411.19	€301.67	€109.52
Nov 2013- May 2014	3.2%	€411.19	€294.37	€116.82
Jun – Aug 2014	3.2%	€411.19	€291.42	€119.77
Sep – Nov 2014	3.4%	€411.19	€288.54	€122.65
Dec 2014- May 2015	3.15%	€402.44	€288.46	€113.98
Jun – Sep 2015	2.9%	€393.97	€288.46	€105.51
Oct 2015 – Feb 2016	2.65%	€385.72	€288.45	€97.27
Mar 2016	2.7%	€385.72	€288.45	€97.27
Apr – Jun 2016	2.7%	€385.72	€287.04	€98.68
Jul 2016	2.45%	€377.84	€287.14	€90.70

I note that over the impacted period the monthly overpayments on the mortgage loan continued to increase from **April 2013** when the overpayment per month was €92.33, to **September 2014** when the overpayment per month was €122.65 up to **November 2014**. Thereafter, the monthly overpayment decreased slightly to €97.27 in **October 2015** and to €90.70 in **July 2016**. I accept that these are significant overpayments for the Complainants to have had to bear on a monthly basis. I have no doubt that the Complainants suffered inconvenience as a result of the Provider's overcharging owing to the unavailability of the sums which the Provider overcharged them.

The Complainants contacted the Provider on **14 May 2013**. The Provider's internal notes detail the following telephone call;

"Client looking to fix her mtg payments for 400e for the next 3 years. She is looking to how much of a lump sum she has to pay in order to do this & also wants to know what the rate would be fixed at".

The Provider responded to the Complainants' query by way of letter dated **6 June 2013** which details as follows;

"I refer to the above home loan account and your recent query in relation to a possible out of course lodgement for €5,000.00.

Please find relevant approximations below:

- *If you were to make an out of course lodgement for €5,000.00, your balance would reduce to €68,604.61. Your loan repayments will automatically reduce to approximately €411.33. Your loan expiry date would remain 19/02/2035.*
- *Please note that if you wished your loan repayments to reduce to approximately €400.00, an out of course lodgement for approximately €7,000.00 would be necessary. Your approximate repayment would be €399.45. Your loan expiry date would remain 19/02/2035.*

Please note that the above is only an estimation based on the interest accrued and rate at today's date and it is subject to variation. There is no change to the terms and conditions of your mortgage. You can retain your current interest rate.

Your current repayments based on the standard variable rate of 4.4% are €441.05. Your next repayment is due for collection on 17/06/2013. Your home loan is due to expire on 19/02/2035.

To make an out of course lodgement you can either forward a cheque or draft to this office or make a lodgement directly to your mortgage account at any [Provider] branch. In order to reduce the term of your loan and keep your repayments at their present level we will need a request signed by both parties to the loan.

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I trust the above is to your satisfaction. Please do not hesitate to contact your branch or this office, should you have any queries relating to this or any other aspect of your home loan."

The Provider received a telephone call from the Complainants on **12 June 2013**. The Provider's internal notes detail the following telephone call;

"Spoke to [First Complainant] re accs etc hoping to get payments at 400 and possibly go on <50% ltv var. If she calls again you can pass her through to me"

I note from the **Mortgage Account Statements** submitted in evidence that the Complainants made a lodgement of €5,000 to their mortgage loan account on **14 June 2013** which reduced the balance on their mortgage loan from €73,604.61 to €68,604.61 on that same day. The Provider subsequently issued a letter dated **21 June 2013** to the Complainants which detailed as follows;

"I refer to your Mortgage Loan and acknowledge receipt of out of course lodgement for €5,000 on the 14th June 2013 which has been lodged in permanent reduction of your mortgage loan. I advise that the outstanding balance of your mortgage loan has been reduced to €68,891.63dr. I confirm your monthly repayment has been amended to €411.19. This will take effect from your next repayment which will be debited from your account on the 17th July 2013.

I acknowledge receipt of your request to apply an LTV variable rate (<50%) of 4.09% to the loan. In order to qualify for an LTV variable rate of 4.09% we will require an up to date completed [Provider's] valuation report from a member of the [Provider's] Residential Mortgage Valuers Panel (details available in any [Provider's] local branch or on our website [Provider's website]).

Please find relevant approximations below:

If you were to apply an LTV variable rate (<=50%) of 4.09%. Your loan repayments will automatically reduce to approximately €399.70. Your loan expiry date will remain 19/02/2035.

Please note that the above is only an estimation based on the interest accrued and rate at today's date and it is subject to variation. There is no change to the terms and conditions of your mortgage. You can retain your current interest rate.

/Cont'd...

I trust the above is to your satisfaction. Please do not hesitate to contact your branch or this office should you have any queries relating to this or any other aspect of your home loan. Thank you for your continued business."

The Complainants are seeking compensation of €5,000 for the lump sum payment that they had to make to their mortgage loan account in **2013**. The Complainants state that while they acknowledge that the Provider did not advise or require them to make the lump sum payment, they felt that they had to make a lump sum payment to avoid falling into arrears. Having considered the documentary evidence submitted, it appears to me that the outcome that the Complainants were seeking by making the lump sum payment of €5,000 to their mortgage loan account was to reduce their monthly repayments to €400.

I note that following the lump sum payment of €5,000 by the Complainants, the monthly repayments on their mortgage loan account decreased from €441.05 to €411.19 from **July 2013** to **November 2014**. The difference between the two amounts being €29.86. However, the monthly overpayment on the Complainants' mortgage loan account remained at between €109.52 and €122.65 during that same period.

It appears to me that the Complainants chose to make the lump sum payment of €5,000 of their own volition and by doing so they reduced their overall mortgage loan balance. I appreciate that with the benefit of hindsight, the Complainants may have chosen not to make this lump sum payment and instead retain the money as part of their savings or to use it towards day-to-day living expenses. However, I do not accept that the Provider could reasonably be expected to now refund the €5,000 lump sum payment to the Complainants when the Complainants have benefitted from a reduced overall mortgage balance. The Independent Appeals Panel agreed that Complainants should be entitled to the interest on the lump sum lodgement made by them while on the incorrect interest rate which has been calculated at €512. I note that the Provider has indicated that it accepts the Independent Appeal Panel's award in this regard and is agreeable to pay this amount to the Complainants should they choose to accept it.

The Complainants submit that they had to pay a total of €1,990 in childcare expenses to a family member between **August 2013** and **September 2016** to look after the children, as the First Complainant was unable to do so due to stress caused by the Provider's overcharging.

/Cont'd...

The Complainants have submitted a copy of a handwritten letter from that family member which details as follows;

“To whom it may concern,

This is to confirm that I have received €1,990 from [First Complainant] between the dates Aug 2013 and Sept 2016, I took care of [First Complainant’s] children during those times, I would have them on a Saturday once a month approx. as [First Complainant] found it very difficult to be with them because she was under a lot of pressure and felt it was best for the children not to be around her as she was very irritable,

€300 – Feb-14

€250 – July -14

€350 – Nov-14

€400 – May-15

€300 – Dec -15

€250 – April -16

€190 – Sept -16

Total = €1,990.00

Hoping the above is to your satisfaction”.

I note from the above letter that the total amount received by this family member from **February 2014** to **September 2016** was actually €2,040.

I note that the family member did not receive regular monthly payments and it is unclear whether the family member had to look after the Complainants’ children on a regular basis. It appears that the family member only looked after the Complainants’ children on a *“Saturday once a month approx”*.

I note from the documentation submitted in evidence by the Complainants, in particular a letter from the solicitor of the First Complainant’s parent dated **28 November 2017**, that the First Complainant’s parent had an accident in **2013**. I understand from the evidence submitted that this resulted in the First Complainant having to take on extra responsibilities to include caring for and supporting her parent as well as another family member at the weekends who has special needs.

/Cont’d...

The Complainants further state they had to obtain a loan in the amount of €1,000 from a family member in **June 2015** as they were in “*financial difficulty*” at this time and are seeking compensation in this regard. I note that the monthly overpayment to the Complainants’ mortgage loan account in **June 2015** was €105.51 (€26.37 per week). The overcharging reduced gradually over the following year from **October 2015** to **July 2016**.

It does not appear to me from the documentation that has been furnished in evidence, that the Complainants ever raised any concerns with the Provider in respect of any cash flow difficulties or concerns that they may have had in meeting their mortgage repayments during the period of the overcharge. However, that is not to mean that the Complainants did not experience cash flow problems during this eight-year period considering they had to take care of the needs of their young children and provide care and support to their extended family.

The Complainants are also seeking compensation in the amount of €750 for the time that they have spent engaging with the Provider in relation to the overcharging issue, during the Provider’s internal complaints process, the independent appeal process and by having to submit a complaint to this Office.

The First Complainant details as follows;

“From Feb 2013 to Date Sept 2018

I have worked very hard + put in a lot of hours – writing, phone calls, calling to our Bank,

*50hrs @ €15 per hour
= €750”*

The Complainants have submitted a copy of an invoice from their solicitor dated **28 November 2017** for an amount of €738 in relation to “*professional advice in respect of appeal process regarding [Provider] Tracker Mortgage for two hours work at €300 per hour in respect of the above matter, advising and consideration of the appeal to be submitted on the 6th of December 2017 with particular focus on the level of compensation arbitrarily calculated by the [Provider] at 15% of the interest overcharged on the basis that 15% of the time value money [TVM] calculation”.*

/Cont’d...

I note the Provider has paid a sum of €615 to the Complainants towards the cost of obtaining independent professional advice. In addition, I note that the Independent Appeals Panel agreed that the Complainants be reimbursed the fee of €738 for the legal advice received from their solicitor and the Provider is agreeable to pay this amount to the Complainants should they choose to accept it.

The Complainants are also seeking compensation for the stress and worry that they endured by consequence of the Provider's overcharging. It is evident from the Complainants' submissions that the prolonged overcharging on their mortgage loan account has been a source of inconvenience and stress as they had to forgo family holidays, weekends away as a couple, treats for their children and also added to the stress in providing care and support to their extended family.

I accept that there was significant overcharging of the Complainants by the Provider and I also accept that it cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis throughout the eight-year period caused additional hardship and inconvenience to the Complainants.

I also accept that the evidence supports the Complainants' position that they prioritised their monthly mortgage loan payments at all times during the impacted period and never fell into arrears.

Furthermore, it is important to point out that there was no obligation on the Complainants to discuss their financial difficulties with the Provider and the fact that they did not, is no indication that they were not suffering financial difficulty.

That said, the evidence does not support the assertion that the Provider's overcharging on the mortgage loan account was the sole cause of the stress suffered by the Complainants, in particular, the First Complainant, during this period. The evidence shows that there were clearly other factors at play in the Complainants' family life, that were not related to their dealings with the Provider.

Taking into consideration all of the evidence before me in terms of the particular circumstances of the Complainants, the level of overcharging and the period over which the overcharging occurred, the impact the overcharging had on the Complainants, I accept that the amount of compensation offered by the Provider of €5,488.51 is reasonable in the circumstances of this particular complaint. I note that the Provider has already paid the Complainants the sum of €1,738.51 and has agreed to pay a further €3,750 to the Complainants. I note that the offer of the further €3,750 compensation remains available to the Complainants to accept.

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Following the issuing of the Preliminary Decision on **26 May 2021**, the Complainants confirmed, by way of email dated **11 June 2021**, that they wish to accept the Provider's offer of compensation in the amount of €3,750.

In these circumstances and for the reasons set out above, I do not uphold the complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

28 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.