



<u>Decision Ref:</u>	2021-0356
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a mortgage loan account ending **7563** held by the Complainant with the Provider and an overcharge of interest in the amount of €14,250.08 on the mortgage loan account.

The mortgage loan account ending **7563** was drawn down in **June 2006** in the amount of €125,000 and was secured on a Buy-to-Let property.

The Complainant's mortgage loan account ending **7563** was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "Examination"). The Provider identified that a failure had occurred on the account and the mortgage loan account was deemed to be impacted under that Examination.

The Complainant has one other mortgage loan account ending **7587** with the Provider which is secured on his private dwelling house. This mortgage loan was not considered to be impacted as part of the Examination.

The Provider wrote to the Complainant on **29 August 2016** advising him that an error had occurred on his mortgage loan account ending **7563** as follows:

*“The review, which is progressing, has found we fell short on our obligations to some customers, including instances where we were not sufficiently clear with them or where we failed to honour contractual commitments. As part of our review we have established that you were charged too high a rate of interest on your mortgage account [ending **7563**], a failure on our part that we deeply regret and for which we sincerely apologise”.*

The Provider went on to state that:

“In order to ensure that you do not experience any further detriment as a result of our failure, the first step we are taking is to reduce your current interest rate 4.73%, to the ‘Buy to Let’ interest rate that your account should be on, which is the European Central Bank (ECB) rate (currently 0.00%) plus a margin of 1.50%. Your new rate is 1.50%”

The Provider restored a tracker interest rate of ECB plus 1.50% to the Complainant’s mortgage loan account on **29 August 2016**.

The Provider wrote again to the Complainant on **21 April 2017** and detailed the circumstances that caused this failure to happen as follows:

“Your mortgage account had the ‘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 account the Provider outlined as follows:

*“What does this mean for you?
Now that we have completed the detailed review of your mortgage account and reduced your interest rate, we have been able to calculate the redress and compensation that is due from 31/10/2008, which was when your account was first impacted.”*

The Provider made a redress and compensation offering to the Complainant in the letter dated **21 April 2017**. The offer of €4,967.93 made by the Provider to the Complainant comprised the following:

1. Redress of €4,967.93 covering;
 - The amount overpaid while on the incorrect rate.
 - Interest to compensate the Complainants for not having access to the money they overpaid on the mortgage account (Time Value of Money).
2. Compensation of €2,744.44 for the failure on the mortgage loan account.
3. Independent Professional Advice payment of €1,230.

The Complainants' mortgage loan account balance was also reduced by €23,987.43, from €138,710.63 to €114,723.20.

In **October 2017**, the Complainant appealed the redress and compensation offering to the Independent Appeals Panel. The basis of the Complainant's appeal was the inadequacy of the redress and compensation offering.

The Appeals Panel decided on **19 April 2018** that the Complainant's appeal was unsuccessful, on the basis that it did not agree with the Complainant that the financial and non-financial losses being claimed arose as a result of the failure of the Provider to apply the correct interest rate to his mortgage loan account.

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

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

The Complainant's Case

The Complainant submits that the redress and compensation offer received from the Provider is "*inadequate*" to compensate for the "*huge financial, physical and mental stress*" which he has endured because of the Provider's overcharging on his mortgage loan account.

The Complainant submits that when the overcharging began on his account in **2008** *“it became harder to meet loan repayments”* so he approached the Provider to seek forbearance on the account. He states that he requested interest only repayments for 5 years, but the Provider declined his request, which *“put the loan into arrears, and also forced my family home into arrears.”* He states that both of his mortgage loan accounts with the Provider fell into arrears because he followed advice from the Provider to *“use money earned to repay the home loan and redirect it to the buy to let mortgage”*.

The Complainant details that his business has also been affected by the Provider’s overcharging on his mortgage loan account as he *“had to use business monies/cashflow to help pay arrears/overpayments”* and consequently he was *“forced to turn down contracts as I did not have adequate working capital to start jobs.”* He states that this has resulted in an *“overdrawn overdraft and a revenue bill for over €20,000”*.

The Complainant submits that a receiver was appointed over the security property in **2013** and the receiver did not rent the property for a period of three years, resulting in the loss of rental income amounting to €10,800.00.

The Complainant submits that his son who has a disability has *“suffered greatly”* in circumstances where the Complainant was forced to remove him as a student from his private specialised school.

The Complainant outlines that the arrears and overcharging on his mortgage loan has caused him and his family *“great financial hardship, stress and strain”* which has caused *“many sleepless nights, and poor mental health.”* He submits that the *“compensation offered by [the Provider] does not come near the financial turmoil that [the Provider] caused me.”*

The Complainant is seeking the following compensation in respect of financial losses:

- a) Clearance of the arrears on the following mortgage loan accounts, which the Complainant attributes to the overcharging:
 - Arrears of €32,923.39 on the subject Buy to Let (BTL) mortgage loan account ending **7563**.
 - Arrears of €29,972.60 on the Complainant’s Private Dwelling Home (PDH) mortgage loan account ending **7587**.
- b) Compensation for the Complainant’s inability to pay tax due to the overcharging, estimated at €11,922.19

- c) Compensation of €20,000 for the loss of business opportunities due to a lack of working capital
- d) Compensation estimated at €10,800.00 for the loss of 3 years' rental income following the appointment of a Receiver to the BTL property.

The Complainant is also seeking the following in respect of non-financial losses:

- e) Compensation for psychological stress suffered by the Complainant and his wife
- f) Compensation for having to remove the Complainant's son from his specialised private school.

- g) Compensation for being unable to take a family holiday since **2008** and for having to sell the family car.

The Provider's Case

The Provider submits that the criteria it considered in setting the level of redress and compensation offered to the Complainant align to the principles of redress outlined under the Central Bank directed Tracker Mortgage Examination guidelines, in particular, that redress will result in impacted customers being returned to the position they should have been in if the issue had not occurred, and that compensation is to be reasonable and reflect the detriment incurred.

The Provider outlines that the General Terms and Conditions governing the Complainant's mortgage loan gave a guarantee that the interest rate could not be more than 1.50% over the European Central Bank rate. It states however that during the Provider's review of the mortgage loan as part of the Central Bank directed Tracker Mortgage Examination, the Provider realised that there were times when the interest rate exceeded 1.5% over the ECB rate. It states that the Provider has now honoured the General Terms and Conditions and rectified and redressed the mortgage loan account to put the Complainant in the position that he would have been in had the Buy to Let interest rate of ECB + 1.5% been applied to the account at all times. The Provider states that to redress the Complainants in line with the Central Bank's requirements, the interest rate was reduced, and redress and compensation was calculated from **31 October 2008**, which was when the account first became impacted.

The Provider states that it is satisfied that the redress and compensation offering it made to the Complainant, places him in the position he would have been in had the failure identified by the Provider not occurred. In this regard the Provider states that it offset €14,281.57 of the interest overcharge amount against the arrears balance on the account, which reduced the arrears from €43,654.51 to €29,372.94.

The Provider details that it also made a Time Value of Money (“TVM”) payment of €993.49 which compensated the Complainant for not having the benefit of the money which formed the overcharge.

The Provider also details that a compensation payment of €2,744.44 was made to the Complainant which was *“to compensate for potential inconvenience, harm, personal suffering or hardship”*. The Provider states that this compensation amount was calculated at 11% of the amount of the overcharge plus 11% of the TVM payment as the impacted account relates to a BTL property that is under the control of the Provider. The Provider states that it also made a payment of €1,230.00 towards independent professional advice. It states that it reduced the balance of the mortgage by €29,987.43, in order to reflect what the balance should have been had the Provider’s failure not occurred.

The Provider submits that the redress and compensation was calculated using its Compensation Model which was designed to meet the Central Bank’s principles for redress under the Examination. The Provider asserts that *“the payments made by way of redress and compensation are fair and reasonable.”*

The Provider submits that from **2011** the Complainant’s repayments on the mortgage loan account ending **7563** were *“infrequent and intermittent”* and he made no repayments between **2014** and **2016**. It outlines that the Provider *“worked with the Complainant in trying to put together a sustainable restructure of his loans.”*

The Provider outlines the following interactions with the Complainant in relation to the mortgage loan account ending **7563**:

- On **14 July 2009** the Complainant requested a 12-month interest only repayment period on the mortgage loan account. The Provider submits that it declined this request as there were *“significant differences”* in the valuation provided by the Complainant at the time of the application and the valuation provided at drawdown in **July 2006**.
- On **4 January 2010** the Complainant applied for 12-month interest only repayments on the mortgage account. The Provider approved the Complainant’s request and retrospectively applied the arrangement to the account.
- On **31 January 2011** the Complainant applied for a 12-month extension of the interest only repayments, however, the Provider declined his request as he did not provide a fully completed **Standard Financial Statement**.

- On **4 February 2011** the Provider outlines that it contacted the Complainant and requested financial information, but this was not provided.
- On **1 September 2011** a meeting was held with the Complainant in his local branch, primarily in relation to his other mortgage loan account which was secured on his private dwelling home.

The Provider outlines that during the meeting the Mortgage Arrears Resolution Process (MARP) was explained to the Complainant and the Complainant was advised to complete a **Standard Financial Statement** and an **interest only application form** for all his mortgage loans and return them to his local branch.

- On **21 June 2012** the Complainant requested interest-only repayments for a period of 36 months. The Provider declined his request as he did not provide a completed SFS as required.
- On **4 July 2012** the Provider sought an explanation from the Complainant as to how he intended to meet his mortgage repayments as the incomplete SFS provided by the Complainant indicated that he was not demonstrating the affordability to meet his monthly repayments. The Provider submits that it did not receive a response from the Complainant.
- On **21 November 2012** the Provider requested the Complainant complete a Standard Financial Statement, however he failed to return the completed form to the Provider.
- On **28 May 2013** the Complainant was deemed by the Provider to be “*not co-operating*” with respect to the mortgage loan account.
- On **12 November 2013** the mortgage loan account ending **7563** was deemed unsustainable by the Provider and moved into the legal process.
- On **9 December 2013**, a receiver was appointed to the security property of mortgage loan account ending **7563**.

The Provider rejects the Complainant’s submission that his PDH mortgage loan account ending **7587** fell into arrears as a result of the overcharging on the BTL mortgage loan account ending **7563**. The Provider submits that on **22 May 2014**, the mortgage account ending **7587** was in significant arrears in the amount of €19,094.77, and that the Provider made another attempt to obtain a SFS and carried out drive by valuations for the three properties owned by the Complainant, including the security property for the mortgage account ending **7563**, to assess the possibility of providing a term extension for the PDH mortgage loan account ending **7587**.

The Provider outlines that it advised the Complainant in its letter of **29 August 2016** that his mortgage loan account ending **7563** had been deemed to be impacted as part of the Central Bank directed Tracker Mortgage Examination and that the sale of the security property had been put on hold while the Examination was ongoing.

The Provider submits that when it issued the redress and compensation cheque and letter to the Complainant on **21 April 2017**, it requested for the Complainant complete a new **Standard Financial Statement** to assess what repayments the Complainant could afford given the new mortgage balance, the reduced interest rate and the reduced repayments on the account.

The Provider details that a meeting was held with the Complainant and his third party representative on **5 May 2017**. It states that during the course of the meeting the Provider outlined two options to the Complainant which were as follows:

1. An affordability assessment with a view to the Complainant regaining possession of the property.
2. Bank Sale of the property and writing off the residual debt.

The Provider submits that the Complainant wrote to the Provider on **29 September 2017** stating that he wished to choose option 2 i.e., for the Provider to sell the property and write off any residual debt.

The Provider states that it received a **Deed of Surrender of Possession of Mortgaged Premises** from the Complainant dated **17 June 2019**.

In relation to the Complainant's claims for additional compensation in respect of his inability to pay income tax, the loss of business opportunities due to lack of working capital, the psychological stress suffered by the Complainant and his wife, the removal of his son from a specialised private school, his inability to take a family holiday since **2008** and having to sell the family car, the Provider states that the Examination "*was not designed to review customers' overall borrowing position, to rectify other non-impacted accounts held by the Complainant or to clear outstanding tax bills/utility bills incurred.*" The Provider submits that it acknowledges that the period of the overcharging was "*a difficult time*" for the Complainant. It states that its redress and compensation payment included a compensation payment to compensate for "*potential inconvenience, harm, personal suffering or hardship*", which was calculated based on the Bank's Compensation Model which has been assured by an external independent third party under the Central Bank's framework.

Regarding the Complainant's claim for compensation in respect of the loss of 3 years of rental income, the Provider states that the Complainant chose to surrender the security property as he agreed with the Provider that the mortgage loan account was unsustainable.

The Provider states that the Complainant made the decision to surrender the property because he would not have been able to afford the mortgage repayments, even if the mortgage account was on the correct interest rate.

The Provider submits that it complied with the relevant provisions of the **Consumer Protection Codes 2006 and 2012** in the arrears handling on the Complainant's mortgage loan account. The Provider states that it is satisfied that it has acted honestly, fairly and professionally when dealing with the Complainant with regard to his mortgage loan. The Provider states that it issued correspondence to the Complainants in relation to the mortgage loan pursuant to its obligations under provision 4.11 of the **Consumer Protection Code 2006** and provisions 8.6, 8.8, 8.9 and 8.10 of the **Consumer Protection Code 2012**. It submits that the level of contact was "*appropriate, not excessive*" and in line with provision 8.13 of the **CPC 2012** and the Provider's Consumer Communications Policy.

The Provider submits that it proactively worked with the Complainant and his third party representative throughout the period of financial difficulty in accordance with provisions 8.3 and 8.5 of the **CPC 2012**.

The Provider details that in its response to the Complainant's appeal dated **20 April 2018**, it incorrectly stated that there was no indication on its files that the Complainant advised the Provider of any health issues or special circumstances until the matter was raised in the Complainant's appeal received by the Provider on **24 October 2017**. It notes that there was reference to health issues and special circumstances in the Complainant's **income and expenditure form** dated **1 May 2014** and in correspondence from the Complainant's doctor dated **7 April 2015** advising of the stressful situation that the Complainant found himself in.

The Provider further submits that it made a typographical error in response to the Complainant's appeal in stating that the mortgage loan repayments made by the Complainant prior to the appointment of a receiver over the BTL property in **November 2012** were €2,281.00. It notes that the correct amount was €2,581.00.

The Provider states that it is satisfied that its inaccuracies contained in its response to the Complainant's appeal would not have had any effect on the assessments made on the mortgage loan after **1 May 2014**.

The Provider states that it apologises for any confusion which is errors may have caused and wishes to offer a *“goodwill gesture”* of €10,000.00 to the Complainant.

The Provider is of the view that the redress and compensation payment made was *“fair”* and *“reasonable”*. It states that the Complainant’s appeal was heard by the Independent Appeals Panel which also agreed that the redress and compensation received by the Complainant was sufficient.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has failed to offer adequate compensation to the Complainant for the failures identified on his mortgage loan account.

Decision

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

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

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

A Preliminary Decision was issued to the parties on 10 September 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 Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Central Bank's principles for redress. The redress payment of €993.49 reflects the amount of interest overpaid on the mortgage loan account and includes a payment to reflect the TVM.

The mortgage loan account balance was also reduced by €23,987.43 to reflect what the balance should have been if the error had not occurred. The Provider also paid the Complainant compensation of €2,744.44 and €1,230.00 for the purposes of seeking legal advice. The Provider submits that the redress and compensation payment is fair and reasonable.

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

A **Loan Offer** dated **19 October 2005** issued to the Complainant which detailed as follows:

1. *Amount:* €125,000 (one hundred and twenty five thousand euro)
2. *Term & Nature:* 25 year Repayment Loan (including a capital moratorium for the first 60 months).
3. *Purpose of Loan:* Towards the purchase of [BTL Property Address] at a cost of €139,500 plus costs.
4. *Rate of Interest:* Variable at 3.50% p.a.
Rate Basis: Variable Residential Investment Rate
5. *Repayments:* €364.58 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.

All Payments shall be made by monthly direct debit on dates as may be determined by [the Provider] and advised to the Borrower in writing. Payments will vary in line with movements in the interest rate."

The loan amount was €125,000 and the term was 25 years. The Loan Offer detailed that the Provider's variable residential base rate of 3.50% would apply and that the Complainant was required to pay interest only repayments for the first 60 months of the term of the loan. This mortgage loan was secured on the Complainant's Buy to Let property and was drawn down on **12 July 2006**.

A Valuation Report of the security property completed on **24 April 2006** details:

"Accommodation (Number of rooms)

Reception	<input type="text" value="2"/>	WCs	<input type="text" value="2"/>
Beds	<input type="text" value="3"/>	Utility	<input type="text" value="-"/>
Kitchen	<input type="text" value="1"/>	Out Buildings	<input type="text" value="-"/>
Bath	<input type="text" value="1"/>		

...

Approximate Measurements: (Square Metres only)

(a) House:	<input type="text" value="107 Sq. Mtrs"/>
(b) Site:	<input type="text" value="230 Sq. Mtrs"/>

...

Valuation: Gross Valuation:

I note that a representative from the Complainant's local branch wrote to the Provider on **24 October 2006** as follows:

"Please find attached the customers instruction which are self explanatory.

I hope you are in a position to deal with this"

The enclosed letter enclosed from the Complainant to the Provider dated **24 October 2006** stated as follows:

"I [the Complainant] wish to convert my buy to let interest only from 5 yrs to a normal interest and repayment.

Please amend accordingly."

It appears from the **mortgage loan statement** that the monthly repayments were switched from interest only repayments to capital and interest repayments from **December 2006** onwards.

In the period between **November 2008** and **July 2009**, the mortgage loan account was on the Provider's variable commercial base rate which fluctuated between 4.28% and 5.53%. The tracker interest rate that would have been applied was ECB + 1.5%. Between **November 2008** and **July 2009**, 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 would have been charged on the tracker interest rate is demonstrated in column 3 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 account between **November 2008** and **July 2009**, is also represented in the table below at column 4:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Nov 2008 – Dec 2008	0.53%	€764.38	Between €711.46 and €745.12	Between €19.26 and €52.92
Jan 2009 – Mar 2009	0.78%	€713.65	Between €631.30 and €662.67	Between €50.98 and €100.35
Apr 2009	1.53%	€697.29	€600.97	€96.32
May 2009	1.53%	€681.19	€586.19	€95.01
Jun 2009 – Jul 2009	1.78%	€681.19	€571.65	€109.54

I note that **14 July 2009** the Complainant completed an **Application for Interest Only** which outlined as follows:

“I/We wish to apply for an Interest Only Facility for a period of 12 months.”

The Complainant provided a **Valuation Report** on **30 July 2009** which outlined as follows:

“ACCOMMODATION -NUMBER OF ROOMS-

Reception Rooms	<input type="text" value="1"/>	WCs	<input type="text" value="3"/>
Bedrooms	<input type="text" value="3"/>	Kitchen	<input type="text" value="1"/>
Bathrooms	<input type="text" value="1"/>	Utility Rooms	<input type="text" value="1"/>

...

APPROXIMATE MEASUREMENTS/m²

House	<input type="text" value="104"/>	Site	<input type="text" value="300"/>
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...

VALUATION

Current Valuation

...

Comment on recent prices attained

for properties in the area... Average price €175,000 to €180,000”

The Provider’s internal email dated **7 August 2009** states as follows:

“...

Request received via internal mail appealing decision to decline interest only request for account [ending 7563].

Number of issues here:

- 1) Val[uation] shows discrepancies (sic) with original val – now has only 1 reception room and the site has increased from 230 sqm to 300sqm, difficult to understand given the property is in a housing estate.*
- 2) Their valuation states 180k however the property was purchased in 2006 for 139.5k. Given we are now seeing property values around their 2004 levels it is difficult to see how this property could have increased by 40k.*
- 3) There is a 3 bed property similar to ours in the development currently advertised on daft.ie at 159k, 20k less than the valuation and this is the asking as opposed to the sale price.*
- 4) There are 3 beds for sale on daft.ie advertised c, 135k in line with our index value, it is 4 beds that are advertised at the 180k mark.*

Decision to decline interest only request remai[ns]”.

A **statement of arrears** for the mortgage loan account ending **7563** has been provided in evidence which shows that the mortgage account was in arrears of €1,362.38 on **30 September 2009**. The amount overcharged on the mortgage loan account during the period between **November 2008** and **September 2009** rose from €19.26 to €109.54 per month and totalled €917.36 by **September 2009**.

In the period between **August 2009** and **August 2011** the mortgage loan account was on the Provider's variable commercial base rate which fluctuated between 4.28% and 4.83%. The tracker interest rate that would have been applied was ECB + 1.5%. Between **August 2009** and **August 2011**, the overall tracker rate (ECB + margin) fluctuated between a rate of 2.50% and 3.00%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged on the tracker interest rate is demonstrated in column 3 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 account between **August 2009** and **August 2011** is also represented in the table below at column 4:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Aug 2009 – Jan 2010	1.78%	€681.19	€571.65	€109.54
Feb 2010 – Jan 2011	1.78%	€409.44	€237.51	€171.93
Feb 2011 – Mar 2011	1.78%	€701.83	€592.53	€109.30
Apr 2011 – Jul 2011	1.58%	€720.33	Between €592.53 and €606.30	Between €114.03 and €127.80
Aug 2011	1.83%	€735.81	€620.08	€115.73

In **January 2010** the arrears on the mortgage loan account were €2,905.95. The Complainant wrote to the Provider on **4 January 2010** requesting interest only repayments on his mortgage loan as follows:

"I am requesting a (sic) Interest Only repayment on property at [the security property address] as i am having difficulty renting property,

And will be renting property in near future for €400 per month."

An **Income and Expenditure Statement** to the Provider which was signed by the Complainant on **4 January 2010**. This document detailed that the Complainant's Employment Status was "*Not Working*" and the reason for the arrears was "*Can't make repayment due to change in work status*". The Complainant did not provide any details in relation to his monthly income or expenditure.

In the **Details of Proposed Arrangement** section, the Complainant stated as follows:

*"(Interest only) or €400 taken (sic) capital + interest in to account;
Will make some lodgement at later date, can't determine how much but will take off capital if possible".*

The monthly overcharges on the mortgage loan period between **June 2009** and **January 2010** was €109.54 per month, which I acknowledge is a significant amount to be overpaying on a monthly basis. It also appears that the Complainant was unemployed at the time and was having difficulty renting the property.

I note that interest only repayments of €409.44 per month were applied to the mortgage loan account from **February 2010** until **February 2011**.

The **statement of arrears** for the Complainant's PDH mortgage loan account ending **7587** shows that this account entered arrears of €1,278.69 on **30 November 2010**. The Complainant has submitted that this was because he "*used all [his] income to try + meet obligations on [the BTL] property.*" I note that the monthly overcharge on the mortgage account ending **7563** was €171.93 per month between **February 2010** and **November 2010**. It appears from the **statement of arrears** that there were no arrears on the account ending **7563** at that point in time.

The interest only repayment arrangement on the mortgage loan account ending **7563** expired in **February 2011** when the account reverted to full capital and interest repayments of €701.83.

The Provider's internal notes state that it received an "Interest Only Request" from the Complainant on **1 February 2011**.

I note that the Complainant wrote to the Provider by way of undated letter as follows:

"I am writing to you in connection with my Interest only agreement which i took out over a year ago, due to my circumstances at present i am finding it hard to pay the repayments at present even with interest only, and to go back to paying the Capital would be impossible for me, i am seeking a tennant (sic) for above property at present with good possibility (sic) of getting a tennant (sic), to pay interest [illegible] as before ... Could you please try and let me have another year with Interest Only."

The Provider's internal note dated **4 February 2011** states:

"Called [the Complainant]. He will send in all relevant docs for application ASAP."

It appears from the evidence that there were no further interactions between the parties in relation to the Complainant's request for a further interest only repayment period on the mortgage loan account at that point in time. I have not been furnished with any evidence to suggest that the Complainant proceeded with his application for a further interest only period as he did not complete the SFS and he did not furnish the Provider with any of the requisite supporting financial information.

I note from the **statement of arrears** that the mortgage account ending **7563** re-entered arrears of €701.83 on **28 February 2011**. The monthly overcharge on the mortgage at that time was €109.30.

In the period between **September 2011** and **November 2016** the mortgage loan account was on the Provider's variable commercial base rate which fluctuated between 4.48% and 5.08%. The tracker interest rate that would have been applied was ECB + 1.5%. Between **September 2011** and **November 2016**, the overall tracker rate (ECB + margin) fluctuated between a rate of 3.00% and 1.50%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would have been charged on the tracker interest rate is demonstrated in column 3 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

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been applied to the mortgage account between **September 2011** and **November 2016** is also represented in the table below at column 4:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Sep 2011	1.83%	€735.81	€620.08	€115.73
Oct 2011 – Nov 2011	2.08%	€751.29	€620.08	€131.21
Dec 2011	1.83%	€736.02	€606.21	€129.81
Jan 2012 – Jul 2012	1.48%	€714.92	€592.72	€122.20
Aug 2012 – May 2013	2.48%	€714.92	€579.71	€135.21
Jun 2013 – Aug 2016	2.73%	€732.06	Between €548.54 and €567.74	Between €164.32 and €183.52

The **statements of arrears** show that on **30 September 2011**, the arrears on the BTL mortgage account ending **7563** were €1,471.62 and the arrears on the PDH mortgage account ending **7587** were €1,365.26. I note that the monthly overcharge at that point in time on the mortgage loan account ending **7563** was €115.73.

The Provider's internal notes indicate that a meeting took place between the Provider and the Complainant on **1 September 2011**. The Provider's notes outline as follows:

“took [the Complainant] into priv[ate] office, explained marp process to him, gave him sfs & int only request form. He has taken them home with him to complete with his wife and will revert back to us if he wants to go ...”

The arrears on the BTL mortgage account ending **7563** were €4,644.82 on **31 May 2012** and the arrears on the PDH account ending **7587** were €7,705.89. At that time the monthly overcharge on the relevant account was €122.20 per month.

The Complainant signed a document on **21 June 2012** which stated as follows:

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"I have enclosed the completed Financial Statement form in order to apply for interest only for a period of 36 months"

The **Standard Financial Statement (SFS)** completed by the Complainant on **20 June 2012** detailed that his employment status was *"Unemployed"* and the *"Reason(s) for Review/Arrears"* on his mortgage loan was as follows:

*"Drop of Income
Loss of Employment"*

The SFS outlined that the Complainant's only monthly income was Child Benefit of €280.00 per month. His total monthly expenditure was stated to be €3,354.00, not including his mortgage loan repayments.

The Provider wrote to the Complainant on **4 July 2012** as follows:

"Thank you for completing a Standard Financial Statement which was assessed by the Arrears Support Unit.

On your Standard Financial Statement you have declared a monthly income of no more than €1,050.00.

This figure is less than your monthly household expenditure. It is therefore unclear how there could be sufficient disposable income to maintain repayments on the Primary residence or indeed the Buy to Let properties.

[The Provider] cannot agree to a repayment plan unless the plans affordability can be demonstrated. For this reason [the Provider] cannot presently agree to your interest only request.

I have enclosed another Standard Financial Statement which you can complete if you feel there are corrections to be made. Please also forward a Notice of Assessment from the Revenue for 2011 and as will need to verify your annual income."

/Cont'd...

The Provider has submitted that its request for an explanation as to how the Complainant was funding his mortgage repayments and how he proposed to fund future repayments was “not forthcoming”.

The Provider’s internal notes indicate that its representative telephoned the Complainant on **21 November 2012**. The note details as follows:

*“ – RANG MR ON MOBILE.
- I EXPLAINED TO HIM THAT LAST SFS WAS NOT COMPLETED PROPERLY
- HE NEEDS TO COMPLETE A NEW FORM WITH ALL DETAILS INCLUDING HIS INCOME AND THE DOVCS [sic] REQUIRED ON PAGE 2 OF SFS.
- I AM SENDING HIM A COPY OF HIS LAST ONE.
- HE ASKED FOR A REP TO CALL TO HEKP [sic] WITH SFS. I ADVISED HIM IT WOULD BE FASTER IF HE ARRANGED TO CALL INTO A BRANCH.
- HE WILL DO THIS AND GET NEW SFS ONTO US.
- WORKS IN CONSTRUCTION - VARIES. BOTH BTLS VACANT.”*

Based on the evidence submitted it does not appear that the Complainant provided a completed SFS as requested by the Provider. I note that arrears continued to accumulate on the mortgage loan account as the Complainant failed to make any repayments during the period between **November 2012** and **May 2013**.

The Provider issued a letter to the Complainant on **28 May 2013** with respect to the arrears on the mortgage loan account ending **7563**, which stated as follows:

“Our records show that at the close of business on the above date, payments on your mortgage account(s) were in arrears by a total of €12,604.29

At this time, we have not been able to engage with you with the objective of reaching a sustainable solution to reduce the arrears on your loan.

We have not received full contractual repayment for the past 3 months and you have not made contact with us, or responded to, any of our communications regarding your mortgage account(s).

As a result we are now classifying you as a ‘not cooperating’ borrower and we are now commencing legal proceedings to resposess (sic) the Property. It is important that you are aware that you will be responsible for the legal costs of such proceedings, estimated at €4,500 and costs associated with the disposal of the Property.

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However this amount could be higher or lower depending on the legal action taken.

You will also remain liable for any outstanding debt, including any accrued interest, charges, legal, selling and other related costs."

I note from the evidence that the arrears on the BTL mortgage account ending **7563** on **31 May 2013** were €12,604.29 and the arrears on the PDH account ending **7587** on that date were €7,705.89.

The evidence shows that at this time the Complainant was overpaying €135.21 per month. These are significant overpayments to make on a monthly basis. I accept that having access to these funds at the time would have assisted the Complainant to make fully informed decisions about the management of his finances and had an impact on the finances available to him. However I do not accept that the overcharge on the mortgage loan, was the primary reason for the arrears, as the Complainant has suggested. The monthly loan repayment on the mortgage loan in **May 2013** was €714.92, which is significantly larger than the monthly overpayment of €135.21 that the Complainant was making on his mortgage loan at the time.

I note that the Provider issued a letter to the Complainant on **5 June 2013** in relation to the *"Payoff Quote for Loan Account [ending 7563]"* which outlined that the amount required to redeem the loan as of that date was €119,631.82.

The Provider issued a further letter to the Complainant on **12 November 2013** which detailed as follows:

"We refer to previous correspondence in relation to the monies due and owing by you pursuant to the Facility Letter and monies otherwise due and owing by you to [the Provider].

...

You have failed to meet your repayment obligations pursuant to the terms of the Facility Letter governing the above account(s). As a consequence, the Loan Facility (including all interest and charges as outlined below) has immediately become due and payable by you.

*Accordingly, we hereby demand payment by you of the sum of €120,625.42 (being the amount required to redeem the Loan Facility, in full, as of 31st October 2013 by **5pm on Thursday 14th November 2013.** Please note that daily interest in the*

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amount of €15.78 will continue to accrue until such time as the Loan Facility is paid in full. Please also note that the daily interest figure is subject to change.

*If full payment in cleared funds is not made by **5pm on Thursday 14th November 2013**, the Bank will without further notice take the steps as is deemed necessary to recover this debt and/or enforce its rights under the security held to include the appointment of a Receiver and any other legal action.*

*We hereby give you notice that we will hold you responsible for all costs, fees, charges and expenses incurred or to be incurred by or on our behalf in connection with the Loan Facility including, without limitation, in connection with preserving our rights and enforcing any security given to us in connection with the Facility Letter should you fail to pay the sums herein by **5pm on Thursday 14th November 2013**.*

This letter is sent without prejudice to the Bank's rights whether under the Facility Letter and/or the security documents or otherwise and shall not be construed as a waiver of any other rights or remedies which we may have including, the right to make further demands in respect of the sums owing to the Bank.

We respectfully suggest that you immediately take legal action in connection with this letter."

The **mortgage loan statements** show that the Complainant did not repay the total balance owing on the account at that time.

The Receiver issued a further letter to the Complainant on **9 December 2013** which outlined as follows:

"By Deed of Mortgage and Charge dated 26 February 2007 between yourself and [the Provider], I was appointed as Receiver over the Property as detailed in the enclosed copy Deed of Appointment.

As a result of our appointment, the Property is now under my control as Receiver and all powers of management in relation to the Property now rest with me, and no transactions may be entered into without my authority. You are therefore no longer permitted to act for or on behalf of the Property.

Kindly forward to me within the next seven days a completed Borrower Questionnaire, which you will find enclosed, along with all relevant records, documents correspondence and agreements in relation to the Property and any

/Cont'd...

tenants in the Property, together with the names and addresses of other persons who may hold such items belonging to the Property.

...

Should you have any queries in relation to the above, please do not hesitate to contact my colleague [redacted] on telephone number].”

I note that no repayments were made to the mortgage loan account ending **7563** during the period between **2014** and **2016**.

A Provider **Referral form** has been furnished in evidence dated **1 May 2014** in relation to the Complainant’s PDH mortgage loan account ending **7587** which details as follows:

“...

Borrower confirmed arrears due to downturn in economy and not being able to get work on a consistent basis ...”

I note that an **Income and Expenditure Form** was completed on behalf of the Complainants. The form is undated, however it appears that it was completed in or around **May 2014**. The **“Reason for review/arrears”** states *“Mr self employed [occupation] and work very inconsistent”*.

The **Further Information** section of the **Income and Expenditure Form** outlines as follows:

“Borrowers confirmed that the main reason for the arrears accruing on the account was due to borrower being a self employed [occupation] and work not being consistent. Borrower confirmed that he has been working on a contract for [employer] at their [location] base and while he expects to be kept on this contract until June borrower confirmed the contract is on a month by month basis. Borrower felt that if his contract did end he would have work lined up which would provide a similar income. [The Complainant’s wife] (not named on the mortgage) works part time as a [occupation] and has done so for the past 10 years. This year Mr advised his account[ant] has advised will have to pay a total bill €13,830 mthly payment of €1152.50 towards an outstanding tax and VAT bill. In relation to Assets borrowers only assets are his wife’s car and his work van. Borrower when question[ed] was unable to give an estimated figure as to value of both vehicles however he has confirmed no finance is secured against either car. Borrower has no unsecured debts however in terms of income borrower confirmed he ear[n]s net income of €2634.66. His wife earns approx €1320.23 per month. Most of borrowers expenses

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are within guidelines however heating is slightly above average due to their disabled child. Borrower confirmed groceries of €930 per month are accurate as this covers 7 persons living in the property. When challenged borrower did not feel this figure was excessive. Borrower confirmed diesel expenses high as this covers both car and Van which are used for travel to and from work. Mr confirmed alone he makes a round trip of 100 miles per day for work. Car Maintenance is high as this covers both car and van.

Borrower confirmed medical expenses high as this covers health insurance for the family including child with special needs who often requires hospital appointments and admissions. Figure also includes prescriptions for the child. Borrowers are not paying TV license, SKY, cable or internet/broadband. Borrower does not have any life insurance and has no set monthly expenses for social expenses, clothing or cigarettes/alcohol."

A **Case Assessment Summary** was completed in relation to the Complainant's mortgage loan account ending **7563** on **28 May 2014**. The **Financial Statement Summary** section of the form outlined that the Complainant had a total monthly income of €5,099.00, less monthly expenditure of €3,896.00 and PDH mortgage loan repayment of €1,178.00, leaving a surplus of €25.00. The form detailed that there was a monthly rental income of €500.00 from the BTL property and the monthly mortgage repayment was €685.00, leaving a monthly deficit of €160.00.

Under the **Assessor Recommendation and Rationale** section of the form, it was outlined as follows:

"Mr Bwr is a self employed [occupation] to [name of company] until July 2014, aged [redacted] married with [number of] dependents aged [ages of children]. Bwrs spouse is not named on the mortgage but has provided her income as a part time [occupation] earnings €1864.

While Mr Brw's contract with [name of company] is on a month to month basis & due to end July 2014 Bwr has confirmed he has sufficient work lined up providing the same income.

Bwrs have a [child with disability] & is in residential care in [Location] costing €200pm (incl in exp)

This BTL is being rented for €500pm & is being lodged since June 13

Term remaining is 22 mths with cap repayment of €1030 to clear arrears is not affordable

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Current valuation of €30K against outstanding debt of €22.4 positive equity LTV 74% should we insist V/S residual of €6,374 would make little inroads to BTL with FARA where recent valuation of €50K against outstanding debt of €123K A/C [ending 7563] BTL has FARA Bwrs PDH [account ending 7587] is affordable & repayments have commenced for past 6 months & recommendation to cap arrears

RECOMMENDATION: TERM EXT TO 60 MONTHS REMAINING NEW REPAYMENT OF €684 EXCL INS"

Under the **Business Approver Recommendation and Rationale** section there is a handwritten note which states as follows:

"Term Ext on BTL Approved as abov[e]"

After the mortgage loan account had been deemed impacted as part of the Central Bank directed Tracker Mortgage Examination, the Provider wrote to the Complainant by letter dated **20 September 2017** as follows:

"...

While the property securing the Mortgage Account is currently under the control of the Bank, we outlined that you could have the opportunity to regain possession of the property.

...

Option 1: Take back possession of your property

...

Option 2: Bank sale with any remaining balance cleared.

..."

I note that the Complainant wrote to the Provider on **29 September 2017** as follows;

"I ... hereby wish to exercise option 2: Bank sale with any remaining balance cleared.

I have meet with both [Redacted] and [Redacted] to discuss these options and sought financial advice."

/Cont'd...

A **Deed of Surrender of Possession of Mortgaged Premises to [the Provider]** was signed by the Complainant on **17 June 2019**.

The Complainant has submitted that his mortgage loan accounts would not have fallen into arrears if not for the overcharging on the subject mortgage account ending **7563**. The **statements of arrears** for the mortgage loan accounts show that at the time the tracker rate of ECB + 1.50% was restored to the mortgage account ending **7563** on **29 August 2016**, the arrears stood at €39,440.65 on the mortgage account ending **7563** and at €20,111.59 on the mortgage account ending **7587**.

Whilst I accept that the overpayments of approximately €148.00 per month between **October 2008** and **August 2016** on the mortgage account are unacceptable, most unhelpful and inconvenient for the Complainant, I am of the view that the evidence shows there were other factors outside of the interest rate applying to the mortgage account that caused the Complainant to fall into arrears on both of his mortgage accounts. The evidence shows that periods of unemployment and a lack of rental income were the main contributing factors.

The Complainant has submitted that he was unable to pay his tax debt because of the Provider's overcharging on his mortgage loan account. I note from the evidence that Revenue issued an undated **Notice of Attachment** to the Complainant seeking tax debt due in the amount of €11,922.19.

The Complainant has further submitted that he used funds from his business to make repayments on his mortgage loan account during the period of the overcharging which resulted in a loss of business opportunities due to lack of working capital.

The Complainant has also submitted that he had to remove his son as a pupil from his specialised private school. He further states that he has been unable to take his family on holidays since **2008** and had to sell the family car. The Complainant is also seeking compensation of €10,800 for the loss of 3 years' rental income following the appointment of a receiver over the security property.

A copy of a letter from the Complainant's doctor dated **14 September 2017** has been provided in evidence which details as follows:

"[The Complainant and his wife] are patients of mine since 2004. This family has been under severe psychological stain for the past several years due to financial hardship and the impending threat of litigation from financial institutions. Their

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mental health is fragile. I understand this family are under ongoing financial pressure and I feel any further stress or legal action would seriously affect their health. [The Complainant and his wife] have [number redacted] young children – one of the children has special needs (physical and psychological) and requires special educational input and specialist opinion which is only available in Dublin – this is another financial hardship on them. I feel this family are at breaking point due to their circumstances and any further stressors, financial, legal or social will have serious adverse consequences for their physical and mental health.”

I have no doubt that this was a difficult time for the Complainant and his family. I note that at each point when the Complainant requested forbearance on his mortgage loan account, there were personal circumstances (that is, unemployment and inability to rent the security property) which caused the Complainant to seek forbearance. The difficulties in this respect are noted in the Complainant’s requests for forbearance.

That being said, I recognise that the overcharging on the Complainant’s mortgage loan account had a direct impact on the funds that the Complainant had available to him to service his mortgage loans, and other expenses, during this time period.

Throughout the 8-year period, the Complainant was denied the opportunity of making informed decisions about his finances as he did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan. The evidence shows that the overcharging in the period from **November 2008** to **May 2009** was between €19.26 and €100.35 monthly, rising between **July 2009** and **August 2011** to between €109.54 and €127.80 monthly, and increasing again to sums ranging between €115.73 and €183.52 per month in the period between **September 2011** and **August 2016**. These are significant sums on a monthly basis. I have no doubt that the Complainant suffered inconvenience as a result of the Provider’s overcharging.

During this time, the Complainant was challenged financially as he was servicing both of his mortgage loans on a reduced income. I have no doubt that this in and of itself placed a strain on the Complainant’s finances and it cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused additional hardship and serious inconvenience to the Complainant during this period. I am of the view that the evidence supports the Complainant’s position that the overcharge on the Complainant’s mortgage loan account has been a source of major inconvenience during the impacted period and the Complainant was required to engage with the Provider to seek a number of forbearance arrangements.

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Taking into consideration all of the evidence before me in terms of the level of overcharging and the extended period over which the overcharging occurred, and the impact such overcharging had on the Complainant, I am of the view that the level of compensation offered of €2,744.44 is not sufficient or reasonable to compensate the Complainant for the inconvenience suffered by the Complainant during the impacted period.

I do not accept that the Provider's contention that the redress and compensation payment made was "fair" and "reasonable". I note the Provider states that the Complainant's appeal was heard by the Independent Appeals Panel which also agreed that the redress and compensation received by the Complainant was sufficient. I do not agree with the Appeal Panel's decision either.

However, I note that the Provider has offered a goodwill gesture of €10,000.00 which remains open to the Complainant to accept. I consider this offer to be reasonable in the circumstances of this complaint. For this reason, I do not uphold the complaint.

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

7 October 2021

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

