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<b><u>Decision Ref:</u></b>	2021-0222
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer appropriate compensation or redress CBI Examination
<b><u>Outcome:</u></b>	Substantially upheld

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

This complaint relates to two mortgage loan accounts held by the Complainants with the Provider and an overcharge of interest in the amount of €39,370.94 on the mortgage loan accounts. The mortgage loan accounts that are the subject of this complaint were secured on the Complainants' buy-to-let ("BTL") property.

The Complainants' mortgage loan account ending **7927** was drawn down in **April 2003**. The loan amount was €200,000 and the term of the loan was 25 years.

The Complainants' mortgage loan account ending **2183** was drawn down in **August 2006**. The loan amount was €157,500 and the term of the loan was 25 years.

The Complainants' mortgage loan accounts ending **7927** and **2183** were considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "Examination"). The Provider identified that an error had occurred on both mortgage loan accounts and as such they were deemed to be impacted under that Examination.

The Provider wrote to the Complainants by way of letters dated **9 December 2016** advising them of the errors that had occurred on their mortgage loan accounts.

The Provider detailed the circumstances that caused the “failure to happen” in respect of each mortgage loan account as follows:

*“Your mortgage account had a ‘Buy to Let’ rate, which could not be more than 1.50% over the ECB rate. At a point during your mortgage the interest rate moved to a different rate type. While the interest rate that you moved to was lower for your benefit at the time, we didn’t tell you that as that interest rate moved you might end up paying more than 1.50% over the ECB rate.”*

With respect to the effect of the failure on the mortgage loan accounts 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 31/10/2008, which was when your account was first impacted.”*

The Provider made an offer of redress and compensation in letters dated **9 December 2016** to the Complainants for each mortgage loan account, as follows:

	Account ending <b>7927</b>	Account ending <b>2183</b>
Redress covering; - Total interest overpaid - Interest to reflect the time value of money	€19,986.97	€22,398.20
Compensation	€2,232.54	€2,304.67
Independent professional advice payment	€615.00	€615.00
<b>Total</b>	<b>€22,834.51</b>	<b>€25,317.87</b>

The balance of mortgage loan account ending **7927** was adjusted by €9,780.28 and the balance of mortgage loan account ending **2183** was adjusted by €8,330.76.

Both mortgage loan accounts were restored to a tracker interest rate of ECB + 1.50% in **August 2016**.

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In **March 2017**, the Complainants appealed the redress and compensation offerings to the Independent Appeals Panel. The basis of the Complainants' appeal was the level of compensation offered by the Provider. The Appeals Panel decided on **27 July 2017** that the Complainants were unsuccessful in their appeal for the following reasons:

*"The Panel has carefully considered the appeal of [the Complainants] in accordance with the Terms of Reference and Panel Rules. The Panel considered all information available, the Panel decided that, in the circumstances, it did not agree with [the Complainants] that the claimed losses arose as a result of the failure by the Bank to apply the correct interest rate.*

*In coming to its decision, the Panel sought further information from [the Complainants] which unfortunately was not forthcoming. There was therefore a lack of detailed evidence that the claimed losses arose as a result of the application of the incorrect interest rate.*

...

*Pursuant to the Terms of Reference and Panel Rules, the Panel, in reaching its decision, considered all information available to it and decided that it did not agree with [the Complainants] that the non-financial losses claimed by them arose as a result of the failure by the Bank to apply the correct interest rate."*

As the Complainants have been through the Provider's internal appeals process, this office was in a position to progress the investigation and adjudication of the complaint.

### **The Complainants' Case**

The Complainants submit that the redress and compensation offered by the Provider has not placed the Complainants in the financial position that they would have been in had the overcharging of interest on their mortgage loan accounts not occurred. They detail that they are unhappy with the "Redress process" as it did not allow for their "full participation".

The Complainants submit that the Provider overcharged them during the impacted period "up to an extra €800 per month totalling €60,000. This had the effect of causing a shortfall in the money [they] had available so [they] had to fund the extra mortgage payments from alternative sources ... leaving [them] cash starved for the period". The Complainants further outline that the overcharge occurred "during a very harsh recession". They have set out that at this time they were in negative equity and unable to sell their property.

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The Complainants submit that due to the overcharge on their mortgage loan accounts, they have been *“forced to make financial decisions which have cost [them] a significant amount of money”*. The Complainants detail that this was not acknowledged or compensated for in the redress. The Complainants further outline that because of the overcharge they had to make decisions *“which were required to maintain financial stability and to maintain mortgage payments”*

The Complainants detail that between **2009** and **2016**, the First Complainant was *“forced to work extra hours”* to cover the mortgage repayments and details that he would not have had to work these days had the overcharge not occurred. The Complainants outline that the First Complainant worked approximately 37 additional days during the period of overcharging.

The Complainants detail that they had reduced cash flow available to them because of the monthly overcharge. The Complainants submit that this reduced cash flow resulted in them being unable to exercise particular share options in **2010**.

The Complainants submit that as a result of the overcharge they were *“forced to sell”* shares held in a named company *“to keep up mortgage payments”*. They detail that in **June 2010** they *“had an option to purchase 4,834 shares in [named company] at a cost of €13,801. From [Provider’s] calculations of overcharging - [they] have been overcharged €6,742 in the period up to June 2010 (Option date) the difference between €13,801 and the overcharge is €7,058. Had [the Complainants] not been overcharged [they] would have had no hesitation in raising/borrowing the €7,058 to buy the shares ... Therefore as the rate change was the sole reason [they] did not buy shares [they] now wish to make a claim for 4,834 shares in [the named company] for which [they are] prepared to contribute €13,801.07 being the cost at the option date”*.

The Complainants detail that this decision to sell shares was *“forced”* at the time as they felt it was prudent given their financial circumstances. The Complainants outline that they had to make financial decisions based on the actual or forecasted mortgage loan repayments at that time. The Complainants detail that had the overcharge not occurred, they would have been in a position to purchase the share options at this time. The Complainants outline that by **June 2010**, their accounts were overcharged by €8,707.00.

The Complainants submit that the mortgage account history shows that their mortgage loan accounts were in arrears in **January 2016**, when in fact the accounts would have been in funds if not for the overcharging.

They further state that they encashed their life policies *“around the time of the Arrears saga Jan 2016 ... [They] can confirm these events were related and caused by the bank overcharging.”* The Complainants detail that they encashed the life policies valued at €10,500 after the *“Arrears issue in 2016”* to allow for extra cash flow.

The Complainants submit that *“Although there were periods when [the Complainants] could have asked for Forbearance [they] didn’t. This was a period of high stress for [them], high interest rates and negative equity. [They] made a commitment to pay the mortgages and [they] honoured that commitment by working extra hours for example.”*

The Complainants reject the Provider’s submission that the percentage of compensation it applied is 15%. They say they were *“awarded 7.5% not 15% as stated”*. They further state that *“The Bank will not tell [them] how the 7.5% rate was decided and who decided this would be sufficient compensation”*. The Complainants detail the compensation was decided by the Provider without any consultation from them. The Complainants submit that the level of compensation should be *“reasonable and fair and take the specific circumstances of each impacted customer into account”*.

They submit that the rate of 7.5% is *“discriminatory, as others have achieved much higher rates of compensation.”* They have queried why *“The Redress package discriminates between BTL and PDH customers”* and it implies that one type of customer receives preferential treatment over the other. The Complainants contend that compensation payments should be made irrespective of the status of their accounts.

The Complainants detail that this rate of compensation did not cover the losses incurred due to the overcharging on their mortgage loan accounts and did not place them in the financial position they would have been in had the overcharging not taken place.

### **Customer Service**

The Complainants submit that there have been unacceptable customer service failings on the Provider’s part.

The Complainants allege that they were *“harassed”* by the Provider due to the *“number and frequency of phone calls”* in or around **January** and **February 2016** in relation to alleged arrears arising on the Complainants’ mortgage loan accounts. They say that during the period between **2 February 2016** and **9 February 2016** they received *“approximately 19 phone calls in the space of a week ... I asked them to stop calling but the calls did not stop”*.

The Complainant outlines that the Provider told him that it was an automatic dialling system and he requested to be taken off the system on **05 February 2016**, and again on **09 February 2016**.

The Complainants outline that the Provider claims that the calls stopped after the call received at 12.10pm on **09 February 2016** but submit that they received “*at least 4 more calls that day*”. The Complainants detail that some of the calls received were during the evening and weekends. The Complainants detail that they were unaware that the calls were being recorded.

The Complainants explain that when they requested to meet with the Provider through the Provider’s helpline, they were informed that this would not be possible and that they should visit their branch.

The Complainants submit that they made two telephone calls to the Provider on **16 December 2016**. The Complainants detail that they made the first call at **10.00am** to the Provider’s helpline and the staff member who they spoke to could not answer any of their questions so they asked to speak to a manager. The Complainants submit that a different staff member called them back at **12.45pm**. The Complainants assert that during the second call at **12.45pm**, they are “*confident*” that the Provider did not give them an email address to contact it when requested on this call. The Complainants submit that they asked for a copy of the ECB rates during both calls and they were told to get the rates themselves from the Central Bank.

The Complainants state that during one of the telephone calls between an agent of the Provider and the First Complainant on **16 December 2016**, the Provider’s agent “*made some assertions during the call which were probably outside her remit. For example telling me where I should or should not live, or that I should have sold my property, and she assumed I was getting rental income etc. Was this appropriate behaviour from the helpline? During this phone call I tried to remain calm and mannerly even though [the Provider’s agent] showed no respect for my point of view and would hardly allow me to speak or ask questions without interruption. I stand by my assertion that [the Provider’s agent] was defensive and aggressive in tone. This is exactly the same attitude I received in the [Location] branch*”.

The Complainants also submit that the Provider did not want to meet them to offer an explanation or apology to the Complainants in respect of the overcharging on their mortgage loan accounts.

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The Complainants detail that the Provider refused them “*a direct meeting*” to present their case “*properly and not just through letters and paperwork*” and to present the full facts of their complaint in person. They submit that the Provider did not want to engage with them to understand how the overcharge impacted their lives. The Complainants detail that this is an example of unfair procedures used by the Provider.

The Complainants state that as far as they can recall, they had two meetings with the branch manager. They assert that they were unable to retrieve any satisfactory answers from their branch when they met with the branch manager on **9 January 2017**, who told them “*you know as much as we do*”. They say that the branch manager “*was defensive and aggressive in tone and [the First Complainant] was made to feel that [he] had no right to question him or the Bank. At the last meeting [the First Complainant] was given the impression that I was wasting the managers time as he said we have other things going on here as he ushered me from his office.*”

The Complainants outline that the Provider does not seem to understand “*that their actions of over the eight year period has had further consequences on its customer and these are not addressed in the Redress package*”. The Complainants detail that they worked hard to maintain mortgage repayments as a priority and were “*financially prudent and careful*” to ensure that their mortgage repayments were made, and the overcharging impacted their lives both financially and personally.

The Complainants are seeking compensation as follows:

- a) Compensation of €2,144 for interest paid on credit union loans taken out by the Complainants;
- b) Compensation of €79,700 for the lost opportunity as they were “*forced to sell share options*”;
- c) Compensation for the loss of the Complainants’ life insurance policies of €10,493 in **March 2016**;
- d) Compensation of €18,500 for having to work an additional 37 days of overtime between **2009** and **2016** to help cover the mortgage payments;
- e) Compensation for breach of contract; and
- f) Compensation for the stress incurred in maintaining the mortgage payments over an 8-year period.

The Provider submits that it considered the Complainants’ mortgage loan accounts ending **7927** and **2183** as part of the Examination.

The Provider outlines that the Complainants' mortgage loans were considered to be impacted as part of the Examination in **December 2016** because at a point during both mortgages, the interest rate moved to a different rate type and the Provider failed to tell the Complainants that they might end up paying more than 1.50% over the ECB rate as a result of the move to a different interest rate.

The Provider notes that the terms and conditions provided to the Complainants *"gave a guarantee that the rate (the 'Buy to let' rate) could not be more than 1.50% over the European Central Bank (ECB) rate"* however the interest rates applicable to the Complainants' mortgage loan accounts were often higher than this.

The Provider outlines that it paid the Complainants redress and compensation as follows:

#### **Mortgage Loan Account ending 7927**

The Provider details that in **December 2016** it reduced the balance outstanding on the Complainants' mortgage loan account ending **7927** by €9,780.28 to the level it should have been and refunded the Complainants €18,676.30 which was the amount that they overpaid along with a time value of money ("TVM") payment of €1,310.67. The Provider details that it also paid compensation of €2,232.54.

#### **Mortgage Loan Account ending 2183**

The Provider details that in **December 2016** it reduced the balance outstanding on the Complainants' mortgage loan account ending **2183** by €8,330.76 to the level it should have been and refunded the Complainants €20,694.64 which was the amount that they overpaid along with a TVM payment of €1,703.56. The Provider details that it also paid compensation of €2,304.67.

The Provider details that it also made a payment towards *"Professional Advice"* of €615 in respect of both mortgage loan accounts so that the Complainants could have *"an advisor bring them through the detail of the Redress and Compensation letter dated 09 December 2016"*.

The Provider asserts that the redress offered to the Complainants in **December 2016** aligns with the Central Bank's Tracker Mortgage Review guidelines and *"will result in impacted customers being returned to the position they should have been in if the issue had not occurred"*. The Provider submits that it *"considers how much the customer overpaid in mortgage repayments (i.e. that they were out of pocket) because of the tracker failure and refunds this money to the customer so they are not out of pocket."*

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It details that it has also included a TVM payment in the redress which *“compensates the Customer for not having the benefit of the money overpaid to the account”*.

The Provider outlines that where the impacted account relates to a private dwelling house that is still in the Complainants’ possession, compensation and TVM payment was calculated at 15% of the interest overcharged.

However in later submissions, the Provider notes that this was a clerical error and in circumstances where both of the Complainants’ mortgage loan accounts related to BTL properties, the percentage of compensation was calculated at 7.5%.

The Provider details that the compensation is intended to *“compensate for potential inconvenience, harm, personal suffering or hardship”* and to also be *“reasonable and reflect the detriment involved.”* It affirms that the level of compensation awarded to the Complainants is based on the Provider’s compensation model which is designed to meet the Central Bank’s principles for redress under the Examination. It outlines that *“[t]he 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 notes that this complaint was considered by the Independent Appeals Panel who *“did not agree with the Complainants that the claimed financial and non-financial losses arose as a result of the failure by the Bank to apply the correct interest rate.”*

The Provider submits that it was unaware of any investment decisions that the Complainants may have engaged in during the impacted period, and specifically it states that it was never approached to discuss providing credit to assist with exercising share options. It states that any investment decisions with regard to these shares were taken by the Complainants without the knowledge of or notice to the Provider.

The Provider details that similarly, any decision to encash life assurance policies was a unilateral decision by the Complainants which the Provider had no knowledge or notice of.

The Provider submits that the financial losses claimed by the Complainants cannot be attributable to the loss of the tracker interest rate and it is of the firm view that both of these unilateral decisions were not foreseeable by the Provider and there is insufficient evidence that the decisions were related to the failure by the Provider to apply the correct interest rate.

The Provider details that mortgage loan account ending **7927** was in arrears for one month in **January 2016**, due to one missed payment which was subsequently cleared in **February 2016**. The Provider has acknowledged that mortgage loan account ending **7927** would not have entered arrears had the overcharging not occurred.

The Provider submits that the contact it made with the Complainants in **January and February 2016** in respect of the alleged arrears was *“within regulatory standards”* and references **Provision 22** of the **Code of Conduct for Mortgage Arrears**.

The Provider submits that it has reviewed its records, and in **August 2016** it engaged with the Complainants to explain the redress and compensation process and timing. The Provider submits that it was explained to the Complainants that the redress and compensation process was underway and that *“rectification of their mortgage accounts was the first step and that the Redress and Compensation Letters were to issue by year end”*.

The Provider details that there were a number of further telephone calls between the First Complainant and the Provider. The Provider outlines that there was a call between the First Complainant and a staff member of the Provider on **7 November 2016** at which time the First Complainant sought clarification on how the revised payment was calculated as he felt that the calculations were incorrect. The Provider details that the staff member was not in a position to give the First Complainant this information during the call or facilitate a meeting or answer the First Complainants' questions. The Provider outlines that the member of staff suggested that the First Complainant call to his branch to discuss the matter or to make an appeal to the Independent Appeals Panel. The Provider acknowledges that having reviewed this call, there was a *“shortfall”* in its service in the way the First Complainant's query was handled, in addition to the length of time the Complainant was placed *“on hold”* during the call. The Provider has offered the Complainants a gesture of €250 for this specific customer service failure and has apologised to the Complainants for this customer service failing.

The Provider outlines that on **09 December 2016**, it issued Redress and Compensation letters to the Complainants which explained the circumstances which led to the overcharge on the impacted accounts, how the accounts have been corrected and how the Complainants are compensated.

The Provider refers to the Complainants' submissions regarding their request for an email address for the Provider and submits that during a call on **16 December 2016**, a staff member provided the Complainants with a direct email address for the Provider.

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The Provider further submits that they have no record of a further call taking place at 12.45pm on **16 December 2016**.

The Provider outlines that on **09 January 2017**, the First Complainant met a staff member of the Provider at a particular branch where the staff member “*explained the Redress and Compensation letters with the Complainant and advised the Complainant of the Appeal process if the Complainant was not satisfied with the actions taken by [the Provider]*”. The Provider details that it and its employees endeavour to offer its customers a professional and courteous service. It also details that there are no complaints recorded to indicate that the Complainants had ever outlined their dissatisfaction with the service that they received from the Provider’s staff.

### **The Complaints for Adjudication**

The complaints for adjudication are as follows:

- (a) The Provider has not offered adequate compensation to the Complainants by consequence of the Provider’s failure in relation to their mortgage loan accounts, and
- (b) The Provider failed to provide adequate customer service to the Complainants, in that the Provider has not engaged with the Complainants and offered to meet them throughout this process.

### **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.

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

Following the issue of my Preliminary Decision, the Complainants made one further submission by way of e-mail to this Office received on **20 May 2021**, a copy of which was transmitted to the Provider for its consideration.

The Provider made a further submission by way of letter dated **04 June 2021**, a copy of which was transmitted to the Complainants for their consideration. The Complainants indicated to this office by way of email received on **10 June 2021** that they had no further submissions to make.

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

At the outset, I note the Complainants have made submissions detailing that there were failings in the redress and appeals processes *"as the Independent Appeals Panel were biased, lacked transparency and did not provide customer engagement."* The jurisdiction of this Office is confined to resolving individual complaints against regulated financial service providers and pension providers. In this regard, **Section 44 (1)** of the ***Financial Services and Pensions Ombudsman Act 2017*** states as follows:

*"A complainant may make a complaint to the Ombudsman in relation to the following:*

*(a) The conduct of a **financial service provider** involving-*

- a. the provision of a financial service by the financial service provider,*
- b. an offer by the financial service provider to provide such a service, or*
- c. a failure by the financial services provider to provide a particular financial service requested by the Complainant."*

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The Independent Appeals Panel was set up as part of the Central Bank directed Tracker Mortgage Examination framework and the guidelines that were issued by the Central Bank. It is important to note that the Central Bank is the regulator of financial service providers. The role of the Central Bank as regulator is quite distinct from the role of the Financial Services and Pensions Ombudsman. As such, this office does not have any oversight role in relation to the Central Bank directed Tracker Mortgage Examination framework or in relation to the manner in which the Independent Appeals Panel as part of the Examination was set up or operates.

This office wrote to the Complainants on **12 April 2019**, explaining that it is not the function of this Office to investigate the conduct of the Independent Appeals Panel process on the basis that the Independent Appeals Panel is not providing a financial service within the meaning of **Section 44 of the Financial Services and Pensions Ombudsman Act 2017** and therefore, this office does not have jurisdiction to make a decision on this aspect of the Complainants' complaint. The Complainants submitted to this office by email dated **15 April 2019** that they accept the jurisdiction of this office and that I will not be adjudicating on this aspect of the complaint.

The grievances outlined by the Complainants regarding the failings in the redress and appeals processes and in particular that the Independent Appeals Panel were biased, lacked transparency and did not provide for customer engagement, do not form part of this investigation and decision for the reasons set out above.

I will now consider the conducts complained of that are being investigated.

**(A) The Provider has not offered adequate compensation to the Complainants by consequence of its failure in relation to their mortgage loan accounts**

The Provider has detailed that the redress and compensation offered and paid to the Complainants 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 **€42,385.17** reflects the amount of interest overpaid (€39,370.94) on both mortgage loan accounts and includes a payment to reflect the time value of money (€3,014.23). The Provider also adjusted the account balance outstanding on both mortgage loan accounts, totalling €18,111.04.

The Provider also paid the Complainants compensation totalling €4,537.21 (comprising of €2,232.54 for account ending **7927** and €2394.67 for account ending **2183**), in addition to €615.00 for each mortgage loan account for the purposes of seeking professional advice.

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The Provider is of the view that the redress and compensation paid is fair and reasonable and the Complainants have not made out a reasonable claim for additional compensation beyond what the Provider has already paid to the Complainants.

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

The Complainants held two mortgage loan accounts with the Provider both of which are the subject of this complaint and are detailed below.

- **Mortgage loan account ending 7297**

The **Loan Offer Letter** dated **26 February 2003** for mortgage account ending **7297** detailed as follows:

1. **“Amount:** €200,000.00 (two hundred thousand euro)
2. **Term & Nature:** 25 year Repayment Loan
3. **Purpose of Loan:** Towards the refinancing of existing [Provider] loan against property at [Address] at an amount of €82,000, and to raise a further €112,000 towards the cost of a new property.
4. **Rate of Interest:** **Year 1:**  
Variable at 3.70% p.a.  
Rate Basis: Discounted Buy to Let Rate.  
  
**After year 1:**  
Rate Basis: Variable Buy to Let Rate  
(Currently 4.2% p.a.).

**Important Notice:**

**The actual rate applicable shall be the rate available from [the Provider] on the date of drawdown, using the Rate Basis shown and may be higher or lower than that quoted above”**

The Complainants signed the **Acceptance** in respect of mortgage loan account ending **7927** on **03 March 2003** on the following terms:

*“We accept your foregoing offer of loan facilities dated 26<sup>th</sup> February 2003 on the terms thereof.”*

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The loan amount was €200,000 and the term of the loan was 25 years. The Loan Offer detailed that the Provider's variable discounted BTL rate of 3.70% would apply for the first year of the term of the loan, followed by the Provider's variable BTL rate for the remainder of the term which, at the time, was at 4.20%.

This mortgage loan was secured on the Complainants' BTL property, which for ease of reference I will refer to as Property 1. This mortgage loan account was drawn down in **April 2003** on the Provider's variable discounted BTL rate.

- **Mortgage loan account ending 2183**

The **Amended Loan Offer** dated **30 May 2006** for mortgage account ending **2183** detailed as follows:

1. **"Amount:** €157,500.00 (*one hundred and fifty seven thousand, five hundred euro*)
2. **Term & Nature:** *25 year Repayment Loan (including a capital moratorium for the first 60 months).*
3. **Purpose of Loan:** *Towards purchase of [Property 2] at a cost of €175,000 plus fees*
4. **Rate of Interest:** *Variable at 4.00% p.a.  
Rate Basis: Variable Buy To Let Rate*
5. **Repayments:** *€525.00 per month comprising interest only for the first 60 months payments based on the above variable rate.  
  
After expiry of the initial 60 months capital moratorium payments shall comprise of principal and interest and shall be calculated to amortise the loan and interest thereon over the remaining term by equal instalments."*

The First Complainant signed the **Acceptance** in respect of mortgage loan account ending **2183** on **05 June 2006** on the following terms:

*"I accept your foregoing offer of loan facilities dated 30<sup>th</sup> May 2006 on the terms thereof."*

This mortgage loan was secured on the Complainants' BTL property, which for ease of reference I will refer to as Property 2. This mortgage loan account was drawn down in **August 2006** on the Provider's BTL variable rate.

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The "**Standard Commercial Loan Conditions**" in respect of both mortgage loan accounts contained the following:

*"DEFINITIONS*

...

*"ECB Rate" is defined as the European Central Bank's Main Refinancing Operating Bid Rate as set by the European Central Bank.*

*"Buy To Let Rate" shall be the rate as determined by [the Provider] from time to time for variable residential investment loans. The dates on which the "Buy to Let Rate" shall vary shall be determined by the timing of changes to the ECB Rate and shall take place on the sooner of:-*

...

*Subject to the timing differences outline above, [the Provider] shall undertake that the variable "Buy To Let" Rate shall not at any time be higher than 1.5% over the ECB rate, throughout the term of the loan."*

It is clear that the Complainants had a 'Price Promise' in respect of both mortgage loan accounts, which meant that the "Buy to Let" rate could not be more than 1.50% over the ECB rate.

Both mortgage loan accounts were drawn down on the Provider's BTL variable rate. In a document contained in the documents received from the Independent Appeals Panel entitled "*CASE SUMMARY AND RESPONSE*", the Provider details the following:

*"24/11/2006: Account Number [ending 7927]: Loan rate structure changed from Variable Buy To Let Rate to Commercial Base Rate loan to avail of a lower interest rate. Interest rate was reduced from 4.75% to 4.5%.*

*May/June 2008: Account number [ending 7927] and Account number ending [2183]: Borrowers requested and were approved a switch in interest rate to a Discounted Standard Variable Rate. Rate amended to Standard Variable Rate of 4.99% and a discount of 0.34% applied."*

It appears from the Provider's submissions that the Complainants requested the Provider to apply its standard variable rate to both mortgage loan accounts in **May/ June 2008**. I note from the documentation submitted in evidence that this interest rate change was not applied to both mortgage loan accounts until **31 October 2008** and this does not appear to be in dispute between the parties.

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It was at this time, **31 October 2008**, that the failure that was subsequently identified in **August 2016** as part of the Examination occurred on the Complainants' mortgage loan account, in that, the interest rate applicable to the Complainants' mortgage loan could not be more than 1.50% over the ECB rate. However from **November 2008** the actual rate on the account was higher than the ECB + 1.50% rate.

I will firstly consider the mortgage loan accounts in the period between **November 2008** and **July 2010**.

In the period between **November 2008** and **July 2010**, the mortgage loan accounts remained on the Provider's standard variable rate which fluctuated between 4.29% and 5.54%. The tracker interest rate that should have been applied was ECB + 1.5%. Between **November 2008** and **August 2016**, the overall tracker rate (ECB + margin) fluctuated between a rate of 2.50% and 5.25%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage loan accounts between **November 2008** and **July 2010**, is also represented in the table below:

Date Range (inclusive)	Column 2	Mortgage Loan Account ending 7927			Mortgage Loan Account ending		
		Actual Monthly Repayments excl. insurance	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month	Column 2	Actual Monthly Repayments excl. insurance	Monthly repayments if the mortgage was on the Tracker Rate
Nov 2008	0.29%	€1,204.39	€1,176.50	€27.89	0.29%	€727.12	€689.
Dec 2008	0.79%	€1,204.39	€1,129.39	€75.00	0.79%	€727.12	€623.
Jan 2009	0.79%	€1,133.45	€1,060.96	€72.49	0.79%	€628.96	€525.
Feb - Mar 2009	1.29%	€1,133.45	€1,016.84	€116.61	1.29%	€628.96	€459.
Apr 2009	1.54%	€1,110.57	€974.13	€136.44	1.54%	€596.13	€393.
May 2009	1.79%	€1,088.03	€953.26	€134.77	1.54%	€563.31	€393.
Jun 2009-Jul 2010	1.79%	€1,088.03	€974.13	€155.29	1.79%	€563.31	€328.

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The Complainants have detailed in their post Preliminary Decision submissions received on **20 May 2021** that during the period of overcharge, the Complainants were separated. The Complainants further detail that the Second Complainant stayed at home “...to care for [their] [number] children age [redacted] and [redacted] in 2008”.

The First Complainant details that the Second Complainant lived in one property, whilst he lived separately in the property secured by mortgage loan account ending **7927** because he needed to be close to work. The Complainants detail that during the period of overcharge, they received no rental income for the property secured by mortgage loan account ending **7927**.

The First Complainant outlines that he paid the mortgages on both properties. The First Complainant details that in circumstances where the Second Complainant was not working “for most of the period”, he was “paying pretty much for everything” in both properties during this period.

The Complainants maintain that as a result of the overcharge they were “forced to sell” shares held in a named company “to keep up mortgage payments”. They further detail that in **June 2010** they were unable to exercise a share option due to the overcharge to purchase 4,834 shares for €13,801.07 as they had been overcharged €6,742 by that point in time.

The Complainants submitted a document as part of their appeal dated **01 March 2017** to the Independent Appeals Panel, which details the following:

<u><i>“Description of additional financial losses claimed</i></u>	<u><i>Amount€</i></u>
<i>Lost opportunity to purchase share options in [Company]</i>	
<i>Option Scheme. Number of shares 4834, value 27/02/17</i>	<i>€68,159</i>
<i>+ dividends €6,501</i>	<i>74,660”</i>

The Complainants submit that if €6,742, being the total amount of the interest overcharged up to **June 2010**, had been available to them in **2010**, they would have been able to raise the €7,059 needed to purchase share options.

On **1 July 2010**, the Complainants state that they sold 4,834 shares in the named company for €17,499.08.

The Complainants appear to be of the view that they are entitled to a higher compensation payment to reflect the current value of the shares had they invested in

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those shares in or around **June 2010**, in addition to the dividends on those share options.

I note that the Independent Appeals Panel issued a letter to the Complainants dated **14 June 2017** whereby the Independent Appeals Panel sought additional evidence from the Complainants as follows:

*“The Panel needs to understand your income and expenditure and domestic circumstances during the impacted period in order to come to a view on your appeal. Therefore, in order to assist the Panel in its consideration of your appeal, the Panel would be most obliged if you could furnish it with the following information:*

- *Full details of each of your earnings for the impacted period being 31 October 2008 to 31 August 2016 with supporting documentation including your balancing statements from the Revenue Commissioners for each of the relevant years.*
- *Full details of the rental income on either and/or both of the properties, being [Property 1] and [Property 2], as applicable with supporting documentation.*
- *Details of each of your expenditure over the impacted period.*

*The Panel would also like to more fully understand why you did not seek forbearance during the impacted period and any further detail in this regard would be most appreciated.”*

I note that the Complainants responded by way of letter dated **18 June 2017** detailing as follows:

*“In response to your letter [t]he customer confirms that [h]e is fully tax compliant and has filed tax returns for the years in question 2008 – 2016.*

...

*The customer confirms Forbearance was achieved for [Property 2] in the form of Interest only for the period of five years 2006 – 2011.*

*The customer is uncomfortable submitting financial accounts including Revenue balancing statements as he does not trust the Bank who will have full access to any documentation submitted to the panel.”*

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The Complainants submit that if they were in a position to exercise their share options in **June 2010**, they could have purchased €13,801.07 in shares. I have not been supplied with any evidence from the Complainants as to what investment opportunities or specific products were available to them up to **June 2010** to support their claims.

I note that the Complainants have indicated that had they not been overcharged €6,742 by this point in time, they would have been able to raise the additional €7,058 required to purchase the shares in **June 2010**. That said, it would appear to me that despite the Complainants being in a position to raise €7,058, they still chose not to exercise their share options at that time. I appreciate that, with the benefit of hindsight, the Complainants are of the view that they may have used that money differently had it been available to them at the time by seizing the most beneficial investment opportunities to include the purchase of shares in a named company. However, the Complainants have not submitted any evidence to support their assertion that they might have purchased those shares had this amount been available to them and that the monthly overpayments on their mortgage loan accounts were the sole reason that they did not exercise their share options at the time.

I further note that the Complainants indicated that they sold 4,834 shares in the named company for €17,499.08 on **1 July 2010**. The Complainants have indicated that they felt it was prudent to sell these shares given their financial circumstances as they had to make financial decisions based on actual or forecasted mortgage loan repayments.

At the time the Complainants sold these shares in **July 2010**, I note that they were overpaying €390.35 per month in total across both mortgage loan accounts. I accept that this is a significant amount to be overcharged on a monthly basis and is likely to have been a factor in the Complainants' decision making and financial planning.

I note the Provider's statement that it was never approached about, and was unaware of, any investment decisions made by the Complainants. The Provider seems to completely miss the point. It is irrelevant whether the Provider was aware of the decision the Complainants made, at the time they made that decision. I see no reason why the Complainants would or should have informed the Provider at the time. The issue for consideration is whether the Provider's conduct in overcharging contributed to the decision.

I will now consider the mortgage loan accounts in the period between **August 2010** and **August 2016**.

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In the period between **August 2010** and **August 2016**, the mortgage loan accounts remained on the Provider's standard variable rate which fluctuated between 4.29% and 4.74%. The tracker interest rate that should have been applied was ECB + 1.5%. Between **August 2010** and **August 2016**, the overall tracker rate (ECB + margin) fluctuated between a rate of 1.50% and 2.50%.

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

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.5%) had been applied to the mortgage loan accounts between **August 2010** and **August 2016**, is also represented in the table below:

Date Range (inclusive)	Mortgage Loan Account ending 7927				Mortgage Loan Account ending 218		
	Column 2	Actual Monthly Repayments excl. insurance	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month	Column 2	Actual Monthly Repayments excl. insurance	Monthly repayments if the mortgage was on the Tracker Rate
Aug 2010 - Mar 2011	1.79%	€1,088.03	€974.13	€155.29	1.79%	€563.31	€328.00
Apr 2011	2.09%	€1,112.75	€932.74	€180.01	2.09%	€602.70	€328.00
May – Jul 2011	1.84%	€1,112.75	€950.61	€152.14	1.84%	€602.70	€360.00
Aug 2011	1.84%	€1,133.24	€968.97	€164.27	1.84%	€635.53	€393.00
Sept 2011	1.84%	€1,133.24	€968.97	€164.27	1.84%	€1026.00	€872.00
Oct 2011 – Nov 2011	2.09%	€1,153.77	€968.97	€184.80	2.09%	€1047.66	€872.00
Dec 2011	2.09%	€1,133.42	€950.44	€182.98	2.09%	€1026.15	€852.00
Jan – Jul 2012	1.99%	€1,105.39	€932.45	€172.94	1.99%	€996.55	€833.00

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Aug 2012 – May 2013	2.24%	€1,105.39	€914.76	<b>€190.63</b>	2.24%	€996.55	€814.
Jun – Nov 2013	2.74%	€1,123.85	€897.73	<b>€226.12</b>	2.74%	€1016.36	€796.
Dec 2013 – Jun 2014	2.99%	€1,123.85	€881.74	<b>€242.11</b>	2.99%	€1016.36	€779.
Jul – Sep 2014	3.09%	€1,123.85	€875.12	<b>€248.73</b>	3.09%	€1016.36	€772.
Oct 2014 – Mar 2016	3.19%	€1,123.85	€869.04	<b>€254.81</b>	3.19%	€1016.36	€756.
Apr – Aug 2016	3.24%	€1,123.85	€863.88	<b>€259.97</b>	3.24%	€1016.36	€760.

The Complainants have submitted that they had to take out loans and pay interest on those loans between **2011** and **2016**. From the evidence submitted the nature of these loans is unclear.

I note that the overcharge on the Complainants' mortgage loan accounts occurred over approximately an eight-year period (**November 2008 – August 2016**). The period that is most significant is the period between **June 2013** and **August 2016**, where the evidence shows that the difference between the monthly repayments made and the monthly repayments that would have been required to have been made if a tracker interest rate applied reached in excess of €445 per month and at one point €515 per month across both mortgage loan accounts. I am of the view that this was significant over payment borne by the Complainants on a monthly basis.

The Complainants have submitted in evidence a **Credit Agreement** between a third-party financial service provider and the First Complainant dated **6 November 2015**. The particulars of the Credit Agreement detail that the loan amount was for €25,000, the term of the loan was 60 months and the interest payable on the loan was €3,920.57.

The Complainants detail that they were forced to encash their life insurance policies in **March 2016**. Two letters from the insurer each dated **24 March 2016** have been furnished in evidence which detail as follows:

*“Plan number:  
[Ending] 8489*

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*You recently asked to withdraw funds from your plan.*

*I am pleased to confirm that your account number ending 1381 will be credited with €7,807.89 and available to you in 4 working days from the date of this letter.*

*This amount represents the full value of this plan which, following this payment, is now finished.”*

*“Plan number:  
[Ending] 0911*

*You recently asked to withdraw funds from your plan.*

*I am pleased to confirm that your account number ending 1381 will be credited with €2,685.44 and available to you in 4 working days from the date of this letter.*

*This amount represents the full value of this plan which, following this payment, is now finished.”*

I note that the Provider states that any decision to encash life assurance policies was a unilateral decision by the Complainants and that the Provider had no knowledge or notice of these decisions. Again, I would point out that it is completely irrelevant whether the Provider knew at that time or not. The issue it should be concerned with now and the issue I must consider is whether the Provider’s conduct in overcharging the Complainants contributed to these decisions.

There can be no doubt that the Complainants had to make significant decisions regarding their finances and had to adjust their finances in order to ensure that they were able to meet their mortgage loan payments on both mortgage loans. I have no doubt that these were difficult decisions for the Complainants to make and it is of no relevance that they did not consult the Provider on these matters.

The Provider submits that at no point did the Complainants seek forbearance on either mortgage loan account. The Complainants have outlined that there were periods when they could have asked for forbearance, but they did not as they had “*made a commitment to pay the mortgages*” and they *honoured that commitment*”. However, I also note that the Complainants indicated in their letter to the Independent Appeals Panel dated **18 June 2017** that “*Forbearance was achieved for [Property 2] in the form of Interest only for the period of five years 2006 – 2011.*”

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I note that the terms and conditions of the **Amended Loan Offer** dated **30 May 2006** for mortgage account ending **2183** detail that the monthly repayments were *“interest only for the first 60 months payments based on the above variable rate. After expiry of the initial 60 months capital moratorium payments shall comprise of principal and interest and shall be calculated to amortise the loan and interest thereon over the remaining term by equal instalments.”* Therefore, I do not accept the Complainants’ submission that they entered into forbearance arrangements for mortgage loan account ending **2183** from **2006 to 2011**, as the evidence shows that mortgage loan account ending **2183** was accepted and drawn down on the basis that there would be a moratorium on capital repayments for the first 60 months of the term.

The Provider outlines that there is no evidence that the Complainants requested forbearance due to financial difficulties or a cash flow problem. It outlines that it *“has in place a process for assessing the forbearance requirement and offering a number of different options with a view to putting in place a solution that is supportive and appropriate and fully compliant with the Code of Conduct for Mortgage Arrears.”*

I am of the view that the Provider in its presentation of this argument has sought to over-simplify the detailed and lengthy documentary process that must be undertaken by a borrower/customer in order to enter into an approved forbearance arrangement with a financial service provider and the potential consequences of doing so. Nonetheless, I have not been furnished with any evidence that would suggest that the Complainants ever raised any concerns with the Provider in relation to their personal or financial circumstances or difficulties in meeting their mortgage repayments.

The Provider details that it was not aware of any investment decisions made by or considered by the Complainants during the impacted period. Furthermore, the Provider asserts that it was never approached by the Complainants to discuss providing additional credit to assist the Complainants and any investment decisions, to include the encashment of any saving or policies which were unilaterally taken by the Complainants without notice to the Provider. The Provider suggests that these decisions were not foreseeable by the Provider and there is insufficient evidence that the decisions were related to the error on the Complainants’ mortgage loan accounts.

The First Complainant submits that in order to make the mortgage repayments in **October/November 2014** he had to earn approximately €1,500 extra per month and therefore worked an additional 37 days to cover mortgage payments of €18,500. I am mindful that as a result of working these additional days the First Complainant missed out on spending time with his family during this period. I also acknowledge the difficult decisions that the Complainants collectively had to make regarding their investments as they submit that they were unable to sustain their investments, their insurance policies

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and their mortgage loan repayments. It is clear that the Complainants made sacrifices in order to make their monthly mortgage loan repayments.

The suggestion by the Provider that the Complainants have not demonstrated any inconvenience is in my view extremely unpalatable. I am at a complete loss to know how the Provider has arrived at this view in the particular circumstances of this complaint. To me, there cannot be any greater demonstration of inconvenience than the fact that the Complainants, given their personal circumstances, were being overcharged often in excess of €400 per month across both mortgage loan accounts. I am of the view that the evidence supports the Complainants' position that they prioritised their mortgage loan payments at all times during the eight-year impacted period and I have no doubt that the Complainants suffered inconvenience as a result of the Provider's overcharging.

Despite acknowledging its failings and awarding the Complainants compensation, the Provider does not believe that the Complainants have demonstrated any inconvenience. I cannot understand how any reasonable person can examine the evidence in this complaint and come to the conclusion that the Complainants have suffered no inconvenience as a result of the Provider's conduct in overcharging the Complainants on their mortgage loan accounts. Throughout the eight-year impacted period, the Complainants were denied the opportunity of making informed decisions about their finances as they did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan accounts ending **7297** and **2183**. It cannot but be the case that the unavailability of sums of up to €259.97 per month on mortgage loan account ending **7297** and €255.94 per month on mortgage loan account ending **2183** over an eight-year period was a source of great inconvenience to the Complainants. In this regard, I find it extraordinary that the Provider has stated that it does not believe that the Complainants have demonstrated any inconvenience.

Therefore, I partially uphold this aspect of the complaint.

**(B) The Provider failed to provide adequate customer service to the Complainants, in that the Provider has not engaged with the Complainants and offered to meet them throughout this process**

In **January 2016**, I note that both of the Complainants' mortgage loan accounts were deemed by the Provider to be in arrears for one month due to one missed payment. The arrears were subsequently cleared in **February 2016**. I note from the evidence submitted

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that the Provider issued two letters in respect of each mortgage loan account to the Complainants on **30 January 2016** which detail as follows:

**Mortgage loan account ending 7927**

*“Our records show that, at close of business on the above date, payments on your mortgage account were in arrears by €1,168.19. Details are show below.*

<i>Date account went into arrears<sup>1</sup></i>	<i>1/01/2016</i>
<i>Amount of arrears</i>	<i>€1,168.19</i>
<i>Number and total amount of full (F)/ partial (P) payments missed</i>	<i>1 (1F/ 0P)</i>
<i>Additional interest arising from the above arrears to be applied next month</i>	<i>€4.61</i>
<i>Accumulated additional interest applied to your account arising from mortgage arrears</i>	<i>€4.61</i>
<i>Applicable interest rate</i>	<i>4.7400%</i>

*1 The date on which the account went into arrears is the repayment due date for the monthly payment of your mortgage*

*2 In certain circumstances the number of missed payments shown may differ slightly from the actual number of missed payments.”*

**Mortgage loan account ending 2183**

*“Our records show that, at close of business on the above date, payments on your mortgage account were in arrears by €1,053.09. Details are show below.*

<i>Date account went into arrears</i>	<i>1/01/2016</i>
<i>Amount of arrears</i>	<i>€1,053.09</i>
<i>Number and total amount of full (F)/ partial (P) payments missed</i>	<i>1 (1F/ 0P)</i>
<i>Additional interest arising from the above arrears to be applied next month</i>	<i>€4.61</i>
<i>Accumulated additional interest applied to your account arising from mortgage arrears</i>	<i>€4.61</i>
<i>Applicable interest rate</i>	<i>4.7400%</i>

*1 The date on which the account went into arrears is the repayment due date for the monthly payment of your mortgage*

*2 In certain circumstances the number of missed payments shown may differ slightly from the actual number of missed payments”*

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The letters further detailed as follows:

*“If you have already paid this amount since the above date, or if you have agreed specific arrangements with us to clear this amount, please disregard this letter. If neither of these situations apply, please arrange to make this payment directly to your mortgage immediately or contact one of our experienced advisors who will discuss the options option to you to bring your mortgage account up to date.*

...

*It is vital that you engage and cooperate with [the Provider] in relation to your current arrears situation. Where you do not cooperate with [the Provider] fees and charges may apply. Please refer to the schedule of charges leaflet enclosed.*

*Should you require further information in relation to the arrears management process, please refer to the booklet ‘Guide for Retail Buy to Let Borrowers’ which is available on our website [REDACTED] from your local [Provider] office or by calling [NUMBER].*

*Please note that non-payment of your loan can have a negative impact on your credit rating both within [the Provider] and with other financial institutions. On a monthly basis information may be passed to the Irish Credit Bureau, including your payment profile information and the number of missed payments.*

*If you do not make your monthly payments, it may take longer than originally scheduled to pay off the loan. How much longer will depend on the amount owed and the length of time it has been unpaid.*

*It is important that you discuss your financial situation with an independent advisor. We recommend that you contact your loan Money Advice and Budgeting Service (MABS). To contact MABS phone [NUMBER] or visit [REDACTED].”*

The letters also detailed:

*\*\*\*Please see important information relation to loan accounts\*\**

- *WARNING YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT.*
- *THE PAYMENT RATE ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME (variable rate loans only)”*

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I note that the Provider appears to have made an error in respect of the arrears issue as the Provider states that the Complainants' mortgage loan account ending **2183** was never in arrears. This appears to be incorrect from a review of the mortgage loan account history and the letter that issued to the Complainants on **30 January 2016**, as outlined above, which shows that mortgage loan account ending **2183** was in arrears in the amount of €1,053.09 as of **30 January 2016**. It would appear to me from the "*Financial Summary*" section of the Complainants' redress and compensation letters dated **09 December 2016**, that the Complainants' accounts would likely not have fallen into arrears during the impacted period if the correct interest rate had been applied. The Provider acknowledges that mortgage loan account ending **7927** would not have entered arrears had the overcharging not occurred. The Provider has not acknowledged this point in relation to mortgage loan account ending **2183**, however based on the evidence submitted I accept that mortgage loan account ending **2183** would not have entered arrears but for the overcharging.

The Complainants state that they received two letters and approximately nineteen telephone calls from the Provider in respect of the arrears on their mortgage loan accounts following one missed payment, which they claim was harassment.

The Provider details that it acted in accordance with **Provision 22** of the **Code of Conduct on Mortgage Arrears ("CCMA") 2013** which provides as follows:

*"22. A lender must ensure that:*

- a) the level of communications from the lender, or any third party acting on its behalf is proportionate and not excessive, taking into account the circumstances of the borrowers, including that unnecessarily frequent communications are not made;*
- b) communication with borrowers are not aggressive, intimidating or harassing;*
- c) borrowers are given sufficient time to complete any action they have committed to before follow up communication is attempted. In deciding what constitutes sufficient time, consideration must be given to the action that a borrower has committed to carry out, including whether he/she may require assistance from a third party in carrying out the action; and*
- d) steps are taken to agree future communications with borrowers."*

I note the Provider has furnished in evidence internal notes which detail that the Provider placed telephone calls to the Complainants on the following dates which were not answered:

<b>02 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>
<b>02 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>
<b>02 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>
<b>03 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>
<b>03 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>
<b>03 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>
<b>04 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>
<b>04 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>
<b>04 February 2016</b>	<i>"UNSUCCESSFUL CALL ATTEMPT MADE"</i>

It is apparent from the evidence that the Provider contacted, or attempted to contact the Complainants, by telephone on multiple occasions in **February 2016**. However, I note that the majority of the Provider's telephone calls were not answered by the Complainants. On the occasions that the Complainants did answer the telephone calls it appears to me that the Complainants were not willing to engage in discussions with the Provider over the telephone regarding the arrears on the mortgage loan accounts.

The Provider outlines that it acknowledges that the system notes may be difficult to decipher and that the *"time stamps on most of the notes do not directly reflect actual calls or attempts at calls."*

I further note that the Complainants did not complete the data protection questions when the Provider's calls were successful in order for the Provider to discuss the arrears on both mortgage loan accounts. The Provider's internal notes outline a telephone conversation that took place between the First Complainant and the Provider on **09 February 2016** as follows:

- "
- *SPOKE TO[FIRST COMPLAINANT], NO DP DONE*
  - *MR ADV HE HAD ASKED TO STOP RECEIVING CALLS*
  - *ADV MR WE NEED TO SPEAK WITH HIM*
  - *WOULD NOT COMPLETE DP*
  - *ADV MR OF TIMES CAN CALLBACK"*

The First Complainant takes issue that he was not made aware at the time that the telephone calls were being recorded. The Provider outlines that a total of four telephone

calls were answered between **05 February 2016** and **09 February 2016** and the Provider was unable to continue with calls as the First Complainant was not comfortable confirming his identity and answering the data protection and security questions. Therefore, the Provider states that it did not have an opportunity to inform the First Complainant that the calls were being recorded as this would happen after the security questions are answered. It is disappointing to note that although it appears that the Provider did record the telephone calls as outlined above, such recordings have not been furnished in evidence. The Provider details that it *“is obliged not to identify the part of the Bank from which the call is originating until the customer identity has been established”*.

I note from the Provider’s internal notes that there does not appear to be any further telephone calls made to the Complainants in respect of the arrears after **09 February 2016** and it does not appear that the Complainants returned the Provider’s call.

**Provisions 8.6 and 8.8 of the Consumer Protection Code 2012 (“CPC 2012”)** state as follows;

*8.6 “Where an account remains in **arrears** 31 calendar days after the arrears first arose, a **regulated entity** must within three **business days** inform the **personal consumer** and any guarantor of the loan, on paper or on another **durable medium**, of the status of the account.*

*This information must include the following:*

- a) the date the account fell into **arrears**;*
- b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts);*
- c) the amount of the **arrears** to date;*
- d) the interest rate applicable to the **arrears**;*
- e) details of any **charges** in relation to the **arrears** that may be applied;*
- f) the importance of the **personal consumer** engaging with the regulated entity in order to address the **arrears**;*
- g) relevant contact points;*
- h) the consequences of continued non-payment, including where relevant, sharing of data relating to the **consumer’s arrears** with the Irish Credit Bureau or any other credit reference agency;*
- i) if relevant, any impact of the non-payment on other accounts held by the **personal consumer** with that **regulated entity** including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and*

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*j) a statement that the **personal consumer** may wish to seek assistance from MABS and contact details for the MABS National Helpline and the link to the MABS website.*

...

*8.8 Where the **arrears** persist, an updated version of the information required in Provision 8.6 must be provided to the **personal consumer**, on paper or on another **durable medium**, every three months.”*

Under **Provision 8** of the **CPC 2012** the Provider is obliged to issue correspondence to customers in arrears.

In the circumstances of this particular matter, and where the Complainants had not been in arrears prior to the missed payments in **January 2016**, I understand that the letters issued to the Complainants on **30 January 2016** were difficult for the Complainants to receive given that they had never experienced arrears prior to this or were likely to be unaware of the Provider’s processes regarding any arrears on a mortgage loan account. However, I do not consider it reasonable to characterise the nature of the telephone communications and the letters dated **30 January 2016**, which were issued in line with the Provider’s obligations under the **CPC 2012**, to amount to “*harassment*”.

The Complainants submit that there were unacceptable customer service failings on the Provider’s part throughout the Examination process. The Complainants submit that the Provider refused to meet with them so that they could present the full facts of their complaint in person and claim this is an example of unfair procedures used by the Provider. The Complainants assert that the Provider had no interest in meeting them or hearing their case in relation to the Provider’s failings on their mortgage loan accounts.

I note from the telephone call dated **7 November 2016** that the Complainants sought clarification on how the revised payment was calculated on their mortgage loan account. I further note that the Provider was not in the position to give the First Complainant the requested information. However, the Complainant was offered alternative options, of either calling into a branch or to bring their case through the appeals process. I further note that the First Complainant requested a note to be put on his file requesting a meeting with management and this was done. The Provider has addressed the inadequate service that the Complainant received during that telephone conversation and has acknowledged the Provider’s shortfall and offered the Complainants the sum of €250 as a goodwill gesture for this specific customer service failure and has apologised for its failure in this regard.

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The Complainants assert that when they requested to meet with the Provider through the Provider's helpline, they were informed that a meeting would not be possible and that they should visit their local branch. The Provider's internal notes on **16 December 2016** detail as follows;

*"customer called to see when letter for 2<sup>nd</sup> impact accout(sic) will be received, adv letters are being sent in batches and he should have it in the next days, cust adv he would like a face to face meeting adv he should go into local branch, he adv he has done and cant get answers required, adv that we have an appeals process and I will get packs sent out, [NAME] will call customer back to adv that he should go to branch"*

A further system note from **16 December 2016** details as follows;

*"I rang [First Complainant] as a call back to his call to the Helpline earlier. I explained that I had been onto [REDACTED] they were happy to meet with him and go through any questions he had. I suggested he waited til (sic.) he had both redress letters so he could discuss both. I also explained that he could get independent advi[c]e and then if he was still not happy he could go through the appeals process. He requested a copy of ECB rates and I said I would try and get them. He was happy there was a process in place for him to follow until he was satisfied all his issues would be addressed."*

The Complainants assert that they were unable to retrieve any satisfactory answers from the Provider's branch when they met with a branch manager on **9 January 2017**. The Complainants submit that the Provider did not want to meet them to offer an explanation or apology.

The Complainants' submission dated **20 August 2018** details as follows;

*"My notes show there were two phone calls on 16/12/2016  
I called the helpline at 1000 and spoke to a lady called [Redacted].  
She could not answer any of my questions so I asked to speak to a manager.  
[Redacted] called me back at approximately 1245 PM 16/12/16."*

It is disappointing to note that the Provider did not furnish this telephone call in evidence when this office originally requested a copy of all telephone recordings in or around **January 2016** and all telephone calls from **August 2016** to date. I note the Provider's formal response was received by this office on **20 July 2018**. It is unclear to me why these telephone calls were not furnished in evidence when originally requested.

The Provider's submission dated **28 August 2018** details as follows;

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*“With reference to the Complainants’ observations of meetings in the [REDACTED] branch in Q5, the Bank and its employees endeavour to offer customers a professional and courteous service. There are no complaints recorded to indicate that the Complainants have ever outlined their dissatisfaction with the service that they received from the Bank’s staff.”*

I note that the Provider, in its response to this office dated **20 July 2018**, explains that the Complainants’ redress and compensation was calculated on the Complainants’ mortgage loan account at 15%. I note that the Complainants in their letter, to this office, dated **10 August 2018** detail as follows;

*“The Bank continues to make “errors” this is demonstrated in their reply to Questions No 2 where it states “In this case...the percentage of compensation applied is 15% of the interest overcharged plus the TVM amount.*

*This is not correct as My accounts received only 7.5% compensation. This is my interpretation of the Banks response.*

*It is possible I don’t understand what they bank are saying in their response as it is very confusing at this stage and the process has been going on for so long.”*

I further note that the Provider in its submission dated **28 August 2018** details as follows;

*“We acknowledge that there was a clerical error made in the Bank’s Response to Q2 in the Schedule of Questions, paragraph 7, should read as follows:-*

*“In this case the impacted accounts relate to **Buy to Let properties** that are still in the Customers possession and are not in a legal process, and therefore the percentage of compensation applied is **7.5%** (of the interest overcharged plus the TVM amount). This percentage is detailed in the Financial Summary which was included in our Redress and Compensation letter to the Complainants.”*

*We note that this error was repeated in the Bank’s response to Q4 paragraph 1, line 8 which should read as follows:-*

*“...the compensation amount was calculated at **7.5%** of the interest overcharged plus **7.5%** of the TVM payment as the impacted properties are the Complainants’ Buy to Lets (BTLs).”*

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*This error was again repeated in the Bank's Schedule of Evidence 8, paragraph 3 line 1, which should read as follows:-*

*"The Bank confirms that in this particular case compensation is calculated at 7.5% of interest overcharged. Account number [ending 7927]. Interest overcharged €2,232.54 plus 7.5% of Time Value of Money (TVM) of €1,310.67. Account Number [ending 2183]. Interest overcharged of €2,304.67 plus 7.5% of Time Value of Money (TVM) payment of €1,703.56 as the impacted properties were the Complainants' Buy to Lets."*

*These errors were due to a clerical error in compiling the Bank's response and we would like to sincerely apologise for these errors and confusion that they may have caused. The Bank are satisfied that the correct compensation percentage of 7.5% was used in calculating the compensation due to the Complainants considering the impacted account related to their Buy to Let properties and this 7.5% has previously been communicated to them within all of the Banks previous correspondence regarding Redress and Compensation".*

I note that the Complainants take issue that the Provider has not furnished them with a specific breakdown of the compensation and specific categories to allow them to understand the "specific reasoning" for the amount of compensation awarded by the Provider in respect of their mortgage loan accounts. I note that the Complainants have detailed that it was "unclear how the bank designed the compensation model and what criteria was used specifically" in their case. I have no doubt that the clerical errors made by the Provider caused even further confusion to the Complainants in their understanding of the redress and compensation that was offered to them.

I find it to be entirely unacceptable for the Provider to present and admit a number of errors to the Complainants on a number of occasions over the course of its dealings with the Complainants and their complaint with the Provider. I would expect the Provider to have thoroughly engaged with the Complainants' mortgage loan and the facts and details pertinent to that loan as part of the Examination and the subsequent appeal, prior to the Complainants making a complaint to this office. It is most disappointing that the Provider has continued to make errors in its communications with this office and the Complainants.

Having regard to the evidence before me, it is clear that the Complainants made sacrifices in order to pay their mortgage loan repayments. Despite acknowledging its failings and

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awarding the Complainants compensation, the Provider does not believe that the Complainants have demonstrated any inconvenience. I am of the view that throughout an eight-year period, the Complainants were denied the opportunity of making informed decisions about their finances as they did not know the true position with respect to the repayments that were actually due and owing on their mortgage loan accounts. I am of the view that the Provider gave inadequate customer service to the Complainants on several occasions over the course of its dealings with the Complainants and their complaint with the Provider and during the impacted period.

I accept that the Provider, having identified its failures, gave redress and compensation to the Complainants as part of the review of the Complainants' mortgage loan account. However, I am satisfied that if the correct interest rate was applied to the mortgage loan accounts, the First Complainant would not have had a need to work overtime and the Complainants would not have been under as much financial stress, resulting in considerable inconvenience. While I accept that the Provider was not aware of any investment decisions that the Complainants may have engaged in during the impacted period, I have already pointed out that I do not see this as relevant. In relation to the Provider's failure to provide adequate customer service to the Complainants, I am satisfied that the Provider has addressed its failures and apologised to the Complainants for the shortfall in its service.

However, the Provider has continued to make errors to this office and the Complainants in their dealing with the Complainants' mortgage loan accounts. As outlined above, the grievances that the Complainants have outlined regarding the Independent Appeals Panel do not form part of this investigation and decision.

I indicated in my Preliminary Decision dated **19 May 2021** that I intended to substantially uphold this complaint and direct the Provider, pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, to pay a sum of €8,000 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered. For the avoidance of doubt, the total sum of compensation of €8,000 is inclusive of the €4,537.21 compensation already paid to the Complainants for the Provider's failure. It is also inclusive of the Provider's goodwill offer of €250.00.

The Complainants, in their post Preliminary Decision submissions received on **20 May 2021**, expressed their disappointment with the level of compensation that I intended to direct the Provider to pay and indicated that the "*award is on the lower scale considering the impact this event has had on [their] financial/ mental stress situation.*" The First Complainant detailed that there was a lot of stress which he managed on his own and he

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made every effort to ensure both mortgages' monthly repayments were made, bar one month in **2016**. The First Complainant contends that I may not have *"appreciated the fact That[sic] [he] needed to work as much overtime as possible to keep all the bills paid"*. The Complainants detail that they are not looking for sympathy but *"a fair outcome"*. I would like to highlight that in making my final determination, I have carefully considered the Complainants' personal and financial circumstances during the period of overcharging. I have previously referred to the many sacrifices made by the Complainants in order to pay their mortgage loan repayments and the inconvenience that the Complainants suffered.

I note that in the Provider's post Preliminary Decision submission received on **04 June 2021**, it submits that it *"recognises that this was a difficult time for the Complainants and it acknowledges the personal and financial challenges faced by them. In recognition of the new information now raised by the Complainants, the Bank proposes making a further Goodwill payment of €2,000, in addition to the FSPO's Preliminary Decision which includes a compensation amount of €8,000 (inclusive of the compensation already paid by the Bank of €4,537.21 and the Bank's Goodwill offer of €250)"*.

I note that the Complainants have received a total of €4,537.21 by way of compensation in respect of both mortgage loan accounts. In addition, the Provider has made an offer of €250 as a goodwill gesture in respect of its customer service failings.

The Provider, in its post Preliminary Decision submission received on **04 June 2021**, has offered an additional gesture of goodwill in the amount of €2,000 to the Complainants. I welcome this additional offer of €2,000 from the Provider. I am of the view that compensation of €8,000 (inclusive of €4,537.21 compensation already paid to the Complainants for the Provider's failure) and the Provider's goodwill offer of €250.00 is reasonable compensation in respect of the overcharge on the Complainants' mortgage loan accounts for the impacted period.

Therefore, I substantially uphold this complaint and direct that pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Provider pay a sum of €8,000 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered. For the avoidance of doubt, the total sum of compensation of €8,000 is inclusive of the €4,537.21 compensation already paid to the Complainants for the Provider's failure. It also includes the Provider's goodwill offer of €250.00.

In addition I note and welcome, the Provider's intention to pay a further sum of €2,000 to the Complainants.

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## **Conclusion**

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

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to pay a sum of €8,000 (inclusive of the €4,537.21 compensation already paid to the Complainants for the Provider's failure and the Provider's goodwill offer of €250.00 compensation) to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

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**

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—

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(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.

