An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0265
Sector:	Banking
Product / Service:	Tracker Mortgage
Conduct(s) complained of:	Failure to offer appropriate compensation or redress CBI Examination
Outcome:	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 €2,142.73 on that mortgage loan account. The mortgage loan was secured on the Complainants' principal private residence.

The loan amount was €80,000 and the term of the loan was 15 years. The mortgage loan account was drawn down in **August 2003** pursuant to a Loan Offer dated **04 June 2003** accepted by the Complainants on **15 July 2003**. The Loan Offer detailed that the interest rate applicable was *"3.68% varying – includes a margin of 0.00% over Standard Home Mortgage Variable Rate"*.

The mortgage loan account was redeemed in **July 2014**.

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 an error had occurred on the mortgage loan account and that mortgage loan account was deemed to be impacted under the Examination.

The Provider wrote to the Complainants on **14 June 2018** advising them of the error that had occurred on their mortgage loan account.

The Provider detailed *"the circumstances that caused this failure to happen"* as follows;

> *"You switched the rate from a tracker to a fixed rate. The version of your terms and conditions did not give you the option to go back on your tracker when this fixed rate expired. We now accept that other information, provided to you by us, may have given you an expectation that you could go back onto your tracker when the fixed rate expired."*

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

> *"**What does this mean for you?***
>
> *Now that we have completed the detailed review of your mortgage account we can now show how we calculated the total redress and compensation payment. This is from 30/07/2010, the date the account was first impacted."*

The Provider made an offer of redress and compensation to the Complainants in its letter dated **14 June 2018**. The offer of €3,465.98 was made by the Provider to the Complainants and comprised of the following;

1. Redress of €2,350.98 covering:

    - Total interest overpaid of €2,142.73
    - A refund of a security release charge which was charged by the Provider on redemption of €60.00
    - Interest to reflect the time value of money of €148.25

2. Compensation of €500.00 for the Provider's failure

3. Independent Professional Advice payment of €615.00

In **July 2018**, the Complainants appealed the redress and compensation offering to the Independent Appeals Panel.

On **08 October 2018**, the Independent Appeals Panel decided to reject the Complainants' appeal. In determining the appeal the Panel outlined as follows;

> *"The Panel has carefully considered the appeal of [the Complainants] in accordance with the Terms of Reference and Panel Rules.*

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> *The Panel decided, based on the information and documentation received from the Bank and [the Complainants], that there was insufficient evidence to support the claims for financial losses contained in the Appeal."*

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

The conduct complained of that is being adjudicated on by this office is that the Provider has failed to offer adequate redress and 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 not been adequately compensated for the "*hardship*" they have suffered due to the overcharging on their mortgage loan account.

The Complainants redeemed the mortgage loan account in **July 2014**. They outline, "*We feel that because we did not know the full picture as to the rate and amount we owed at the time, that we would have made a different decision as to trying to pay off the Morage* [sic] *early*".

The Complainants detail that the First Complainant had been "*diagnosed with a long term illness and was faced with the possibility of not been* [sic] *able to work into the future".* They submit that therefore they *"decided to accelerate paying off the mortgage and [cashed] in [the First Complainant's] Pension early in order to achieve this goal. We are now left with trying to build up the Pension again which is not easy."*

The Complainants submit that *"The decision to access [the First Complainant's] pension in order to pay off the mortgage now affects the Pension [he is] entitled to"* and that this decision was made "*without knowledge of all the facts regarding the state of the mortgage*".

The Complainants further detail that they *"had made [various] attempts to pay off the mortgage including increased payments, lump sum, even investigating the charges (mostly interest). Around this time there were [various] discussion in the national media about overcharging by banks … We contacted the bank and were assured that everything was "ok". We attempted to hire a company from [Location] to look back over the mortgage but they declined saying that our mortgage was to[o] small!"*

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They state that *"So in summary paying off mortgage in a lump sum should not be viewed in isolation but as part of a concerted effort to rid ourselves of the mortgage. Faced with the prospect of coping with [the First Complainant's] illness while attempting to pay off the mortgage appeared daunting. We were never furnished with the correct information so therefore what we decided was flawed!"*

The Complainants detail that they "*received an additional cheque*" in the sum of €826.94 on **24 July 2019**.

The Complainants outline that they have "*lost at least 10,000 euro*" and are seeking compensation for this loss.

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

The Provider submits that the Complainants drew down their mortgage loan account on **05 August 2003** in the amount of €80,000 over a term of 15 years, subject to the Provider's standard variable rate of 3.30%.

The Provider details that while the terms and conditions applicable to the Complainants' mortgage loan account did not give the Complainants an option to revert to their tracker rate when then five-year fixed rate period on the mortgage loan account expired, the Provider "*was of the view that the Complainants may have incorrectly been given an expectation from other information provided to them by the Bank, that they could go back to the last Tracker margin that applied to their Mortgage Loan Account, after their Fixed rate period had ended.*"

The Provider submits that it is "*satisfied*" that its payment of redress and compensation places the Complainants in the position they would have been in had the failure identified by the Provider on this mortgage loan account not occurred. It outlines that the process for calculating redress and compensation "*has been assured by an external independent third party under the Bank's Tracker Mortgage Examination*."

The Provider submits that to determine the level of redress, it considers "*the interest that has been overcharged on the account and what the balance on the account should be if the failure had not occurred*." The Provider outlines that it then "*corrects"* the impacted mortgage account by *"adjusting the mortgage balance back to the position they would have been in had the failures identified not happened*." It details that it then "*considers how much the customer overpaid in mortgage repayments"* as a result of its failure and refunds this amount to the customer so "*they are not out of pocket*."

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The Provider details that it "*also considers the benefit lost in relation to the interest overcharged and pays a Time Value of Money ("TVM") payment in relation to this amount*." It outlines that this TVM payment "*compensates the customer for not having the benefit of the money overpaid on the account and it is calculated by selecting the best one year fixed deposit rate that the Bank offered during the impacted period and applying this monthly to the amounts that were overpaid during the impacted period*."

The Provider further submits that *"the Bank includes a compensation payment to compensate customers for potential inconvenience, harm, personal suffering and hardship*." It outlines that this amount was calculated based on the Provider's compensation model *"which was developed as part of the Central Bank of Ireland Tracker Mortgage Examination of customers who were impacted by the Provider's tracker failure."* The Provider submits that the criteria considered for compensation includes the scale of the Provider's failure, the type of property and the status of the account. It outlines that it calculated *"compensation based on a percentage of the interest overcharge figure plus a percentage of the TVM payment."* It details that as the Complainants' mortgage loan account was secured on a private dwelling house and was not in a legal process, the percentage of compensation applied in their case was 15%.

The Provider submits that the Complainants were given the opportunity to appeal its decision to the Independent Appeals Panel, which they did on **26 July 2018**. It details that the Panel "*carefully considered the appeal of the Complainants in accordance with the Terms of Reference and Panel Rules*" and agreed that the compensation provided was "*sufficient*" and "*fair and reasonable*".

The Provider submits that it "*is satisfied that the measures outlined above evidence that the Complainants have been adequately compensated and redressed accordingly*."

The Provider submits that it received moratorium requests from the Complainants prior to the impacted period (**July 2010 – July 2014**). It 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."* It outlines that where customers request forbearance as a result of financial difficulties, the Provider has *"in place a process for assessing the particular case and where available, offering a number of different options to the customers with a view to putting in place a solution that is supportive and appropriate."*

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The Provider has outlined the following interactions with the Complainants in relation to the mortgage loan account:

- The Complainants requested a six-month payment break on **02 July 2004** and did not furnish a reason for this request. The Provider details that it agreed to a three-month moratorium which was subsequently applied to the mortgage loan.
- On **06 May 2005**, the Complainants sent a signed instruction to the Provider requesting to amend their interest rate to a tracker rate of 2.95% (ECB + 0.95%), which was applied to the mortgage loan account on **09 May 2005**.
- The Complainants subsequently requested to amend their interest rate to a five-year fixed interest rate of 3.82% on **30 November 2005**.
- The Provider issued the Complainants a letter dated **03 December 2005** confirming the requested fixed rate had been applied to the mortgage loan account.
- The Complainants contacted the Provider on **27 October 2006** "*to enquire what the breakage cost would be if they made an out of course lodgement of €10,000 now and €15,000 the following April.*" The Provider informed the Complainants on **07 November 2006** that there "*was no breakage cost on that date but could not advise what the cost would be in April as rates may differ by then*."
- The Complainants subsequently paid an out of course lodgement in the amount of €10,000 to the mortgage loan account on **14 November 2006**.
- The Provider received an instruction form from the Complainants on **13 May 2008** requesting to increase "*the monthly repayments on their Mortgage Loan Account from €750 up to €1,000 per month*."
- The First Complainant contacted the Provider on **09 January 2009** requesting to "*reduce repayments to the standard payment amount and a six month moratorium be applied to their account*." The Provider details that this request was "*due to a slowdown in business*" for the First Complainant.
- The Provider agreed to a three-month moratorium and this was accordingly actioned on **20 January 2009** and again on **23 January 2009**.
- The First Complainant contacted the Provider on **19 December 2011** requesting to increase the repayments to €630 per month, to reduce the mortgage loan term. The Provider actioned the request on **21 December 2011**.
- The First Complainant contacted the Provider on **15 August 2013** requesting another increase in their mortgage repayments from €630 to €1,000 per month. The Provider actioned this request on **19 September 2013**.
- The Complainants made an out of course lodgement to the mortgage loan account in the amount of €800.00 on **22 May 2014**.
- The First Complainant contacted the Provider on **26 June 2014** requesting to reduce their mortgage repayments to the standard minimum repayment amount as the First Complainant's employer's company was on strike and he was unsure when he would return to full employment.

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- The Provider received a second out of course lodgement in the amount of €8,000 on **22 July 2014** from the Complainants in order "*to pay and fully redeem their Mortgage Loan Account*".

The Provider details that the Complainants "*independently*" decided to make *"out of course lodgements and additional monthly payments both prior to and during*" the period of overcharging which occurred between **July 2010** and **July 2014**. It submits that the Provider never requested or required the Complainants to make additional lodgements, nor did it "*advise the Complainants to use their own funds or resources to reduce and redeem the balance or pay off the Mortgage Account early"*. The Provider details that it was *"not unusual for customers in the normal course of business to make unscheduled payments to their mortgage*".

The Provider submits that the decision to redeem the mortgage loan account in **2014** "*was made independently by the Complainants*". It states that the Complainants' "*pattern of repayment behaviour would result in the Mortgage Loan Account being redeemed earlier than the contracted term*" and there is "*no evidence the Complainants engaged with the Bank regarding their decision to reduce the Mortgage Loan Account balance.*"

The Provider outlines that the Complainants advised in their appeal that the First Complainant "*encashed a Personal Pension Bond with a surrender value of €49,326.03 as at 15 July 2014*" in **2014**. It details that an amount of €36,994.51 was transferred to an Approved Minimum Retirement Fund (AMRF) and that the "*remaining €12,331.51 was taken as a lump sum*". It outlines that the Complainants then "*opted to use a portion of this lump sum (€8,000) to make an out of course payment on 22 July 2014 to their Mortgage Loan account, thereby redeeming it in full*." It submits that as the mortgage loan account was redeemed "*there was no requirement to make further ongoing monthly repayment to their Mortgage Loan Account*."

<u>The Complaint for Adjudication</u>

The complaint for adjudication is that the Provider has failed to offer adequate redress and compensation to the Complainants for the failures identified on their mortgage loan account.

<u>Decision</u>

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence.

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

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

The issue for decision is whether the Provider has offered adequate redress and compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainants in **June 2018**.

The Provider has detailed that the redress and compensation offered to the Complainants is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles of Redress. The redress payment of €2,350.98 reflects the amount of interest overpaid (€2,142.73) and includes a payment of €148.25 to reflect the time value of money. The Provider also paid the Complainants €615.00 for the purposes of seeking independent legal or financial advice, along with compensation of €500.00. The Provider submits that the Complainants have not made out a reasonable claim for additional compensation beyond what the Provider has already paid to the Complainants.

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

A **Mortgage Loan Offer Letter** dated **04 June 2003** (the "**Loan Offer**") issued to the Complainants which detailed as follows;

1. "Amount of Credit advanced:	*€80,000.00*
2. Period of Agreement:	*15 years/180 months*
3. Number of Repayment Instalments	*180*
4. Amount of Each Instalment	*€578.73*

…"

Part 1 of the **Particulars of Offer of Mortgage Loan**, details as follows;

"…

Loan Type	*Annuity*
Applicable Interest Rate (at Offer Date)	*3.68% varying – includes margin of 0.00% over Standard Home Mortgage Variable rate APR 3.742%*
Amount of Monthly Repayment instalment (at Offer Date)"	*€578.73*

The Complainants signed the **Acceptance and Consent** section of the **Loan Offer** on **3 December 2003** on the following terms;

"I/We accept the conditions of this Offer and agree to mortgage the property to the Bank as security for the Mortgage Loan."

The mortgage loan account was subsequently drawn down on **05 August 2003**.

A letter from the Complainants to the Provider dated **02 July 2004** has been provided in evidence which details:

"We [the Complainants] wish to take a payment break for 6 months on the above mortgage."

The Provider issued the Complainants a letter dated **06 July 2004** which stated:

"…

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Unfortunately, we are not agreeable to a six-month moratorium in this case. However, I can confirm that I have applied a three-month moratorium to the loan backdated to July. I have refunded the repayment of €563.88 that was collected on 1st July 2004. Your revised repayment, based on the standard variable rate of 3.3% is €576.55. Your next repayment is due on 1st October 2004. The loan is due to expire on 1st August 2018."

The Provider has furnished in evidence an internal memo dated **06 May 2005**, which details as follows;

"Please find enclosed request from customers to change mortgage to Tracker Rate. …"

The enclosed signed request from the Complainants stated:

"I wish to change our above mortgage to Tracker Mortgage with rate of 2.95%."

The Provider issued a letter dated **09 May 2005** to the Complainants, which stated:

"…

I confirm I have amended the interest rate applying to your loan to the tracker rate of 2.95% (incl. 0.95% margin over ECB rate). Your revised repayment is €564.28. Your next repayment is due on 1st June 2005. Your loan is due to expire on 1st August 2018."

An undated letter from the Complainants to the Provider sent under cover of fax dated **1 December 2005**, states:

"following our conversation on the 30/11/05 we are requesting in writing for our mortgage rate to be charged from a variable rate to a fixed term rate for a period of five years."

The Provider issued the Complainants a letter dated **03 December 2005** which stated:

*"With reference to your recent request, I confirm that a fixed interest rate of 3.82% (including the existing interest adjustment of 0.00%) will apply to your home loan from 03 December 2005 for **a period of 5 years**. The Monthly repayment for the period of the fixed interest rate will be €593.83 and will be revised on its expiry in accordance with the rate then applicable.*

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> *You will be entitled, with the Bank's prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Home Mortgage 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; in addition an administration fee of €63**. The premium will be computed on the sum of the balance outstanding as 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 sent the Provider a letter dated **20 May 2006**, which details as follows:

> *"I wish to increase my repayments on mortgage account [number] from 593.83 to 750.00 euros per month."*

The Provider issued a letter to the Complainants dated **27 May 2006** which details as follows;

> *"I refer to the your [sic] Mortgage Loan and confirm I have fixed your Monthly payment for the above mortgage loan at €750.00, as requested. This will take effect from 01/06/2006.*
>
> *I confirm that your mortgage loan will clear by approximately 04/08/2015 as a result of fixing your repayments at the above level. The above amended clearance date is calculated based on the total amount outstanding and the current interest rate applying to the mortgage loan.*
>
> *I would point out that your repayment will remain fixed, irrespective of any future change in interest rates, and this amount may not be sufficient to clear the mortgage loan within the authorised term and conditions of the mortgage loan, should interest rates increase in the future."*

The Provider issued the Complainants a letter dated **18 November 2006**, which stated:

> *"I refer to your Mortgage Loan and acknowledge receipt of out of course lodgement for €10,000.00 that has been lodged in permanent reduction of your mortgage loan. I advise that the outstanding balance of your mortgage loan has been reduced to €56,140.01 dr. I confirm your Monthly repayment has been amended to €750.00. This will take effect from 01/12/2006.*
> *…"*

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The Complainants sent the Provider a letter dated **08 May 2008** as follows:

> *"We would like to increase our mortgage loan from €750.00 euros per month to €1000.00 euros per month the acc no is [account number]."*

The Provider issued the Complainants a letter dated **15 May 2008** which details:

> *"I refer to your Mortgage Loan and confirm I have fixed your Monthly payment for the above mortgage loan at €1,000.00, as requested. This will take effect from 01/06/2008.*
>
> *I confirm that your mortgage loan will clear by approximately 02/07/2012 as a result of fixing your repayment at the above level. The above amended clearance date is calculated based on the total amount outstanding and the current interest rate applying to the mortgage loan.*
>
> *I would point out that your repayment will remain fixed, irrespective of any future change in interest rates, and this amount may not be sufficient to clear the mortgage loan within the authorised term and conditions of the mortgage loans, should interest rates increase in the future.*
>
> *I trust the above is to your satisfaction."*

The Complainants sent the Provider a letter dated **18 January 2009** which detailed:

> *"I am presently experiencing a slowdown in my business and therefore I think it would be prudent where possible to reduce my expenses. With this in mind could you revert my mortgage to the standard payment rate and in addition could you give me a payment holiday for a period of 6 months. I can always shorten this if things improve.*
>
> *I have been paying extra (1000 Euro per month plus 10,000 Euro down) on the mortgage so I should be way ahead on the payments."*

The Provider issued the Complainants a letter dated **20 January 2009** which details:

> *"I can confirm that I have applied a six-month moratorium to the loan, as requested. Your repayments based on the 5 year fixed rate of 3.82% will remain at €1,000.00. Your next repayment is due on the 01/08/2009. Your loan is due to expire on the 01/02/2012.*

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…"

I note that the Provider subsequently sent a further letter to the Complainants dated **23 January 2009**, which stated:

> *"I refer to your above home mortgage and your recent request for six-month moratorium. Unfortunately we are not able to action this request. However, a three-month period has been agreed to. Your revised repayment reverting back from fixed repayments of €1,000.00 based on the 5 year fixed rate of 3.82% is €418.54. Your next repayment is due on the 01/05/2009. Your loan is due to expire on the 01/08/2018."*

The Provider furnished a copy of a Fax dated **09 March 2010** which details;

> *"**Comments:***
> *Please see attached letter requested repayments to increase to €750pm, thank you [name of employee of Provider]."*

The Complainants' enclosed letter to the Provider dated **07 March 2010** detailed:

> *"Could you increase the above mortgage repayments to 750 Euro per month effective from the 1 April."*

The Provider issued the Complainants a letter dated **26 March 2010** which details:

> *"I refer to the above home loan account and your recent request to increase your monthly repayments to amount of €750.00 a month.*
>
> *I regret to advise that we unable to increase your monthly repayment while the home loan account is on the fixed rate term.*
>
> *Please be advised that your next repayment of €418.54 based on the 5 Year Fixed rate of 3.82% is due on the 01/04/2010. The 5 Year Fixed term expires on 03/12/2010.*
>
> *The loan is due to expire on the 01/08/2018.*
> *…"*

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The Provider issued the Complainants a further letter dated **20 April 2010** which detailed:

> *"…*
> *Please be advised that we are unable to increase your monthly repayment amount, as you are currently on a fixed rate and as such any additional funds lodged along with the current monthly repayment could incur a breakage cost. In order to increase your repayment amount you would have to make out of course lodgements yourself. These out of course lodgements would then be subject to a breakage cost, if a breakage cost was applicable at the time of lodgement.*
> *…"*

The Provider issued the Complainants a letter dated **23 July 2010** which states:

> *"I refer to your recent request for early redemption of the existing fixed rate applying to your home loan account.*
>
> *The breakage cost for early redemption is €89.73. Please note that this figure is quoted as of today's date. This figure is valid for 10 working days only...*
> *…*
> *If you wish to proceed with the early redemption of the fixed rate, please send us an instruction to break the fixed rate and to debit a suitable [Provider] branch account for the amount of the breakage cost…"*

It was at this time that the failure that was subsequently identified in **2018** as part of the Examination occurred on the Complainants' mortgage loan account, in that, the Provider failed to provide the Complainants with sufficient clarity as to what would happen when they exited the fixed interest rate period.

The Complainants wrote a letter to the Provider dated **04 August 2010** which stated:

> *"We wish to fix the mortgage to five years at 4.2%."*

The **mortgage loan statement** shows that the Complainants paid a "*Breakage Cost"* of €89.73 on **04 August 2010**, which was refunded to the account on **06 August 2010**.

The Provider reverted to the Complainants by letter dated **06 August 2010** as follows:

> *"I refer to the above home loan and your recent request to apply a five year fixed rate of 4.2% to your home loan account. This is not a rate we offer. Please find attached a sample of the rates currently on offer from [the Provider].*

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Please note your current 5year fixed rate 3.82% is not due to expire until 03/12/2010, breaking early from the fixed rate would incur a breakage cost.

The breakage cost for early redemption is €79.96. Please note that this figure is quoted as of today's date. This figure is valid for 10 working days only. If you wish to proceed to break from your fixed rate and pay the cost as outlined, it will be necessary to have the above amount to this office by close of business on 19/08/2010. Unfortunately, we will not be able to accept or process the above breakage cost payment after this date and a fresh breakage cost quotation will have to be calculated.

Please see overleaf for the formula which is used for calculating breakage costs on early redemption of fixed rates.

If you wish to proceed with the early redemption of the fixed rate, please send us an instruction to break the fixed rate and to debit a suitable [Provider] branch account for the amount of the breakage cost (for non [Provider] accounts please send us a cheque or bank draft). Please note we require a signed instruction from all parties to the home loan. Alternatively you can call into your local branch and lodge the breakage cost to your home loan account as detailed above, and this lodgement must have the narrative "Breakage Cost".

Please do not hesitate to contact your local branch or this office should you have any queries in relation to this or any other aspect of your home loan."

The enclosed **rate options letter** dated **06 August 2010** which outlined:

"…

Here is a sample of the rates currently on offer from [the Provider]. To avail of a fixed rate please complete the attached tear-off section below and return it to [the Provider] at the above address. ***Please note that the rates quoted are valid as of today's date and are subjects to variation hereafter, and repayments quoted do not include Payment Protection insurance.***

RATE	***%***	***APR***	***REPAYMENT***
a.PDH LTV Var>50%<=80%	***2.790***	***2.8650***	***401.31***
a.PDH LTV Var<=50%	***2.590***	***2.6610***	***398.22***
a.PDH LTV Var>80%	***2.990***	***3.0700***	***404.41***
1 Year Fixed	***3.090***	***2.9090***	***405.41***

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2 Year Fixed	***3.250***	***3.0540***	***408.47***
3 Year Fixed	***3.650***	***3.3970***	***414.75***
4 Year Fixed	***3.950***	***3.7610***	***419.50***
5 Year Fixed	***4.250***	***4.1610***	***424.28"***

The Complainants sent a letter to the Provider dated **09 August 2010** stating:

> *"We wish to fix our Mortgage at 4.25% for five years."*

The Provider issued the Complainants a letter dated **14 August 2010** as follows:

> *"With reference to your recent request, I confirm that a fixed interest rate of 4.25% (including the existing interest adjustment of 0.00%) will apply to your mortgage loan from 14 August 2010 for **a period of 5 years**. The Monthly repayment for the period of the fixed interest rate will be €425.26 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 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 **mortgage loan statement** shows that a five-year fixed interest rate of 4.25% was applied to the mortgage loan account on **16 August 2010**.

The five-year fixed rate of 4.25% applied to the mortgage account from **August 2010** to **November 2011**. During the period between **August 2010** and **November 2011**, the overall tracker rate (ECB + 0.95%) fluctuated between 1.95% and 2.45%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below.

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The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the correct tracker margin (ECB + 0.95%) had been applied to the mortgage loan account from **July 2010** to **November 2011**, is represented in the table below;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overcharge per month
July 2010	1.87%	€418.54	€418.54	€0.00
Aug 2010 – Mar 2011	2.3%	€418.54	€418.54	€0.00
Sept 2010	2.3%	€425.26	€389.30	€35.96
Oct 2010	2.3%	€425.26	€389.30	€35.96
Nov 2010	2.3%	€425.26	€389.30	€35.96
Dec 2010	2.3%	€425.26	€389.30	€35.96
Jan 2011	2.3%	€425.26	€389.30	€35.96
Feb 2011	2.3%	€425.26	€389.30	€35.96
Mar 2011	2.3%	€425.26	€389.30	€35.96
Apr 2011	2.05%	€425.26	€389.30	€35.96
May 2011	2.05%	€425.26	€392.78	€32.48
Jun 2011	2.05%	€425.26	€392.78	€32.48
Jul 2011 –	1.8%	€425.26	€392.78	€32.48
Aug 2011	1.8%	€425.26	€396.15	€29.11
Sept 2011	1.8%	€425.26	€396.15	€29.11
Oct 2011	1.8%	€425.26	€396.15	€29.11
Nov 2011	2.05%	€425.26	€396.15	€29.11
Dec 2011	1.29%	€425.26	€392.92	€32.34

The monthly overcharge on the Complainants' mortgage loan account ranged between €29.11 and €35.96 over that period.

/Cont'd…

It appears that the Complainants contacted the Provider in or around **November 2011** seeking to increase the monthly repayment on the mortgage account.

The Provider wrote to the Complainants on **29 November 2011** stating:

> *"I refer to the above home loan account and recent query regarding same.*
>
> *Your current monthly repayments based on the 5 year fixed rate of 4.25% are €425.26. Your next repayment is due on 01/12/2011. Your loan is due to expire 1/8/2018.*
>
> > *If you converted your loan to a Loan-to-Value>80% rate of 3.24% your repayments would be approximately €411.90.*
> >
> > *If you then decreased the term on the loan to increase the repayments to current repayments plus €200.00 the term on the loan would reduce to approximately 12 years and 6 months expiry date 1/2/2016 and the repayments increase to approximately €629.06.*
> >
> > *Please note the above figures are calculated based on today's balance and current interest rate of 3.24%.*
>
> *The breakage cost for early redemption is €0.00. Please note that this figure is quoted as of today's date. This figure is valid for 10 working days only. If you wish to proceed to break from your fixed rate, we require signed authority from all parties to the home loan instructing us to break you out of the fixed rate by close of business on 13/12/2011. Unfortunately, should we receive your request after this date; a fresh breakage cost quotation will have to be calculated and may become applicable at this time.*
>
> *Please see overleaf for the formula which is used for calculating breakage costs on early redemption of fixed rates.*
>
> *Please find enclosed a copy of our current interest rates. If you wish to avail of any of these rates, please forward the signed authority of all parties to the loan. Please note that these rates are quoted as of today's date and are subject to change thereafter.*
>
> *Please do not hesitate to contact your local branch or this office should you have any queries in relation to this or any other aspect of your home loan."*

/Cont'd…

The Provider enclosed a **rate options form** with its letter dated **29 November 2011** which stated:

> *"…*
>
> *Here is a **sample** of the rates currently on offer from [the Provider] based on current balance of your mortgage loan account and the existing term. To avail of a fixed rate please complete the attached tear-off section below and return it to [the Provider] at the above address. **Please note that the rates quoted are valid as of today's date and are subject to variation hereafter, and repayments quoted do not include Payment Protection Insurance.***
>
> *If you require one of our Loan-to-Value (LTV) rates and have never availed of one before, an up-to-date valuation report completed by an approved valuer on [Provider] Residential mortgage Valuer's Panel is required. Please also note that as per Terms and Conditions of the letter of offer under section 3.6.3 customers MAY NOT switch between two different Loan-to-Value variable rate products. This states that the customers may switch to an appropriate fixed rate an offer, however "the customer may not convert the LTV variable rate directly or indirectly from one LTV variable rate to another LTV variable rate in order to avail of lower LTV variable rate".*

RATE	***%***	***APR***	***REPAYMENT***
PDH LTV Var<=50%	***2.840***	***2.9340***	***406.64***
PDH LTV Var>50%<=80%	***3.040***	***3.1390***	***409.26***
PDH LTV Var>80%	***3.240***	***3.3440***	***411.89***
1 Year Fixed	***4.150***	***3.4330***	***423.96***
2 Year Fixed	***4.650***	***3.9800***	***430.67***
3 Year Fixed	***4.880***	***4.4690***	***433.78***
4 Year Fixed	***5.150***	***4.9770***	***437.44***
5 Year Fixed	***5.350***	***5.3800***	***440.17"***

The Provider issued the Complainants a further letter dated **30 November 2011** stating:

> *"…*
>
> *Repayments cannot be increased on a fixed rate loan during the fixed rate period, which expires on the 14/08/2015.*
>
> *In order to increase the repayment*
>
> - *The loan must be converted one of the variable rate on offer*

/Cont'd…

- *The term of the loan can then be reduced thus increasing the repayments*

- *After decreasing the term the loan may either continue on the variable rate or be converted one of the fixed rate on offer.*

…"

The Complainants signed a **rate options form** on **11 December 2011**, opting to apply a variable rate of 2.84% to the mortgage loan account.

The Complainants also sent the Provider a letter dated **14 December 2011** stating:

> *"We would like to increase our monthly payment to app 630 per month in order to reduce the term of the loan by 2.5 years."*

The Provider sent the Complainants a letter dated **19 December 2011**, which details:

> *"…*
> *I acknowledge receipt of your request to apply an LTV variable rate <=50% of 2.84% to the loan. In order to qualify for an LTV variable rate 2.84% we will require an up to date completed [Provider] valuation report from a member of the [Provider] Residential Mortgage Valuers Panel (details available in any [Provider] local branch or on our website [Provider website]).*
>
> *Pending receipt of the completed [Provider] valuation report, I have applied the LTV variable rate>80% of 3.24%. Your revised repayment is €411.91. Your next repayment is due on 01/01/2012. Your loan is now due to expire on 01/08/2018."*

I note from the **mortgage loan statement** that the variable rate of 3.24% was applied on **19 December 2011**.

The Provider issued the Complainants a letter dated **21 December 2011** stating as follows:

> *"I can confirm I have reduced the term of your loan in order to increase your repayment to approximately €630.00, as requested. Your revised repayment, based on the variable rate of 3.24% is €622.14. Your next repayment is due on 01/01/2012. The loan is now due to expire on 01/03/2016.*
>
> *Please note that your repayment will fluctuate in line with interest charges."*

/Cont'd…

The Provider issued the Complainants a second letter dated **22 December 2011** which stated:

> *"I can confirm I have reduced the term of your loan in order to increase your repayment to approximately €630.00, as requested. Your revised repayment based on the variable rate of 3.24% is €622.14. Your next repayment is due on 01/01/2012. The loan is now due to expire on 01/03/2016.*
>
> *I also acknowledge receipt of your request to apply an LTV variable rate <=50 of 2.84% to the loan. In order to qualify for an LTV variable rate of 2.84% we will require an up to date completed [Provider] valuation report from a member of the [Provider] Residential Mortgage Valuers Panel (details available in any [Provider] local branch or on our website [Provider website].)"*

I note from the **mortgage loan statement** that the increased repayments of €622.14 were applied from **3 January 2012**. This increase in overpayments had the effect of reducing the maturity date of the loan to **1 March 2016.**

The Complainants sent the Provider a letter dated **13 August 2013** which stated:

> *"Could you increase the above mortgage repayments to 1000 Euro per month effective from the 1 Oct 2013."*

The Provider reverted to the Complainants by letter dated **19 September 2013**, as follows:

> *"…*
>
> *I can confirm I have reduced the term of your loan to expire on 01/04/2015 in order to increase your loan repayment amount to approximately €1,000.00 as requested. Your next repayment is due for collection on 01/10/2013.*
>
> *Please note that your repayments will fluctuate in line with interest charges.*
> *…"*

This further increase in repayments to €1,000 in **September 2013** had the effect of reducing the maturity date of the loan to **1 April 2015**.

/Cont'd…

The Complainants sent the Provider a letter dated **22 May 2014**, stating as follows:

> *"We would like to pay 800 euros into the above account and repayments to remain the same."*

The Provider issued the Complainants a letter dated **26 May 2014**, as follows:

> *"…*
>
> *We acknowledge receipt of the out of course lodgement for 800.00 on 22/05/2014. This has been lodged in permanent reduction of your mortgage loan. We advise that the outstanding balance of your mortgage loan has been reduced to reflect this lodgement.*
>
> *I confirm I have amended the term of your loan to expire on 02/03/2015. In order to keep your repayments at approximately your previous repayment amount, or the amount you have requested. Please note that if you are on a variable rate your repayments will fluctuate in line with rate changes, however you will be pre-advised of any rate and repayment changes.*
>
> *…"*

The lump sum repayment of €800 in **May 2014** had the effect of further reducing the maturity date of the loan to **2 March 2015**.

The variable interest rate applied to the mortgage loan between **January 2012** and **July 2014** fluctuated between 3.24% and 4.49% during that period. Between **January 2012** and **July 2014**, the overall tracker rate (ECB + 0.95%) fluctuated between 1.10% and 2.30% over the time period. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the correct tracker margin (ECB +0.95%) had been applied to the mortgage loan account from **January 2012** to **July 2014** is represented in the table below;

/Cont'd…

Date Range (inclusive)	**Difference in Interest rate charged vs the tracker interest rate**	**Actual Monthly Repayments**	**Monthly repayments if the mortgage was on the Tracker Rate**	**Overcharge per month**
Jan 2012 – Jun 2012	1.29%	€622.14	€597.42	€24.72
July 2012 – Oct 2012	1.54%	Between €622.14 and €627.55	Between €594.72 and €597.42	Between €24.72 and €32.83
Nov 2012 – Apr 2013	2.54%	Between €627.55 and €632.66	€594.72	Between €32.83 and €37.94
May 2013 – Oct 2013	2.79%	Between €632.66 and €982.34	Between €592.63 and €929.57	Between €40.03 and €52.77
Nov 2013 – May 2014	3.29%	€982.34	Between €927.91 and €929.57	Between €52.77 and €54.43
Jun 2014 – Jul 2014	3.39%	€996.85	Between €939.44 and €939.81	Between €57.04 and €57.41

The monthly overcharge on the Complainants' mortgage loan account ranged from €24.72 to €57.41 over that period.

The Complainants sent the Provider a letter dated **25 June 2014**, as follows:

> *"The company I work for [redacted] and I do not know when they will be back at work again. Just in case it goes on for a long time, could you reduce the monthly payment to the normal amount until I am back to work! I think the normal payment is around 400-500 per month."*

The Complainants furnished a letter from their pension provider dated **15 July 2014** which stated:

> *"…*
> *You recently asked to withdraw funds from your plan.*

/Cont'd…

> *I am, pleased to confirm that your account [number] with [Provider] will be credited with €12,331.51 and available to you in 4 working days from the date of this letter. The balance amount of €36,994.52 has been transferred to plan number [Plan number].*
>
> *The amount represents the full value of this plan which, following this payment, is now finished.*
> *I have set out details of how these payment amounts were calculated.*
> *…*
>
> ***Surrender Calculation Details***
>
> *Gross Surrender Value as at 10 July 2014* *€49,326.03*
> *Net Surrender Value Amount* *€49,326.03"*

The Provider issued the Complainants a letter dated **16 July 2014**, as follows:

> *"I confirm I have amended the term of your loan to expire on 01/03/2016, in order to keep your repayments at approximately your previous repayment amount, or the amount you have requested. Please note that if you are on a variable rate your repayments will fluctuate in line with rate changes, however you will be pre-advised of any rate and repayment changes.*
>
> *If you have any further queries in relation to the above please do not hesitate to contact your local branch or the department."*

It appears that in or around **July 2014** the Complainants contacted the Provider to request redemption figures for the mortgage loan account. The Provider issued the Complainants a letter dated **21 July 2014** stating:

> *"…*
> *With reference to your recent request, Redemption figures as at 21/07/2014 in this case are:*
> *…*
> *Total to Redeem: €7,920.49*
> *…"*

The Complainants' **mortgage loan statements** show that the Complainants lodged a redemption payment of €8,000 to the account on **22 July 2014**.

/Cont'd…

The Provider's internal memo dated **23 July 2014** states:

> *"…customer has lodged 8k to this account to clear off mortgages, [Provider] cheque lodged".*

The Provider issued the Complainants a letter dated **07 August 2014** which detailed:

> *"I would like to take this opportunity to thank you for your business and to confirm that your Home Mortgage account (quoted above) has been repaid in full.*
>
> *…*
> *Should you require any further details regarding your Mortgage account or any other [Provider] products please do not hesitate to contact your Relationship Manager at your local branch."*

The Complainants have submitted that because the First Complainant had been "*diagnosed with a long term illness and was faced with the possibility of not been* [sic] *able to work into the future"* they *"decided to accelerate paying off the mortgage and [cashed] in [the First Complainant's] Pension early in order to achieve this goal".* There is no evidence to suggest that had the mortgage loan account been on a tracker rate of interest at this time then the redemption payment of €8,000 would not have been made by the Complainant in **July 2014.** At that time the monthly overcharge on the mortgage loan account was €57.04.

Having regard to all of the evidence before me I cannot accept that the mortgage loan would not have been redeemed by the Complainants had the tracker interest rate been applied to the Complainant's mortgage loan account from **July 2010** as it should have been. There is no evidence to show any link between the Provider's overcharging of interest of €2,142.73 during the impacted period and the withdrawal of funds from the Complainants' pension in **July 2014**.

I am of the view that the interest overcharge of €2,142.73 between **July 2010** and **July 2014** is a significant sum and the conduct of the Provider in overcharging the Complainants during this period is most unsatisfactory. I note that the Complainant has received compensation of €500.00. This compensation was paid together with redress of €2,350.98, (interest overpaid €2,142.73 and time value of money payment of €148.25).

Therefore, I accept that the amount of compensation which has been paid to the Complainants is reasonable in the circumstances of this complaint.

/Cont'd…

For the reasons set out in this Decision, I do not uphold this complaint.

Conclusion

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

3 August 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.