



<b><u>Decision Ref:</u></b>	2021-0422
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer appropriate compensation or redress CBI Examination
<b><u>Outcome:</u></b>	Substantially upheld

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

This complaint relates to a mortgage loan account held by the Complainants with the Provider and an overcharge of interest in the amount of €35,566.39 on that mortgage loan account. The mortgage loan account was secured on the Complainants' private dwelling home.

The loan amount was for €220,000 repayable over a term of 25 years. The mortgage loan account was drawn down on **15 July 2005** pursuant to a **Mortgage Loan Offer Letter** dated **24 May 2005**.

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 Complainants' mortgage loan account and it was deemed to be impacted under that Examination.

The Provider contacted the Complainants on **12 December 2017** advising them of the error that had occurred on their mortgage loan account. The Provider detailed how it "*got things wrong*" as follows:

*"In our review, we found that when you moved to a fixed rate from a tracker rate we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate. Because of this, you may have had an expectation that a tracker rate would be available to you at the end of the fixed period."*

*The language used by us in your documentation may have been confusing as to whether it was a variable interest rate which varied upwards or downwards tracking the ECB Rate or a variable interest rate which varied upwards or downwards at our discretion.”*

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

*“How this failure affected you  
As a result of our failure, we can confirm that you were charged an incorrect interest rate between 14 Nov 2008 and 23 Nov 2017.”*

The Provider made an offer of redress and compensation to the Complainants in its letter dated **12 December 2017**. The offer of €42,079.18 was made by the Provider to the Complainants and comprised the following;

1. Redress of €37,344.71 covering:
  - Total interest overpaid of €35,566.39
  - Interest to reflect the time value of money of €1,778.32
2. Compensation of €3,734.47 for the Provider’s failure.
3. Independent Professional Advice payment of €1,000.00.

The Provider restored a tracker interest rate of ECB + 1.30% to the Complainants’ mortgage loan account on **24 November 2017**.

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

On **15 November 2018** the Independent Appeals Panel decided to uphold the Complainants’ appeal and awarded additional compensation of €10,000 to the Complainants. In determining the appeal, the Independent Appeals Panel outlined as follows:

*“The Panel had regard to the significant level of the overpayment and its impact on the Customers’ specific financial, personal and family circumstances, some of which were deeply private and confidential in nature, as supported by compelling and detailed evidence. The Panel are of the view that this warrants additional compensation.”*

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The Complainants accepted the Independent Appeals Panel's award of additional compensation and signed the **Appeals Panel Payment Instruction Form** on **20 April 2019**.

As the Complainants have been through the Provider's internal appeals programme, and the offer made and accepted as part of the appeal process was not in full and final settlement, this office was in a position to progress the investigation and adjudication of the complaint.

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

### **The Complainants' Case**

The Complainants submit that they "*are not satisfied with how we have been compensated to date*" in respect of the Provider's failure on their mortgage loan account. They detail that they feel that their "*... dreadful experience has not been dealt with compassionately or fairly.*"

The Complainants submit that the Provider's failure had an "*enormous impact*" on them "*both physically and emotionally*" which "*brought unnecessary stress and anxiety*". They outline that it "*was grossly unfair and luckily for us, there wasn't a more serious outcome.*" The Complainants detail that the Provider's "*insensitivity, dismissal and refusal to believe our factual circumstances, of how been [sic] charged the incorrect interest rate impacted our lives*" only added further "*hurt and upset to us, how they can assume differently is beyond belief*".

The Complainants submit that they were "*forthright and transparent with all relevant information*" to the Provider when applying for their mortgage. They detail that their mortgage was granted "*understandably on our income and ability to pay*" the mortgage repayments and they had furnished details of their income which arose from the lease of a licenced premises.

The Complainants outline that when the lease of the licensed premises was terminated, they "*continued with our required payments*" but difficulties arose when the Second Complainant was diagnosed with a serious illness.

The Complainants outline that when they started experiencing financial difficulties in meeting their mortgage repayments, they *“always co-operated”* with the Provider. The Complainants detail that they did so by arranging meetings with representatives of the Provider, maintaining telephone contact with the Provider and providing Standard Financial Statements together with supporting documentation when necessary.

The Complainants detail that when they had difficulty in meeting their mortgage repayments, they *“took action”* in the following ways:

- They submit that the Second Complainant had *“little choice”* but to sell her car as the First Complainant *“needed to upgrade his [business] Car, as his previous Car was unsuitable under [REDACTED] regulations.”*
- The Complainants detail that the Second Complainant met with their local Credit Union *“to restructure [her] Car loan repayments”* and because of she is *“... not confident of securing a loan with them in the future”*.
- The Complainants submit that the Second Complainant was recovering from treatment for her serious illness and was receiving correspondence from the Provider so returned to work sooner than advised by her medical team as she felt *“...so pressurised, there was no option”*.

The Complainants submit that they *“were wrongly treated by”* the Provider and its failure, and that they were subjected to *“[f]earful threats”*, unnecessary stress and anxiety, lost opportunities and an effect to their credit rating due to this. The Complainants rely on the Provider’s correspondence to support these claims and detail that this was ongoing whilst the Second Complainant was suffering from a serious illness.

The Complainants detail that they received several *“distressing letters”* from the Provider during the impacted period. They outline that receiving this correspondence from the Provider during the period while the Second Complainant recovered from her treatment for her serious illness caused considerable *“stress and anxiety”*. They outline that the Provider’s correspondence was *“so detached from the emotional pain and suffering [Second Complainant] endured”*. They outline that the Provider’s correspondence to the Complainants did not comply with its code of conduct as it did not act *“fairly or professionally”*.

The Complainants detail that, for example, they received a letter from the Provider dated **01 August 2011**, informing them that it had decided not to offer them an alternative repayment arrangement as their mortgage was *“not sustainable”*. They detail that as they read this letter they *“became more distressed learning our Mortgage loan is now being dealt with outside of MARP and the protections of MARP no longer applies.”*

They outline that the letter stated that if they do not repay arrears, the Provider could commence legal proceedings to repossess their property 3 months from the date of the letter. The Complainants submit that they *“were sickened to read the paragraph related to [the] Credit Reference Agency, realising the negative implications this would have for us.”* The Complainants state that their arrears at this time *“were the mere sum of €1, 361.10”*.

The Complainants detail that they appealed the Provider’s decision to decline to offer them an alternative repayment arrangement by way of letter dated **25 August 2014**. They outline that they received a response from the Provider dated **11 September 2014** which stated that it was the *“Board’s strong view, the sustainability of our home loan, is dependent on [the] disposal of the 2 unencumbered properties at [location].”* The Complainants submit that the proper description for the 2 properties is 2 retail units joined together and they appear on the Land Registry map as one property (the “Joined Properties”). The Complainants outline that they were shocked and dismayed at this response and could not believe that the Joined Properties were being described as unencumbered as the First Complainant’s elderly relation lived in the residential part of the Joined Properties, which the Provider was aware of. They further detail that the Joined Properties had been gifted to the First Complainant by this relation, and they had clearly stated in previous discussions with the Provider that selling the Joined Properties would never be an option.

The Complainants detail that they were offered an alternative repayment arrangement subject to evidence *“...satisfactory to the Bank that the Properties are placed on the open market for sale”* and a *“... letter of authority which authorises the Bank to contact our nominated Auctioneer/Estate Agent relating to the sale of the Properties.”*

They detail that this letter is an example of the *“Providers pressure and bullying tactics”* in respect of the sale of the Joined Properties. The Complainants submit that this letter *“was extremely worrying for [the First Complainant], as he didn’t want to cause any upset to his [relation], by outlining our situation.”* They state that this letter *“only added to our anxiety and distress”*, particularly because the Provider detailed it as its *“final response letter.”*

The Complainants submit that the First Complainant *“was so upset”* by this letter that the Second Complainant became *“very concerned for his mental health”*. The Complainants outline that as *“a last resort to our traumatic situation”*, the Second Complainant contacted an employee of the Provider and outlined their situation.

The Complainants outline that on **30 October 2014**, they received a **Mortgage Form of Authorisation**, which included a **Special Condition** requesting a Letter of Authority to allow the Provider to liaise with the selling agent and solicitor in charge of the sale of the Joined Properties.

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The Complainants detail that in response to this letter, the Second Complainant again contacted the same employee of the Provider and discussed the inclusion of this condition in this letter, advising again that they could not sell this property. The Complainants outline that they received "*more reasonable correspondence*" dated **25 November 2014** in response to their communication with the Provider's employee and this did not contain the condition to sell the Joined Property.

The Complainants outline that they received a further alternative repayment arrangement letter on **20 July 2015**. The Complainants detail that they "*couldn't believe upon reading, the Alternative Repayment Arrangement (ARA) was offered on the basis; we repay our mortgage loan from the sale of the assets we identified.*" The Complainants submit that the Second Complainant contacted the employee of the Provider and queried why selling the Joined Property was again included in the alternative repayment arrangement. The Complainants detail that the employee "*could not understand why this paragraph was included, thankfully she successfully dealt with same*" and this condition was removed and an alternative repayment arrangement was issued without this sentence.

The Complainants submit that the First Complainant "*felt constantly under pressure from the Provider regarding [the Joined] property*". The Complainants state that the First Complainant "*was not able to cope or deal with the stress caused to us, he suffered serious depression and he did outline this to an advisor.*" They detail that many of the Provider's letters "*disregarded and disrespected [the First Complainant's] concern for his relation*" and repeatedly mandated the sale of the Joined Property. The Complainants submit that the Second Complainant started attending counselling in **2015**. The Complainants detail that this type of correspondence further added to the First Complainant's "*fragile mental health*", so the Second Complainant dealt with it.

The Second Complainant submits that she could not discuss her fears with the First Complainant as he was "*...not able to cope*". The Second Complainant outlines how it "*was an extremely lonely journey*" and she "*lost [her] confidence*" and "*became very withdrawn.*" The Second Complainant states that she would "*refuse invitations to meet [her] friends*" as she was "*extremely exhausted and upset by events*", and "*...had the added pressure of having to deal with all the upsetting correspondence from [the Provider]*".

The Complainants contend that they believe many of their "*traumatic experiences were unnecessary*" and in reality the pressure was caused by having to pay a substantially higher interest rate. They submit that if they were paying the correct interest rate, there "*...is no doubt, we would have viewed our life's circumstances from a very different perspective*". The Complainants outline that they felt their choices were non-existent and faced difficult situations that they were not responsible for.

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The Complainants submit a number of examples of these difficult circumstances as follows:

- The Complainants detail that due to the Provider's failure they were unable to invest in the commercial part of the Joined Property, which was vacant for 4 years. They outline that the property was *"in need of essential upgrading, particularly in the areas of electrical heating and plumbing."* The Complainants state that they were aware these upgrades were necessary *"in order to make the property more attractive to any prospective tenant"* and that the Joined Property had the *"potential to generate an income of approximately €10,000 annually."* The Complainants detail that in **November 2018** they eventually leased out the Joined Property *"... for a much reduced rent, with the tenant agreeing, to do the necessary renovations"*. The Complainants state that they committed to this 5-year lease due to the *"pressure and fear"* from the Provider, prior to receiving the Provider's redress and compensation letter. The Complainants state that they received correspondence from the Provider regarding the tracker issue too late, and that if they had known about it sooner they would *"...have commanded a higher rent, and be in control of our own affairs"*.
- The Complainants further submit that the First Complainant was *"denied the opportunity to buy a [redacted] licence, enabling him to grow his customer base and increase revenue; with the increase of [redacted] operators in [location] he had no option, but to cease operating his [business] service"* at that time.
- The Complainants outline that they did not have the *"option to switch Mortgage providers, or to move and purchase a different property, as the sale of [their] own home during the downturn would not realise enough money."* They submit that they felt *"trapped"* and *"a sense of hopelessness"*.
- The Complainants further submit that *"[u]nder no circumstances had we the choice to finish our home, particularly landscaping and exterior painting"*.
- The Second Complainant outlines that she had *"to discontinue [being] a patient"* in her previous hospitals located in UK and Dublin *"[b]ecause of the expense involved with consultation fees, Scans, travel and accommodation."* The Complainants detail that the Second Complainant reluctantly requested a specialist doctor closer to their home to help alleviate some of the costs.

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- The Complainants submit that they “recall a very upsetting meeting with a [Provider] employee in the [named] Branch” and they will “never forget” it. They outline that after introducing herself, the employee led them into a boardroom, which was a “... cold and intimidating environment.” The Complainants state that during this meeting, the employee of the Provider “showed very little empathy to the circumstances we outlined to her.” They submit that they were “shocked when she told us, we have no children; how we could always rent a place to have a roof over our head.” The Complainants contend that this comment “was very insensitive” as the Second Complainant “had been through an emotional roller coaster medically, in the hope of starting a family, statements like hers only reminded me of something nature had denied me”.

The Complainants question “[w]hat was fair and professional about that communication?” and “[w]hat was the code of [conduct] exercised during that meeting?” The Complainants submit that they “left this meeting feeling very emotional, dejected and distressed with the possibility of having to leave our home”.

The Complainants submit that it is “unbelievable” that the Provider has “no record of a meeting that took place with the Complainants and a member of the Provider’s staff.” They contend that “[o]f course they have a record of the meeting, as the meeting was supposed to take place in [Provider named branch]; however we requested [name of Provider employee] would meet us in [different Provider named branch] as we wanted to retain our privacy”.

The Complainants further outline that on **30 October 2019** they contacted the Provider to enquire about their loan balance and detail that before the call ended, they were informed by the Provider that should they enter arrears, they “...would receive telephone calls”. The Complainants detail that these comments left them feeling “threatened and unnerved” and do not understand the relevance of same as they were only enquiring about the loan balance.

The Complainants state that this all occurred while the Second Complainant’s “had to cope with and battle a Rare [serious illness]”, being admitted to hospital many times and being required “to attend various appointments and tests”. They detail that the Second Complainant was advised by her specialist doctors, consultants and general practitioner “of the importance of rest and self care.” The Complainants submit that the “reality could not have been more different, and had a significant impact on [the Second Complainant’s] wellbeing.”



The Complainants submit that they are *“shocked and dismayed at the Providers reasoning”* for the Second Complainant’s decision to cease being a patient in hospitals in London and Dublin in the Provider’s response to this office. They state that they *“cant believe”* the Provider would *“upset”* the Complainants further with its *“assumptions”* and the Complainants contend their reasons given are a statement of fact. The Complainants outline that the Second Complainant is a *“very private person”* and *“would never disclose my personnel[sic] circumstances to my Consultants as to why I was unable to continue [being] their patient, as to treat my illness and keep me well was their concern”*. The Complainants rely on correspondence from the HSE to support this and detail that both the HSE and their local county council showed empathy and concern towards the Second Complainant’s illness and helped them to make their home more accommodating to her medical needs. The Complainants outline that there were hospital *“consultation fees, expensive flights and accommodation costs all relevant to this emergency consultation”*. The Complainants contend that the Provider failed to understand and recognise the distressing situation caused by the tracker mortgage scandal.

The Complainants contend that they find it *“amusing of the Provider to indicate, they acknowledged and displayed empathy to [the Second Complainant] at a time she was dealing with the consequences of a very [serious illness] diagnosis.”* The Complainants submit that they do not accept that the Provider gave any consideration to the Second Complainant’s serious illness.

The Second Complainant details that as a result of the financial difficulties, she *“felt so pressurised”* that she had to *“return to work much sooner, than advised by [her] medical team”*. The Second Complainant submits that her *“prognosis hasn’t changed”* and she is still dealing with her serious illness.

The Complainants further submit that the Provider made *“observations on [her] serious illness insurance claim”* in its response to this office, and they assert that they *“find this crossing a personal boundary.”*

The Complainants detail that they were very distressed reading the Provider’s response to this office. They contend that the Provider is failing to address the *“physiological pain and suffering [the Second Complainant] was going through during a critical time”* in her life and find the Provider’s *“dismissive attitude is deplorable”*. The Complainants submit that they *“firmly believe you can’t put a monetary value on pain and suffering”*.

The Complainants submit that it *“is grossly unfair of the Provider to state, that their error in overcharging interest on our mortgage loan from November 2008 to November 2017 was not the reason for our financial difficulties.”* They detail that their *“financial difficulties only commenced, when we were taken off our Tracker rate”*. They detail that for many years they *“were overcharged monthly interest on average €510.”* The Complainants submit it is *“ridiculous”* in response to the Provider’s submission that the Complainants did not refer to the interest rate as being the reason for their financial difficulties in their correspondence to the Provider. They submit that the reason they did not detail the interest rate as being the reason for their financial difficulties was because they *“trusted”* the Provider.

The Complainants assert that the €14,000 in compensation offered by the Provider is *“insulting”*. The Complainants are seeking *“proper financial compensation for what we have endured.”*

#### **The Provider’s Case**

The Provider details that the mortgage loan account was drawn down in the amount of €220,000 on **15 July 2005** for a term of 25 years, as detailed in the **Mortgage Loan Offer Letter** dated **24 May 2005**. It outlines that the Complainants signed and accepted the Loan Offer on **16 June 2005**. It details that the mortgage loan was subject to a discounted tracker rate of ECB + 1.3% for the initial 12 months. The Provider outlines that the Complainants signed and accepted a **Mortgage Form of Authorisation** on **27 November 2005** to apply a 3-year fixed interest rate of 3.49% to the mortgage loan. The Provider notes that upon expiry of the 3-year fixed interest rate, a standard variable rate was applied.

The Provider submits that it was around this time that the Provider identified a failure in connection with the management of the Complainants’ mortgage loan account. The Provider submits that the failure that occurred on the Complainants’ mortgage loan account was that when the Complainants moved from a tracker interest rate to a fixed interest rate, the Provider failed to provide the Complainants with sufficient clarity as to what would happen at the end of the fixed interest rate period in **2008** and the language used may have been confusing as to whether the variable rate was one which varied upwards to downwards tracking the ECB rate or one which varied upwards or downwards at the Provider’s discretion.

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The Provider submits that the Complainants subsequently signed and accepted a **Mortgage Form of Authorisation, Application for Change to Interest Only Loan on 04 January 2010**, applying a 6-month interest only repayment period to the mortgage loan account. The Provider states that the Complainants signed and accepted the **Mortgage Form of Authorisation on 14 April 2010** to apply a 2-year fixed rate of 3.15% to the mortgage loan.

It details that in **June 2010**, the Complainants submitted a **Financial Review Form** dated **23 June 2010** to the Provider and detailed that the reason for their financial difficulty was "*due to their house being new*" and they had to build a lawn and a driveway. It submits that they also stated that the First Complainant's business was a little quieter than usual. The Provider relies on this form and the Complainants' letter dated **24 June 2010** to support this.

The Provider details that the Complainants signed and accepted a **Mortgage Form of Authorisation, Application for Change to Interest Only Loan on 29 July 2010** to apply an interest only fixed repayment of €700 "*with the surplus above interest only to be put towards the capital balance for a period of 12 months.*"

It states that the Complainants signed and accepted a **Standard Financial Statement** ("SFS") dated **21 July 2011** and that they detailed the "*reason for review*" was due to "*financial difficulties*". The Provider outlines that the Complainants sent a letter dated **10 August 2011** advising of the Second Complainant's illness and requested financial assistance as they had "*over stretched*" their resources.

The Provider details that on review of the Complainants' **SFS** it offered the Complainants a 6-month interest only repayment period. It states that the Complainants signed and accepted a **Mortgage Form of Authorisation, Application for Change to Interest Only Loan on 26 September 2011** and a 6-month interest only repayment period was applied to the mortgage loan.

The Provider details that the Complainants signed and accepted another **Mortgage Form of Authorisation, Application for Change to Interest Only Loan on 27 April 2012** to apply a further 3-month interest only repayment period to the mortgage loan.

The Provider outlines that there was a meeting between its employees and the Complainants in **June 2012**, where it was informed of the Second Complainant's serious illness and recent diagnosis.

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The Provider submits that the Complainants informed it that the First Complainant's business had *"suffered a serious decline due to it being in a rural town which had significantly suffered from the economic downturn"* and *"the Second Complainant was in receipt of illness benefit"*. It further outlines that the Complainants advised that they were *"paid proceeds from [named insurance company] for a Serious Illness Claim in the amount of €44,449.04"* in **September 2011**. The Provider submits that the Complainants had advised it that the proceeds of the serious illness claim was to be used to cover the costs of the Second Complainant's illness. It relies on the internal meeting notes to support this.

The Provider details that the Complainants signed and accepted a **Mortgage Form of Authorisation, Application for Change to Interest only** on **12 July 2012** to apply a 12-month interest only repayment period to the mortgage loan account.

The Provider submits that the Complainants advised that they required further financial assistance in a **SFS** dated **25 June 2013** because of the Second Complainant's illness together with the fact that the First Complainant was preparing for an operation and *"trade [was] poor"* for his business. The Provider states that the **SFS** received by the Complainants noted that a rental review was due in **2013** so the Complainants might be able to receive additional rental income from their tenants. It further details that it was noted in this **SFS** that there was a commercial yard at the rear of the Complainants' commercial property which comprised of two retail units that the Complainants intended to rent which would increase their income.

The Provider outlines that the Complainants signed and accepted a **Mortgage Form of Authorisation, Application for Change to Interest Only Loan** on **25 July 2013** to apply a further 12-month interest only repayment period to their mortgage loan.

It details that it was advised by the First Complainant on **14 January 2014** by phone *"that the tenants in both retail units had left and he did not have new tenants for either property"* and the Second Complainant had lost her job. It details that the Complainants completed and signed a further **SFS** dated **26 January 2014** and *"advised that they hoped the retail units would be rented soon as they had"* redecorated in order to have a *"better chance of letting"*. The Provider notes that the Complainants also referenced savings of €7,000 that were being kept for the Second Complainant's medical expenses but were also being used to pay bills. It details that the Complainants advised that this money came from the Second Complainant's illness insurance policy.

The Provider outlines that a further meeting took place with the Complainants on **03 February 2014**. It details that at this point in time, the Complainants were already on a 12-month interest only forbearance arrangement which was due to expire in **July 2014**. It submits that it was advised that the Complainants mortgage repayments *“were being funded from the rental income of two rental units”*. It outlines that the commercial property comprising of two rental units was owned by the First Complainant’s relation who was *“gifting them to the First Complainant by will and the relation retain[ed] a right of residency for the remainder of his life.”* The Provider submits that it was advised that both rental units became vacant in **December 2013** and the Complainants’ *“rental income had ceased.”* It relies on the contemporaneous notes of this meeting to support this. The Provider outlines that the Complainants requested a 3-month moratorium *“until such time that the retail units were rented again.”* It submits that the Complainants *“had very little income and advised that they could not afford to meet the interest only payments”*.

The Provider details that the Complainants signed and accepted a **Mortgage Form of Authorisation, Application for a Deferral of Repayments** on **17 February 2014** for a 3-month moratorium.

The Provider submits that it was informed by the Complainants in **June 2014** that the two retail units had been repainted and that they intended to rent them out soon. The Provider submits that the Complainants contacted the Provider by letter dated **02 June 2014** and advised that meeting their mortgage repayments had become *“impossible”* and requested a 24-month interest only repayment period in order to allow them time to regain their rental income, for the Second Complainant to *“hopefully”* return to work or an increase in her illness payment and an increase in the First Complainant’s business revenue.

The Provider details that it contacted the Complainants in **July 2014** *“to discuss the forbearance arrangement which was due to expire.”* It outlines that the Complainants advised that the First Complainant’s business *“had started to pick up over the previous few weeks as he had secured a weekly school run which was earning him €200 per week.”* It further outlines that the Complainants advised that the Second Complainant was *“receiving illness benefit”* and the rental units had been repainted *“and they hoped to have these units rented out shortly.”* The Provider details that the Complainants *“requested an extension of interest only payments as the maximum monthly payments they could afford was €500.”* It submits that it was also advised *“that if they could not rent out the retail units that the Second Complainant intended to set up a small [redacted] shop in one of the units.”*

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The Provider outlines that it issued a letter to the Complainants on **01 August 2014**, detailing that after considering the full circumstances of the Complainants, its Arrears Support Unit *“decided not to offer [them] an ARA because [their] mortgage loan is not sustainable”*. It submits that this letter, in compliance with the **CCMA 2013**, advised the Complainants *“with regards to MARP and 4 options available to the Complainants including voluntary sale, voluntary surrender, trading down and mortgage to rent scheme”*. It details that it also advised the Complainants in this letter of its appeal process.

The Provider details that the Complainants issued a letter dated **25 August 2014** appealing *“the Provider’s decision not to offer an alternative repayment arrangement”*. It details that the Complainants advised that they understood the Provider’s decision as they were experiencing *“Cash flow problem[s]”* and that they were *“confident this situation will change”* as the retail units had been repainted. It details that the Complainants *“sought a further period of 12 months interest only payments in the hope that this would provide sufficient time to get the retail units rented and their cash flow to increase”*. The Provider outlines that the Complainants also indicated that they would start lodging payments to reduce the arrears on the mortgage loan.

The Provider submits that it is *“not obliged to provide the Complainants with an alternative repayment arrangement nor is it their prerogative to impose a proposed sum or an alternative repayment arrangement of their preference.”* It submits that the acceptance of any proposal *“is at the commercial discretion of the Provider and decisions are made based on certain criteria.”*

The Provider details that the mortgage loan account transferred from the previous Provider to the current Provider on **01 September 2014**. It outlines that the former mortgage loan accounts were transferred to the current Provider pursuant to a **Scheme of Transfer under Part III of the Central Banks Act 1971 (as amended, the 1971 Act)**. It outlines that this was a part of the implementation of the Provider’s EU restructuring plan and *“it was not necessary to obtain agreement from the Complainants to the transfer, nor did the Provider have a statutory obligation to notify the Complainants to the transfer other than to place a newspaper advertisement in at least one National newspaper.”* The Provider submits that it issued courtesy notifications to the Complainants in **June 2014** *“to advise of the transfer of their account to [the current Provider] on 1 September 2014.”* It further details that a subsequent letter was issued on **1 September 2014** *“confirming that the transfer was complete.”*

It outlines that the Complainants' appeal was heard on **10 September 2014**. It details that in compliance with **Provision 44** of the **CCMA** *"and within the mandated time frame a letter from the Provider issued to the Complainants dated 11 September 2014 offering the Complainants an alternative repayment arrangement."*

The Provider details that on **25 November 2014** the Mortgage Appeals Board wrote to the Complainants approving a 6-month interest only repayment period. The Provider submits that this was intended to provide the Complainants with an opportunity to rent the two retail properties, improve their financial situation in order to support an increase in the monthly repayments on the expiration of the forbearance period *"to allow for assessment for a long term sustainable option (if appropriate) at that time"*.

The Provider details that the Complainants signed and accepted the **Mortgage Form of Authorisation, Application for Change to Interest Only loan** on **08 December 2014** to apply the 6-months interest only repayment period to their mortgage loan.

The Provider outlines that the Complainants informed the Provider on **19 March 2015** that they had successfully rented out one of the rental units for €80 per week. The Provider submits that it was advised that the Complainants' income consisted of weekly rent (€80), carers allowance as the First Complainant was taking care of his parents (€306 per week), invalidity pension for the Second Complainant (€183.50 per week) and the business income (€120 per week). It submits that the *"Complainants also advised that the Second Complainant sold her car and the First Complainant"* upgraded his car to diesel in order to make it more efficient and cost effective. The Provider outlines that it was advised that the Complainants could meet monthly repayments in the amount of €900 *"with the hope that [they] could agree a split mortgage payment term"*.

The Provider details that the Complainants fell into arrears again from **30 March 2015** until **30 April 2015**. It outlines that a 31-day letter was issued to the Complainants on **27 April 2015** when the Complainants fell into arrears for the second time in compliance with **Provision 23** of **CCMA 2013**.

The Provider outlines that the Complainants fell into arrears again from **04 June 2015** until **17 December 2015**. The Provider details that the 31-day letter was issued to the Complainants on **29 June 2015** and it issued **Quarterly Review Letter** to the Complainants on **25 September 2015**. It submits that its Quarterly Review Letters issued and *"each letter contained an appendix of important information about mortgage arrears including contact details for Arrears Support Unit, Financial Advice including contact details for MABS and the Citizen Information Bureau, Credit Reference Agency, fees and charges relating to arrears and information on potential legal action"* in compliance with **Provision 27** of the **CCMA 2013**.

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The Provider details that the Complainants signed and accepted an **Agreement to Amend Mortgage Loan Offer letter** on **09 September 2015**. It details that this Agreement provided for fixed monthly repayments of €900 for the preceding 36 months.

The Provider details that the Complainants signed and accepted an **Agreement to Amend Mortgage Loan Offer Letter** on **21 December 2015**. It details that this agreement provided for fixed monthly repayments of €900 for 34 months and capitalised the arrears on the mortgage loan account. The Provider contends that the mortgage loan account was "*substantially in arrears*" from **10 April 2012** until **22 December 2015** when the arrears in the amount of €2,546.82 were capitalised.

The Provider explains that it is obliged under the **CCMA 2013** to contact customers when there is an arrears balance on their mortgage loan account. The Provider details that arrears correspondence is "*system generated and issue when a mortgage is in arrears irrespective of the level of arrears*". It submits that all arrears correspondence issued to the Complainants was in compliance with its obligations under the **CCMA 2013** and details that the information provided in its correspondence is information it is obliged to provide to customers under the **CCMA 2013**. The Provider details that the "*only way to guarantee that these letters do not issue is to ensure that all contractual payments reach the mortgage loan account by the due date.*" The Provider asserts that it acted at all times in accordance with its obligations under **Code of Conduct on Mortgage Arrears 2010**, **CCMA 2013** and the **Consumer Protection Code 2012** and submits that the "*Complainants have not offered any evidence to the contrary*".

The Provider has outlined its compliance of the **CCMA 2013**, as follows:

- It details that in compliance with **Provision 15 of the CCMA 2013** the Provider's "*homepage of its website has a dedicated section providing information for borrowers in arrears or concerned about financial difficulties.*"
- The Provider submits that it has complied with **Provision 30 to 34 of CCMA 2013**. It details it issued a SFS, SFS guide and MARP brochure to the Complainants.
- It submits that it "*explored all options for alternative repayment arrangements in compliance with Provision 37 and met with the Complainants and was in continuous contact with the Complainants to discuss their financial circumstances and to fully explore and discuss any potential options for an alternative repayment arrangement*".
- It outlines that on receiving each SFS and in "*compliance [with] Provision 32 of CCMA 2013 the Provider immediately provided a copy to the Arrears Support Unit for assessment.*"

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- It details that it acted in compliance with **Provision 37** of **CCMA 2013** and based all its assessments on the Complainants' personal circumstances, their overall indebtedness, the information provided in the SFS, their current repayment capacity and their previous repayment history.
- It submits that it considered "*all options for alternative repayment arrangements for suitability in their case, based on their full circumstances*" in compliance with **Provision 39** of **CCMA 2013**. It outlines that the "*Arrears Support Unit considered all information relevant to their case and all alternative repayment options offered by the Provider were explored*" in compliance with **Provision 39** of **CCMA 2013** and documented it as part of the Provider's internal procedure and in compliance with CCMA. It further outlines that under **Provision 39** there "*is no obligation on the Provider to offer an alternative repayment arrangement listed, if it deems that those listed are not appropriate.*"
- The Provider submits that in compliance with **Provision 40** it documented these considerations.

The Provider submits that the arrears correspondence "*was not intended to cause the Complainants stress or anxiety but contact was made with a view to engaging with them and ascertaining the reason why the agreed repayments were not being paid.*"

The Provider explains that given there have been no arrears on the mortgage loan account since **22 December 2015**, no further arrears correspondence was issued. The Provider submits that this case "*was handled sympathetically and positively, with the objective at all times of assisting the Complainants meet their mortgage loan obligations.*" The Provider contends that it acted in a "*respectful, professional and sympathetic manner*" in its interactions with the Complainants.

The Provider outlines that the Complainants, in their response to this office, reference a meeting with the Provider's employee at "*an unspecified time*" and it submits that there was "*certain content of which the Complainants took issue with*". It submits that it has "*no record of any such conversation as described by the Complainants and in particular has no record of comments being made by a representative of the Provider as described by the Complainants.*"

The Provider details that the Complainants' decision to restructure their mortgage loan account was due to the "*financial challenges*" they were enduring "*regardless of the interest rate charged on their mortgage loan account.*" The Provider submits that it "*is of [the] view that these instances of forbearance would have been necessary regardless of the error of the Provider in overcharging interest on the Complainants' mortgage loan accounts from November 2008.*" It relies on the **Standard Financial Statements** completed during the impacted period to support this.

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The Provider submits that from **January 2010** *“for a period in excess of 8.5 years, the Complainants faced a number of financial challenges.”* It details that between **January 2010** and **September 2018**, *“96 months [of] forbearance was provided to the Complainants during a 104 month period.”* It details that the *“purpose of these arrangements were predominately due to the Second Complainant’s illness, and the difficulties being experienced by the First Complainant’s business.”*

It details that the Complainants *“did not have sufficient monthly income to meet their mortgage repayments in full and as a result, they consistently requested alternative repayment arrangements from the Provider.”* It submits that the *“Complainants financial difficulties arose from a number of factors including a reduction in their income and their reliance on rental income to meet their mortgage loan repayments.”* The Provider details that the Complainants *“clearly demonstrated and expressly advised the Provider that they could not meet their capital and interest repayments”*. The Provider submits that they believe that this would have been *“the case regardless of the interest rate being charged.”*

The Provider submits that each alternative repayment arrangement offered by the Provider *“was in line with what the Complainants advised they could afford.”* The Provider submits that its provision of forbearance on nine separate occasions is *“solid evidence”* that it *“responded in an accommodative manner and did so several times”* and shows its *“responsive, empathetic account management”*. It details that the *“repeated willingness to give forbearance could only have had the effect of assisting the Complainants in managing their financial difficulties that originated since January 2010 and their extenuating personal circumstances that occurred since then.”*

It submits that *“[a]t no point, were the Complainants offered an alternative repayment arrangement in line with the repayment which would have fallen due had the mortgage loan account been on a tracker rate of interest and full capital and interest repayments were billed”*. The Provider outlines that the Complainants in their request for forbearance did not *“mention interest cost or the absence of a tracker rate or, more generally, the cost of servicing the mortgage as a factor.”*

In addition, the Provider details the following:

### **The rental units**

The Provider submits that the Complainants stated in their **SFS** dated **25 June 2013** that a rent review in respect of the two rental units was coming up and that they hoped to achieve additional rent due to this this. The Provider details that the rental units were vacated in **December 2013**.

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The Provider details that the Complainants advised that *“their rental units were vacant for 4 years”*. It notes however from the Complainants’ own contemporaneous notes that *“one of the retail units was rented by March 2015 and therefore was only vacant for a little over one year”*. It notes that the Complainants have furnished a copy of their rental agreement for the other retail unit that was leased at a later date in **2017** at a reduced rent because renovations were required.

The Provider contends that the retail unit in question had been vacant since **December 2013** for almost 4 years and it *“does not accept that the Complainants were not in a position to invest in their commercial property due to the financial pressure of the high repayments.”* It submits that the Complainants *“were not in a position to meet capital and interest repayments”* regardless of the interest rate being charged to their mortgage loan account. The Provider submits that the Complainants were not in a position to invest in their commercial property due to the *“cash flow problems”* they outlined previously and not due to the *“high repayments”*. The Provider submits that it responded *“well and repeatedly”* to requests for forbearance.

The Provider does not accept the Complainants submission that the Provider’s failure caused the retail units to be leased at a reduced rent for a 5-year term from **November 2017** due to the absence of investment.

The Provider submits that the rental agreement dated **01 October 2017** for the retail unit in question *“does not contain any termination rights for the First Complainant”* however the tenant has termination rights for *“the letting agreement on the second anniversary, subject to 3 months prior written notice to the Landlord or for intention so to terminate”*. It submits that it is of the *“firm view that there was no impediment to the Complainants seeking to stipulate terms and rental rates as they saw fit”*.

The Provider does not accept that there is a *“causative link”* between the tracker rate and the terms of the rental agreement. The Provider submits that *“it cannot be fairly and reasonably said that the Complainants’ decision to be bound by a rental agreement (at a time the retail unit had been vacant for 4 years, despite the retail unit being actively marketed and re-decorated since January 2014) was not as a result of the conduct complained of”*. It details that this is *“too remote from the question of an entitlement to a tracker rate and interest, and cannot be justifiably said to result from it.”*

## The Second Complainant's illness

The Provider submits that it *"empathises entirely"* with the Second Complainant in respect of her serious illness and for the ongoing going difficulties both Complainants have experienced and continue to experience.

The Provider submits that *"it cannot fairly and reasonably be said that the Complainants' decision to cease being a patient at her previous doctor's practice resulted from the conduct complained of."* It outlines that it was *"not privy to any discussions held with the Second Complainant and her doctor"*, but it highlights that there could have been a number of reasons for the Second Complainant's decision to cease being a patient of the named hospitals. The Provider submits that it is *"not unreasonable to speculate that the Second Complainant made this decision due to the nature and gravity of her illness and the likelihood of requiring a specialised type of care"*. It outlines that the Provider was *"not privy to the details of the Complainants decision in this regard."*

It submits that a *"significant insurance benefit (€44,449.04) [was] received by the Complainants"* on **06 September 2011** under the serious illness benefit and contends that the Complainants informed the Provider that they *"set aside to cover the expenses incurred by the Second Complainant during her treatment."* The Provider further details that in the **SFS of January 2014**, the Complainants referenced €7,000 in savings which was supposed to be used towards the Second Complainant's medical expenses but was being used to pay bills. The Provider submits that there is an *"overwhelming probability... that the Complainants made personal decisions regarding their medical care unbeknownst to the Provider"* and did not disclose these decisions to the Provider *"despite extensive engagement between the Provider and the Complainants."* The Provider details that the Complainants restructured their mortgage in an effort to address their financial challenges regardless of the interest rate charged. It submits that the Complainants have not furnished any *"contemporaneous evidence to show their decision to cease being a patient at a particular doctor's practice was connected to the issue of the interest rate on their mortgage account."* The Provider also points to the 8 years of forbearance which it applied to the mortgage loan account which it submits *"which could only have had the effect of assisting to alleviate their financial difficulties."*

The Provider outlines that it *"at all times has acknowledged the Second Complainant's serious medical condition, and entirely sympathises with the Complainants for the difficult personal circumstances that arose during the time at which they were dealing with the consequences of this diagnosis."*

The Provider contends that the Complainants seek to establish a causative link between their entitlement to a tracker interest rate and a personal decision regarding healthcare and the Provider details that *"...it cannot be fairly and reasonably said that the Complainants' decision arose from the conduct complained of"*, and the consequence is too remote from the question of an entitlement to a tracker interest rate.

### **The First Complainant's vehicle**

The Provider details that the Complainants sent a letter dated **09 March 2015** advising that the Second Complainant sold her car and the First Complainant *"upgraded"* his car to a more efficient and cost-effective vehicle. The Provider refers to the Complainants' letter to the Independent Appeals Panel dated **19 October 2018** which detailed the sale of the Second Complainant's car and described that the sale of the First Complainant's car as necessary as the car was *"unsuitable under [redacted] regulations"*. The Provider submits that the Complainants' contemporaneous note regarding the sale of the Second Complainant's car do not mention *"interest cost on the mortgage loan or the absence of a tracker rate as a factor."* It submits that the Provider's points on remoteness and that the financial difficulties were not related to the absence of a tracker rate also apply in this instance.

The Provider asserts that it included the Complainants' mortgage loan account in the Examination which resulted in the mortgage loan being restored to a tracker interest rate of ECB + 1.30% and a payment of redress and compensation to the Complainants. The Provider submits that the amount of redress and compensation offered was in line with the Provider's redress and compensation scheme framework. The Provider outlines that the redress included a lump sum *"equal to the difference between the tracker rates at the relevant margins and the higher interest rates charged for the relevant periods"*. It details that interest has been paid on that redress payment. It further submits that the redress paid seems *"to equate to the contractual measure of damages."* It submits that the redress payment has *"the effect of reversing the MFAs in the relevant periods in which rates higher than the tracker rates were charged."* The Provider submits that this redress included a time value of money payment *"to reflect additional financial loss suffered by our customers for not having access to the money that was used to pay interest at the incorrect rate."* The Provider submits that the *"redress and compensation paid has been fair and reasonable"* and puts them back in the position they would have been, had the Provider's failure not occurred.

The Provider submits that the compensation is calculated based on the Provider's understanding *"of detriment suffered, including but not limited to inconvenience, harm, loss as a result of not having funds available to the Complainants when they should, personal suffering and hardship, caused by the relevant issue."* The Provider acknowledges that compensation does not always reflect the detriment suffered by a customer but it submits that it always advises customers to refer their case to the Independent Appeals Panel for review.

The Provider details that the Complainants *"claim for additional compensation is neither fair nor reasonable, taking into account that the Complainants appealed the matter to the Appeals Panel, who further awarded €10,000."* The Provider submits that it is *"satisfied that the comprehensive scheme and the independent review and adjudication of the Complainants' appeal has provided appropriate and reasonable compensation for the losses suffered by the Complainants."*

### **The Complaint for Adjudication**

The Provider has incorrectly failed to offer adequate redress and compensation to the Complainants for the failures identified as part of the Examination on their mortgage loan account.

### **Decision**

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

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

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

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A Preliminary Decision was issued to the parties on **07 October 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.

Following the issue of my Preliminary Decision, the Complainants made a further submission under cover of their e-mail to this Office dated **01 November 2021**, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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

The Complainants' mortgage loan account was drawn down on a discounted tracker interest rate of 2.5% (ECB + 1.3%) for the first 12 months in **2005** and was to revert to a tracker interest rate of ECB +1.30% thereafter.

A **Mortgage Loan Offer Letter** dated **24 May 2005** (the "**Loan Offer**") issued to the Complainants which detailed as follows:

- |  |                    |
|--|--------------------|
| 1. "Amount of Credit advanced:             | €220,000           |
| 2. Period of Agreement:                    | 25 years           |
| 3. Number of                               |                    |
| <u>Repayment</u>                           | <u>Instalment</u>  |
| <u>Instalments</u>                         | <u>Type</u>        |
| 12   | Variable at 2.500% |
| 288  | Variable at 3.300% |
| ...  |                    |
| 11. Type of Loan:                          | Repayment          |
| 12. Interest Rate:                         | 2.500% Variable    |
| ...  |                    |
| 14. Purchase price (or value) of Property" | €365,000"          |

**Part 4 – The Special Conditions** of the Loan Offer detail as follows:

"...

/Cont'd...

*(iii) This offer replaces our offer of 02/03/2005.*

...

*(v) (a) Subject to part (b) of this condition, the interest rate applicable to the loan is variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.3% above the European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the loan. Variation in interest rates shall be implemented by the Society not later than close of business on the 5<sup>th</sup> working day following a change in the Repo Rate by the European Central Bank. Notification shall be given to the borrower of any variation in interest rate in accordance with General Condition 6(b) of this Offer letter. In the event that, or at any time, the Repo rate is certified by the Society to be unavailable for any reason the interest rate applicable shall be the Society's prevailing Homeloan variable rate. (b) For the first 12 months from the date of draw down of the loan the interest rate as outline in (a) above shall be discounted by 0.8% and shall be no more than 0.5% above the Repo rate and shall be subject to the terms and conditions outline in (a) above. At the end of the said 12 month discount period the interest rate applicable to the loan shall revert to the rate as outlined in (a) above i.e not more than 1.3% above the Repo rate. The discount set out in this special condition is the discount which would apply if the loan were drawn down today. There is no guarantee that this discount will be available when the loan is in fact drawn down. The actual discount that will apply shall be the discount then offered by the Society at the date of drawdown."*

**Part 5 – The General Conditions** of the Loan Offer detail as follows:

***"6. Variable Interest Rates***

- a) Subject to clause 6 (c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender's discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*
  
- b) The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1 (c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*

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- c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).*

## **7. Fixed Interest Rates**

- a) *The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the loan. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. **The fixed rate of Interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.***
- b) *The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Bank does not provide such a further or subsequent fixed rate period or if the Bank offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate..."*

The Complainants signed **Acceptance and Consents** section of the **Loan Offer** on **16 June 2005** on the following terms:

*"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."*

The Complainants' mortgage loan account was drawn down on **04 March 2004**.

On **27 November 2005**, the Complainants signed a **Mortgage Form of Authorisation ("MFA")** to apply a 3-year fixed interest rate of 3.49% to the mortgage loan account until **14 November 2008**.

It was at this time that the failure that was subsequently identified in **2017** 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 at the end of the fixed interest rate period in **November 2008**. The Provider found that the language used may have been confusing as to whether it was a variable interest rate which varied upwards or downwards tracking the ECB rate or a variable interest rate which varied upwards or downwards at the Provider's discretion.

I note from the **mortgage loan account statements** submitted in evidence that there was a "*Rate Change to 4.790%*" on the mortgage loan account on **14 November 2008**. I note that the Provider's redress and compensation letter dated **12 December 2017**, details that the Complainants' mortgage loan account was charged an "*incorrect interest rate between 14 Nov 2008 and 23 Nov 2017*". I have not been provided with a MFA signed by the Complainants electing a specific interest rate on the expiry of the fixed rate period in or around **November 2008** however it appears to me that the Complainants' mortgage loan account rolled on to the Provider's standard variable rate on **14 November 2008**.

The Provider has already conceded that the tracker interest rate that should have been applied from **14 November 2008** was ECB + 1.30%. Between **November 2008** and **January 2010**, the overall tracker (ECB + margin) rate fluctuated between a rate of 2.3% and 4.55%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **November 2008** and **January 2010**, is also represented in the table below:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overcharge per month
Nov 2008 – Dec 2008	0.24%	€1,241.56	€1,214.81	€26.75
Dec 2008 – Jan 2009	0.99%	€1,241.56	€1,132.89	€108.67
Feb – Mar 2009	0.74%	€1,159.50	€1,081.94	€77.56
Apr 2009	0.74%	€1,108.32	€1,030.94	€78.04
May 2009	0.49%	€1,055.80	€1,005.45	€50.35
Jun 2009	0.49%	€1,030	€981.57	€48.43
Jul 2009 – Jan 2010	0.24%	€1,006.04	€981.57	€24.47

The monthly overcharging on the Complainants' mortgage loan account ranged from €24.47 to €108.67 across a period of just over 2 years.

The Complainants completed and signed a “**Home Loan Mortgage Financial Review Form**” dated **04 December 2009**, which details as follows;

“...

*Please provide details of properties that you own:*

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<b>Property address</b>	<b>Value (€)</b>	<b>Mortgage Balance (€)</b>	<b>Repayments (€ monthly)</b>	<b>Rent (if monthly)</b>	<b>For Sale (Y/N)</b>	<b>Current Lender</b>
[Property address]	€380,000	€194,000	1,006.00			[Provider]
[Commercial Property address]	€400,000	-	-	€800		

...

*Other Assets (include shares/investments/deposits)*

<b>Details</b>	<b>Balance (€)</b>	<b>Financial institution</b>
On Accountants Report		[Named Provider]

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

<b>Details (including purpose)</b>	<b>Balance (€)</b>	<b>Financial Institution</b>	<b>Repayments (€ monthly)</b>
Over Drafts (Provider)		[Named Provider]	

...

<b>Income (Weekly/Monthly)</b>	<b>€</b>	<b>Outgoings (Weekly/ Monthly)</b>	<b>€</b>
Salary/ Wages		Mortgage	1006.04
...		...	
Children's Allowance		Maintenance Payments	€100 /MTH
...		...	
Mortgage Interest Subsidy		Mortgage Protection	69.44
Maintenance		Life Assurance	
Rental Income	€800 per mths		
Dependant's Contribution			
Other Income (Please specify) FAS COURSE	€920 /mths		
Total			

**Please provide any other information which you believe to be relevant to above:**

*Our Accountant [name of accountant] has forward a report out lining our current financial details separate to this form to you dated 3<sup>rd</sup> of December 2009. Please find same.*

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

*We feel we would like a break from full mortgage payment, as we are trying to keep our investment from suffering. We have a lot of maintenance work to catch up on, which will cost a lot of money. This work will enable us to create more revenue in the future."*

The Complainants make reference to an accountant's report however a copy of this has not been furnished to this office. From the figures detailed above, the Complainants had a monthly income surplus of €544.52.

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However, it is notable to me that the Complainants have not included any living expenses in their monthly expenditure, therefore it is likely that much of this surplus may have gone towards their monthly living costs such as groceries, electricity, and medical expenses.

The income details provided by the Complainants indicate that they relied largely on rental income from their investment property and a FAS supplement. The mortgage repayment was the largest expense. The reason for the Complainants' forbearance request was to assist them in maintaining their investment which they were relying on as a large portion of their income. I note the Complainants were overpaying **€24.47** per month on their mortgage loan account in **December 2009** due to the Provider's error. Although €24.47 per month is not an insignificant amount, particularly in circumstances where the Complainants only had a monthly income of €1,720 per month, it does not appear to me that the Complainants sought forbearance at this time due to the Provider's overcharge on their mortgage loan account.

The Complainants made full mortgage repayments from **November 2008** to **January 2010** and had submitted their first forbearance request in **December 2009**. It would appear to me that there was not a substantial difference between the interest rates applied and the tracker rate of interest that should have applied. Equally, the Complainants do not appear to have been in serious financial difficulty at this time.

They detail in their financial review that the investment property required a "*lot of maintenance work...which will cost a lot of money*", therefore it is reasonable to conclude that the request for forbearance would have been required even if the correct rate of interest had been applied as the maintenance work would have been required regardless.

The Complainants were offered a 6-month interest only repayment period on foot of the Provider's financial review. The Complainants signed and accepted a **MFA** to apply a 6-month interest only repayment period to their mortgage loan account on **04 January 2010**.

On **14 April 2010**, the Complainants signed and accepted a **MFA** applying a 2-year fixed interest rate of 3.150% to their mortgage loan account. On **29 July 2010**, the Complainants signed a further **MFA** moving to interest only repayments at a fixed amount of €700 per month, with any additional surplus to go towards the capital balance of their mortgage loan account.

The tracker interest rate that should have been applied from **February 2010** was ECB + 1.30%. Between **February 2010** and **August 2011**, the overall tracker (ECB + margin) rate fluctuated between a rate of 2.3 % and 2.80%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **February 2010** and **August 2011**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
Feb 2010– Apr 2010	0.24%	€409.13	€369.77	€39.36
May 2010 – Jul 2010	0.85%	€507.69	€369.77	€137.92
Aug 2010	0.85%	€1,083	€1,000.23	€82.77
Sep 2010– Apr 2011	0.85%	€700	€700	€0
May 2011– Jul 2011	0.60%	€700	€700	€0
Aug 2011	0.35%	€700	€700	€0

The 6-month interest only repayment period began in **February 2010**, and I note from the mortgage loan account statements submitted in evidence that the Complainants' monthly mortgage repayments reduced from **€1,006.04** per month to **€409.13** in **February 2010**. I note that the interest only period was due to expire at the end of **June 2010**. The Complainants sent the Provider a letter dated **24 June 2010**, detailing as follows:

*“At present we are paying interest only €507.44 per month on our mortgage. We wish to continue with this arrangement for a further 6 months, this would really benefit us as we are currently landscaping & laying out a driveway as well as other necessary items such as fencing off.*

/Cont'd...

*Our situation is very much the same as 6 months previous, figures are as before.”*

The Complainants completed and signed a “**Home Loan Mortgage Financial Review Form**” dated **23 June 2010**, which appears to have been enclosed with the Complainants’ letter and details as follows:

“...

*Please provide details of properties that you own:*

<b>Prop erty addr ess</b>	<b>Value (€)</b>	<b>Mortga ge Balance (€)</b>	<b>Repaymen ts (€ monthly)</b>	<b>Rent (if monthl y)</b>	<b>For Sale (Y/ N)</b>	<b>Curr ent Lend er</b>
[Pro pert y addr ess]	€380,0 00	€194,00 0	€1,000			[Prov ider]
[Co mm ercia l Prop erty addr ess]	€400,0 00	-	-	€800		

...

*Other Assets (include shares/investments/deposits)*

<b>Details</b>	<b>Balance (€)</b>	<b>Financial institution</b>
Deposit [Provider]	€32,000	

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

/Cont’d...



<b>Details (including purpose)</b>	<b>Balance (€)</b>	<b>Financial Institution</b>	<b>Repayments (€ monthly)</b>
Over Drafts (Provider)	€7,000		

...

<b>Income (Weekly/Monthly)</b>	<b>€</b>	<b>Outgoings (Weekly/ Monthly)</b>	<b>€</b>
Salary/ Wages		Mortgage	1006.04 (now €507.44)
...		...	
Children's Allowance		Maintenance Payments	€100 per /mth.
...		...	
Health Board		[Provider] Over Draft	
Mortgage Interest Subsidy		Mortgage Protection	€69.44
Maintenance		Life Assurance	
Rental Income	€800 per mth		
Dependant's Contribution	€840 per mth		
Other Income (Please specify) [business] Service	€600 per mth		
<b>Total</b>	<b>€2,240 per mth</b>		<b>€1,175.48</b>

**Please provide any other information which you believe to be relevant to above:**

[Name] our accountant forwarded you a report on 3<sup>rd</sup> of Dec 2009 outlining our financial situation. Please expect this report as being the same there has been no changes to this Report.

/Cont'd...

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

*Please understand our house is very new. We have to create a lawn & a drive way also business has got a little quieter rather than busier as was predicted and as already explained we are trying to protect our savings of €32,000 in [Provider]."*

The above financial review details additional income of €840.00 per month due to the "Dependant's contribution" and further additional income of €600 per month from the First Complainant's business in comparison to the financial review submitted in **December 2009**, which leaves a monthly surplus of €1,064.52. I note that the Complainants submit that the reason for review was due to the need to renovate their home and because the First Complainant's business had declined. The Complainants detailed that they also had savings of €32,000 which they were trying not to use.

The **Financial Review Assessment Form** dated **20 July 2010** generated by the Provider approved an offer of 12 months fixed monthly mortgage repayments at €700. The Complainants signed and accepted a **MFA** to apply the 12-month fixed mortgage repayments to the mortgage loan account on **29 July 2010**. I note from the mortgage loan account statements that the Complainants made fixed monthly interest only repayments of €700 from **September 2010 to August 2011**.

I note that when the Complainants made the application for additional forbearance in **June 2010**, they were being overcharged by €137.92 per month on their mortgage loan account.

The Complainants were also only making interest only repayments on foot of a prior forbearance arrangement with the Provider. I note that the Complainants' income was detailed as having been increased, however as set out in detail above, the Complainants have not included any living expenses in the expenditure column of the financial review form therefore it is difficult to ascertain a true reflection of their financial circumstances.

Prior to seeking initial forbearance from the Provider, the Complainants were meeting full capital and interest repayments in **January 2010**. The monthly repayments were €1,006.04 at that time which was approximately €300 more per month compared to the fixed interest only monthly repayments of €700 that were applied to the Complainants' mortgage loan account in **July 2010**. Upon a review of the mortgage loan account statements and amortisation table submitted in evidence, it is difficult to establish what the monthly overcharge would have been had the Complainants not entered a fixed monthly repayment arrangement of €700. However, prior to this arrangement the monthly overcharge was €137.92 in **June 2010**.

/Cont'd...

While I acknowledge that an overcharge of in or around €137.92 monthly is very significant, I do not consider that the evidence conclusively supports that this overcharge led to the Complainants requesting a further period of interest only repayments in **July 2010** given there was over €300 per month difference between the agreed fixed interest only repayments and the full capital and interest repayments. Therefore, it would appear to me that Complainants may have sought some form of forbearance from the Provider regardless of the overcharging that had occurred.

The 12-month period of fixed mortgage repayments expired in **August 2011**. On **26 September 2011**, the Complainants signed and accepted a **MFA** to apply a 6-month interest only repayment period to their mortgage loan.

The tracker interest rate that should have been applied from **September 2011** was ECB + 1.30%. Between **September 2011** and **January 2012**, the overall tracker (ECB + margin) rate fluctuated between a rate of 2.30% and 2.80%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **September 2011** and **January 2012**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
Sept 2011	0.35%	€1,110.82	€1,067.17	€43.65
Oct 2011– Nov 2011	0.35%	€498.94	€439.02	€59.92
Dec 2011	0.60%	€498.94	€399.21	€99.73
Jan 2012	0.85%	€498.94	€360.19	€138.75

/Cont'd...

The Complainants completed a **SFS** dated **21 July 2011**, detailing as follows:

“

		<i>Borrower 1</i>	<i>Borrower 2</i>
	...		
A3	<i>Outstanding Mortgage Balance (€)</i>	€190,000	
A4	<i>Estimated Current Value of Primary Residence (€)</i>	€390,000	
A5	<i>Monthly mortgage repayments due (€)</i>	€1108.48	
	...		
A16	<i>Employed Y;/N if self-employed give details</i>	Yes. [REDACTED]	
	...		
A20	<i>Reason(s) for Review/ Arrears</i>	<i>Financial Difficulties.</i>	

**Section B: Your Monthly Income**

		<i>Borrower 1</i>	<i>Borrower 2</i>	<i>Total</i>
B1	<i>Gross Monthly Salary (before tax and any other deductions at source)</i>	€1,400	€832	€2,232
B2	<i>Net Monthly Salary (after tax and any other deductions at source)</i>	<i>Self employment &amp; accountant fees €850 p/a</i>	<i>As B1</i>	<i>CE SCHEME</i>
	...			
B11	<i>Total Monthly Income (sum of B2 to B10)</i>	€1,400	€832	€2,232

**Section C: Monthly Household Expenditure**

		<i>Average Charge</i>	<i>Arrears (where applicable)</i>
	<i>Utilities</i>		
C1	<i>Electricity</i>	€60	
C2	<i>Gas/Oil</i>	€100	
C3	<i>Phone (Landline &amp; Internet)</i>	€20	
C4	<i>TV/Cable</i>	N/A	

/Cont'd...

C5	Mobile Phone	€60	
C6	Refuse Charges	€30	
C7	TV Licence	€15	
...			
C10	Food/Housekeeping/Personal Care	€440	
C11	Clothing and Footwear	€40	
C12	Household Repairs/Maintenance	€40	
...			
C13	Petrol	€320 FOR 2	
C14	Motor Insurance/Tax/NCT	€1,600 FOR 2	
...			
C16	Car Maintenance/Repairs v	€40 FOR 2	
...			
C18	Mortgage Protection/Endowment Premium	€69.44	
...			
C20	House Insurance	€33.33	
...			
C26	Medical Expenses and Prescription Charges	€120	
C27	Health Insurance	€143.41	
...			
C31	Life Assurance	25.99	
...			
C35(b)	Other -please specify CAR REPAYMENT	€360	
...			

***Please provide details of any steps you have already taken to reduce your monthly expenditure and the savings you have achieved:***

*As you can see from my expense list I am short as it is for my mortgage. I have €15,000 left in my savings this money is helping me with my finances, I still have some work to finish in my home which I take very slowly. Also my wife has been ill recently which has put extra pressure on our circumstances. We do want to make our full repayments but we are unable @ present, we hope this will change ASAP.*

/Cont'd...

***Please provide details of any steps you propose to take to reduce your monthly expenditure and the savings you expect to achieve:***

*I have another shop unit which I'm currently trying to let out which should generate €600 per mths, also my wife will be returning to do extra hours in the future but @ present she is unwell this is why we need our savings, as my wife will have to make several trips to a [UK] Specialist. I hope you will understand our situation & that we can only pay the interest @ present."*

In "**Section D: Your Current Monthly Debt Payments**" of the SFS, the Complainants detailed their current monthly debts to include mortgage loan repayments of €1,108.48, a credit union loan of €14,000 with €360 being paid each month and a credit card debt of €1,600 with €50 being paid each month.

In "**Section E: Property Assets (other than Private Residence)**" of the SFS, the Complainants detailed "*Commercial Property (2 Retail Units)*" with rental income of €800. The Complainants further detailed:

*"This property cannot be sold @ present as my relation gifted it to me, He has a lifetime interest and lives in the residential area."*

I note from the above **SFS**, that the Complainants monthly household expenditure totalled €1,717.17 per month (this is less the credit union loan repayment as this is also listed in monthly debt repayments), along with monthly debt repayments of €1,110 leaving total monthly outgoings of €2,817.17, whereas their total monthly income was €2,232 per month, leaving a monthly deficit of €585.17.

The Complainants noted that they were using their savings to help them with their finances and indicated that they had €15,000 left in savings. The **SFS** which the Complainants completed the year previous on **23 June 2010**, indicated that they had savings of €32,000 which they were trying to "*protect*".

It seems to me that the Complainants used approximately €17,000 of their savings over the course of a year to assist them with their monthly expenses and home improvements. When broken down over a 12-month period, it appears that the Complainants used €1,416.16 of their savings per month.

/Cont'd...

While the First Complainant's income appears to have increased by approximately €800 as compared to the previous SFS, the SFS dated **21 July 2011** contains details of the Complainants' monthly household expenditure which provides a more accurate reflection of the Complainants' true financial position.

The largest expense for the Complainants detailed in the SFS is the household expenses of €1,690.50. While the **Financial Review in June 2010** did not outline in detail the household expenditures of the Complainants, it is clear that there was an increase in expenses which made it difficult for the Complainants to meet their mortgage repayments. As the monthly repayments were fixed at €700 at this time, the Complainants' financial issues cannot be attributed to the overcharge of interest but rather appear to have arisen because of medical expenses, credit union loans and the credit card charges.

Furthermore, it should be noted that the Complainants advised the Provider at this stage that the commercial property could not be sold as the First Complainant's relation was residing in the residential part of the property and held a right of residence for his lifetime.

The Provider sent the Complainants a letter dated **02 August 2011**, which detailed as follows:

*"We are writing in relation to the Standard Financial Statement (SFS) which you recently completed and returned to us. However in order to assess your current circumstances and come to an arrangement in relation to your outstanding arrears we require the following supporting documentation to corroborate the information provided:*

- *Statements re credit card bills (please forward two more months)*
- *Up to date 12 Management Accounts*
- *Most recent audited accounts*

*We remain committed to working with you through any repayment difficulties you may have, and we encourage you to stay in contact with us to ensure we deal with any issues that do arise as speedily as possible. Should you have any queries on the above, please contact our Arrears Support Unit at Tel. No. [Phone Number]."*

The Complainants responded to the Provider by way of letter dated **10 August 2011**, detailed as follows:

*"Enclosed please find all documentation requested, most recent audited accounts are 2009 which are enclosed.*

*We have had a very stressful year as my wife has been diagnosed with [serious illness]. She has been very unwell and at this time over stressed, as I have previously explained we are over stretched with our resources. I always believe in paying our way but @ this time, we can only see ourselves paying the interest on our mortgage as soon as this changes we will be glad to revert to full payment of same, please understand our situation, if you request anymore documentation, please ring my mobile no. [phone number] as we want this matter sorted ASAP".*

On **09 September 2011**, the Provider completed a **Financial Review Assessment Form**, which detailed as follows;

"...

**New REQUEST:** 6 months interest only

**REASON FOR ARREARS:** Nil

**REPAYMENT RECORD:** Good repayment record in general note a couple of unpaids however

**PREVIOUS APPROVAL HISTORY:** )12/2009 3 months MO approved, 6 months interest only approved, 12 months Fixed repayments of EUR 700 pm approved

**ADDITIONAL SECURITY HELD? :** N/A

**PRE-DEFAULT/DEFAULT:** N/A

**INCOME PER MONTH& SOURCE:** 2,323 ([First Complainant] employed [occupation] & [Second Complainant] PAYE both are in receipt of 800 pm rental income from unencumbered property)

**EXPENDITURE PER MONTH:** Household Expenses 1,689 Short Term Debt 406 Mortgage 1110.82

**TOTAL MORTGAGE OUTGOINGS:** 3,205.82

**SURPLUS/ SHORTFALL:** Shortfall of 882 pm

**SHORT TERM DEBT BREAKDOWN:**

CRU 12,423 repayments 386 pm

[Provider] CC 1,678

...

/Cont'd...



**RELEVANT INFO/BACKGROUND:**

Customers own 2 unencumbered commercial unit is rented at 800 pm and are hoping to rent the second unit, Advised this property is valued at 700k but cannot be sold – [First Complainant's] relation has life time interest and lives in the residential part of the property.

Customers have 15 k in savings this has reduced from 32k in 2010

[Second Complainant] has been unwell as was diagnosed with [serious illness]

Customers have been managing repayments of 700 pm

**MABS/MIS/TRS**

**REASON FOR DECLINE:** ~~Ongoing repayment capacity is not evident.~~ [Strike out by Provider]

**RECOMMENDATION:**

Situation seems to have deteriorated since previous FRF were received, Recommend Approval of interest only here for 6 months. Customers will have ongoing medical expenses for [Second Complainant], Recommend Customers Approach MABS. May need to look into disposal of Commercial premises can commercial premises be separated from residential premises and sold off?

**Decision: CCMA Ref [number] Approve: 6 months interest only repayments".**

"Section 4 – Summary of key discussion points with customer and Branch recommendation" of an undated "Branch SFS Checklist" submitted in evidence details as follows:

**"Summary of discussion with customer(s)**

[First Complainant] is a self employed [occupation] and also has 2 rental income properties which is the basis of his income. – this income has decreased in the last 12 months and [First Complainant] has also had ongoing medical issues where he has had 2 operations and is due to have another one soon.

[Second Complainant] has been diagnosed with a very rare form of [serious illness] – details attached. While she is in remission at present she cannot work full time so this has an impact on the income into the household.

Their expenditure on a monthly basis has been cut drastically coming in at a figure of E1400 – v- guidelines of E1700.

*They do have savings of approximately E11k but this is the remaining funds that they were paid from a serious illness policy which they have been using towards [Second Complainant's] medical expenses and will continue to use for the purpose as [Second Complainant] will need ongoing treatment.*

*They have 2 rental income commercial properties which were given to [First Complainant] by his relation who lives in an apartment in one of the properties – it would be their long term intention to sell these properties to repay their mortgage but a condition of the inheritance of these properties is that [the First Complainant's] relation lives there until his death.*

*[Second Complainant's] scheme is finishing in September 2013 which is her contract end date."*

The Provider's internal notes dated **13 September 2011** detail the following:

*"RECOMMENDATION: Situation seems to have deteriorated since previous FRF were received, Recommend Approval of interest only here for 6 months, Customers will have ongoing medical expenses for [Second Complainant] Recommend Customers Approach MABS. May need to look into disposal of Commercial premises can commercial premises be separated from residential premises and sold off?*

*6 months interest only approved to start 01/10/2011 Recommend [First Complainant] and [Second Complainant] contact MABS to discuss options".*

Following a review of the Complainants' financial circumstances, the Provider offered the Complainants a 6-month interest only repayment period.

As detailed above, the Complainants started experiencing financial difficulties when the Second Complainant was diagnosed with a serious illness which prevented her from working. This meant the loss of the household's second income and led to a significant increase in medical expenses, leaving a shortfall of roughly €800 per month.

The Provider's internal notes dated **25 January 2012** detail as follows:

*"25/01/2012 - [First Complainant] called to [Provider] branch, he is currently running a [redacted]business but business is quiet only other income is from 2 rental properties. [Second Complainant] is quiet ill & will not be returning to work in the foreseeable future. Will required further forbearance. [Other Provider] SFS given to [First Complainant] for completion in the middle of Feb. in order to have it proceed by April when interest only is dropping of. [name of employee]."*

/Cont'd...

The Complainants completed and signed a **SFS** dated **22 February 2012** which detailed as follows:

		<i>Borrower 1</i>	<i>Borrower 2</i>
	...		
A3	<i>Outstanding Mortgage Balance (€)</i>	<del>€186,000</del> €189,608*	
A4	<i>Estimated Current Value of Primary Residence (€)</i>	€340,000	
A5	<i>Monthly Mortgage Repayments Due (€)</i>	<del>€498.94</del> €1219.30 *	
	...		
A16	<i>Employed Y/N: if self-employed give details</i>	[redacted]	ILLNESS BENEFIT AT PRESENT.
	...		
A20	<i>Reason(s) for Review/ Arrears</i>	Business is very difficult and my wife is currently ill	

<i>Section B: Your Monthly Income</i>				
		<i>Borrower 1</i>	<i>Borrower 2</i>	<i>Total</i>
B1	<i>Gross Monthly Salary (before tax and any other deductions at source)</i>		N/A ILLNESS BENEFIT AT PRESENT	
B2	<i>Net Monthly Salary (after tax and any other deductions at source)</i>	Estimated €300 p/m	N/A	€300.00
B3	<i>(€147.30 pw) Monthly Social Welfare Benefits</i>		Illness Benefit €638.30	€638.30
	<i>Please list</i>			
	<i>Illness Benefit</i>	N/A	€417.40	€417.40
	<i>Benefit -</i>	N/A	Illness Benefit	
	...			
B8	<i>Other, e.g. Pension, room rent, grants (Please specify) TRS</i>	<del>N/A</del> €73.04 *	N/A	€73.04
B9	<i>Monthly Income from Property assets (other than primary residence)(see E5)</i>	Letting 1 €800	N/A	€1,320 -

/Cont'd...

		Letting 2 €520		
	...			
<b>B11</b>	<b>Total Monthly Income (sum of B2 to B10)</b>	<del>€1,620 *</del>	<del>€417.40 *</del>	<del>€2,037.40 *</del>

€1693 -                      €638.30                      €2331.34

<b>Section C: Monthly Household Expenditure</b>			
		<b>Average Charge</b>	<b>Arrears (where applicable)</b>
	<b>Utilities</b>		
C1	Electricity	€65.00	
C2	Gas/ Oil	€125.00	
C3	Phone (Landline & Internet)	20.00	
...			
C5	Mobile Phone	2 Mobile €65	
C6	Refuse Charges	€40	
C7	TV Licence	€13.30	
	<b>Household</b>	328	
...			
C10	Food/Housekeeping/Personal Care	€320	
C11	Clothing and Footwear	€40	
C12	Household Repairs/Maintenance	€40	
	<b>Transport Costs</b>	400	
C13	Petrol	€100	For [Second Complainant]
C14	Motor Insurance/Tax/NCT	<del>€39.1 *</del> €60.76	For [Second Complainant]
C15	Rail/Bus/[redacted] Costs (including school transport costs for children)	N/A	
C16	Car Maintenance/ Repairs	€25	For [Second Complainant]
...			
	<b>Primary Residence Mortgage-related Costs</b>	186	
C18	Mortgage Protection/ Endowment Premium	€69.44	
...			
C20	House Insurance	€26.65	
	<b>Education</b>	96	
...			

/Cont'd...

	<b>Medical</b>		0
C26	Medical Expenses and Prescription Charges	€5	
C27	Health Insurance	€168.13	
	<b>Social</b>		173
C28	Lifestyle Expenses (e.g. family events, Christmas, Birthdays, eating out etc.)	<del>N/A</del> €50 *	
...			
	<b>Other</b>		50
...			
C36	Monthly Expenditure on property assets (see E5)	€87.50	
...			
C38	<b>Total Monthly Expenditure (sum of C1 to C37)</b>	<del>1,170.02</del> *	
		€1320	

\* [Strike outs by Complainants and/or with the agreement of the Complainants].

**Please provide details of any steps you have already taken to reduce your monthly expenditure and the savings you have achieved:**

We constantly look for ways of making our cost of living cheaper. Re – food, electricity, maintenance etc.

We no longer have life assurance except for mortgage protection. Literally spares a little I do a lot of my own maintenance on my rental property saving on repairs etc.

**Please provide details of any steps you propose to take to reduce your monthly expenditure and the savings you expect to achieve:**

We are going to look @ saving on refuse charges also we need to look @ our heating system,”

In “Section D: Your Current Monthly Debt Payments” of the SFS, the Complainants detailed their current monthly debts to include mortgage repayments of €1,006.04 with €639.59 being paid monthly and a Court mandated debt of €24,319 with €243.19 being paid monthly. The Complainants further outline two credit union loans comprising of a car loan with a 3-year term remaining with €7,141.22 outstanding and €56.12 being paid per week and a personal credit union loan with a 2-year term remaining with €2,831.80 outstanding and with €32.94 being paid per week.

/Cont’d...

The Complainants also outlined that they were repaying an overdraft of €142.74. The monthly debt outgoing was therefore approximately €1,381.76

In “Section E: Property Assets (other than Private Residence)” of the SFS, the Complainants detail as follows:

	<i>Property (give details below)</i>	<i>Property Type (e.g. Buy to let)</i>	<i>Owner-Ship Type</i>	<i>Current Value (est) € (Divided) ...</i>	<i>Monthly Rental Income – €</i>	<i>Monthly Expenditure (e.g upkeep, maintenance)</i>	<i>...</i>
E1	1	Retail unit	Sole	N/A	€800	€20.00	
E2	2	Retail unit	Sole	€400,000	€520	€87.50	
E3	3						
E4	4						
E5	<b>Total</b>	2		€400,00	€1,320	€107.50	

...

“Section F: Non-Property Assets” of the SFS detailed as follows:

<b>Section F: Non- Property Assets</b>					
	<i>Asset Type</i>	<i>Original Cost/ Value €</i>	<i>Current Estimated Value €</i>	<i>Net Monthly income</i>	<i>Please give any relevant details</i>
F1	<i>Savings/deposits/current account</i>	€20,000			<i>This €27,000 is part of a serious illness insurance which</i>
F2	<del>Shares</del> <i>Cr Union Savings Share</i>		€1099 =		<i>My wife [Second Complainant] received recently. This money is to</i>
F3	<i>Motor Vehicle (s)</i>	€7,000 €8,000	€7,000 €8,000		<i>Help with her illness costs and care etc. Doctors, consultants, travel. And many other associated costs etc.</i>

/Cont’d...

...					
F8	Total (sum of F1 to F7)	€42,000			

**Please list other liabilities, for example any guarantees given with respect to company borrowing or borrowing by a family member.**

**Please provide any other information which you believe to be relevant to above:**

My wife was diagnosed recently with [serious illness], she has only recently completed [treatment]. She will be out of work for some time as she has been very unwell having had 2 surgeries in [summer] 2011 and therapy in 2011 & [early] 2012. We have both been through a very difficult time through 2011 & and a very expensive time also start of 2012.

“Section G: Financial Statement Summary (for office use only)” of the SFS details as follows:

G1	Total Monthly Income (B11)	€2331.34	€2331.34
G2	Less Total Monthly Expenditure (C38)	€1320.00	€1320.00
G3	Sub-Total (G1 minus G2)	€1011.34	€1011.34
G4	Less Mortgage Repayments Due (D1)	€639.59 I/O	€1219.30
G5	Less Other Monthly Debt due (D22)	€385.93	€385.93
G6	Total Surplus/Deficit (subtract G4 and G5 from G3)	( €14.18)	(€59389)

Shortfall based on paying I/O mortgage payments	Shortfall based on paying full mortgage repayments”
--	--

The SFS shows that the Complainants’ income significantly decreased from €3,032 to €2,331.34 since completion of the previous **SFS** dated **21 July 2011**, with the rental income amounting to nearly half of their monthly income. The Complainants have attributed this to the decrease in the First Complainant’s business and the Second Complainant’s illness which resulted in significant medical expenses which depleted their savings and prevented her from returning to work. The Complainants reduced their household expenditure from €1,690.50 to €1,320. The Complainants’ monthly debts increased from €1,100 to €1,381.76. These figures indicate a deficit of €370.42. This deficit arose during a period where there was interest only repayments applying to the mortgage loan account.

The Provider's internal notes dated **05 April 2012** detail as follows:

*"Detailed phone conversation with [First Complainant] on 5/4/2012. CCMA Property SFS completed by both parties awaiting Fin. A/C's.*

*Business is very difficult and incurring on-going medical expenses for [First Complainant] diagnosed with [serious illness]. Have had previous forbearance of interest only. No previous temporary forbearance [sic]. Request for temporary forbearance [sic] on a/c [account number] from 1/5/2012 to 1/7/2012 inclusive – amount interest only E498.94 [location]."*

The Provider's internal notes dated **10 April 2012** detail as follows:

*"Three month forbearance request not processed – The amount requested is below Interest only payments for this a/c. The minimum requirement is 100% of Interest Only repayment. Routed back to [redacted]. Please route to [redacted] if the request is charged to a minimum of full interest only request. See [internal notes] for daily interest amount of e21.039 x 30.4 days = e639.59. Thanks."*

The Provider's internal notes dated **17 April 2012** detail as follows:

*"Solicited Meeting with [Complainants] in [Provider, Location] at 2 pm today 17/4/12. Discussed circumstances, [Second Complainant] has ongoing serious illness, thus curtailing her capacity to work and [First Complainant's] [redacted] business turnover is less than the E6.6k achieved in Y/E 31/12/10 (Net Profit E3.5k). The [Complainants] are going to approach [Location] Cr Union to restructure their 2 loans of c E10k over 5yrs @ say 10% would reduce repayments to E212pm thus allowing them to pay the increased Interest only of E639.59. D/F to 1/5/12 to allow them revert with Cr Union Decision. [Name of employee] NAM 17/4/12"*

The Provider's internal notes dated **18 April 2012** detail as follows:

*"18/4/12 [First Complainant] reverted saying that they would be able to make the I/O payments of E639.59 pending CR Union restructure being approved (confident that CU would agree). This will allow 3mth temp forbearance to be put in place pending completion of SFS and docs..."*

*Three month forbearance approved as recommended, pending full assessment of SFS. AS400 flags FB and XC have been updated and Mmail(s) sent requesting 3 month forbearance. Account has been routed back to relevant network [Location].*

/Cont'd...



*For accounts that are in arrears an extended promise has been set for each account. Reason for review – Illness – as per NAM request.”*

The Provider subsequently offered the Complainants the agreed 3-month interest only repayment period. On **27 April 2012**, the Complainants signed and accepted a **MFA** to apply a 3-month interest only repayment period to their mortgage loan.

The Complainants did not confirm at this time whether the credit union loan had been successfully restructured. The Complainants' mortgaged property required renovation in order to accommodate the needs of the Second Complainant arising from her long-term serious illness. The Complainants have submitted an *“Occupational Therapy Housing Report”* dated **02 May 2012** in evidence which detailed that the Complainants' *“application would be considered a Priority 1. The applicant has a terminal illness and will require suitable accommodation to meet her needs.”*

The Provider's internal notes dated **09 May 2012** detailed *“[r]e 3 month forbearance – extended promise adjusted”*. On **18 June 2012**, the Provider's internal notes indicated that a representative of the Provider contacted the Complainants to *“check on [the] result of Restructure Request to Cr Un. Left V/m for [First Complainant] to return call.”*

The tracker interest rate that should have been applied from **February 2012** was ECB + 1.30%. Between **February 2012** and **June 2012**, the overall tracker (ECB + margin) rate was 2.3%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **February 2012** and **June 2012**, is also represented in the table below:

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overcharge per month
Feb 2012 - Apr 2012	0.85%	€498.94	€360.19	€138.75
March 2012	0.85%	€498.94	€360.19	€138.75
April 2012	0.85%	€1134.33	€1,044.74	€89.59
Apr 2012 – Jun 2012	1.75%	Between €589.12 and €639.28	Between €359.11 and €360.19	Between €228.93 and €280.17

The mortgage loan account statements indicate that the monthly mortgage repayment increased to €1,134.33 in in **April 2012** and this direct debit was returned “*unpaid*”. I note from the bank statements that the Complainants made a lodgement in the amount of €498.94 in **April 2012**. The SFS dated **22 February 2012** details a monthly deficit of €370.42. The above table indicates that the monthly overcharged interest at this time was approximately €200. I am of the view that whilst the Complainants may still have had to seek the interest only repayments arrangement, the overcharging of interest undoubtedly caused further hardship and inconvenience to the Complainants.

The Provider’s internal notes dated **22 June 2012** detail as follows:

*“SFS received. [redacted] Updated. ICB obtained. On Mast. As per SFS reason for arrears in business is very difficult and my wife is currently ill. HEA long term health set inc [redacted]. SFS passed to [redacted] for assessment. See scanned documents.”*

The above note suggests that the Provider received a further SFS from the Complainants in **June 2012**. However, I note that the Provider has not supplied a copy of this SFS in evidence. I am disappointed that the Provider has failed to provide a copy of this document in event and has not offered any reasons as to why it is not able to provide a copy of said document.

**Provision 11.5 and 11.6 of the Consumer Protection Code 2012** (which was fully effective from **01 January 2012**) outlines as follows:

*“11.5 A regulated entity must maintain up-to-date records containing at least the following:*

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer’s contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information and documentation concerning the consumer.*

*11.6 A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.”*

The Complainants’ mortgage loan was incepted for a term of 25 years commencing from **July 2005** and this SFS was completed in **June 2012**. There is no indication that the mortgage has been redeemed or disposed of in any way. The Provider is obliged to retain that documentation on file for 6 years from the date the relationship with the mortgage holder ends. It is therefore unclear to me, in the absence of any explanation, why this correspondence has not been furnished by the Provider. This is most disappointing.

I note that the Provider’s internal notes dated **26 June 2012** summarise the contents of the SFS received as follows:

*“SFS –PDH-LTV:76.44% Arrears: E635.39 SFS/[Provider] Income: E2334.07 Exp: E1320 Deficit: E593.60 STD: E9973.52 @ 385.93pm Mtg as percentage of Income:52% Short/Long Term Sustainability: Potentially sustainable in the long term Rationale/ Decision: Monthly Exp Moderate – within [Provider] guidelines. STD – 2 loan with C/U @ 385.93 pm.*

/Cont’d...

Customers are in the process to restructure repays with C/U. [First Complainant] [redacted] business has slowed and [Second Complainant] is undergoing treatment for [serious illness]. 20k savings – serious illness insurance currently being used for [Second Complainant] treatment in Dublin and the UK. [First Complainant] has retail properties he inherited from...

SFS(PT2)Receiving rent of E1320pm –no mortgage o/s. relation age [redacted] Currently resides in a flat attached to the property. [First Complainant] intends to sell properties however from nam notes it is understood that he is unable to do so in the lifetime of the relation. Long term – If properties sold Cust o/s mortgage could be clear. Term extension not an option as 2 yrs only be able to be offered which will have little impact on repays. Custs are now seeking IO for a further 12 mths while [Second Complainant] completes her treatment...

SFS(PT3). She hopes to return to her [redacted] scheme once she is back to health which would produce more income than illness benefit she is currently on.

Customers have an excellent track record have always adhered to agreements made however have had 27 mths F/b To date. However taking into a/c customers present situation and their track record will look to approve 12 Months IO.

SFS CLOSED REFER TO COLLECTOR MFA TO ISSUE WAITING APPROVAL. For further details of assessment – please see S:\Credit\Collections Standard\SFS Assessment Team\Borrower Assessment Template.”

The Provider has submitted an undated document titled “**Summary of discussion with customers and Branch recommendation**” in evidence which outlines as follows:

❖ **“Summarise the key areas discussed focusing in particular on discretionary expenditure areas.**

- There is little in the area of discretionary expenditure in the SFS in that total exps total €1320pm (€1808pm being the Standard Exps for a couple/ no kids). Lifestyle exps at €50 per SFS seems very small. Health Insurance at €168pm although not considered discretionary is a priority for the [Complainants] given the [Second Complainant’s] current health problems.
- [The Complainants] have Investment Property in [Location] which was inherited from [First Complainant’s] relation who still resides in an Apt which is part of this property. Currently let to a commercial tenant. [Company name] @ €520pm and a Residential Tenant @ €800pm.

/Cont’d...

No mortgage on these units. However, they cannot sell these properties either during the lifetime of [First Complainant's] relation who is in his [age redacted]. I understand. The tax on this rental income is substantial in that there is no interest offset against the Gross rental income of €15,840pm (€1,320pm).

❖ **Were there any other specific areas of challenge?**

- The challenge facing [the Complainants] is twofold in that (1) [First Complainant's] [redacted] business has suffered a serious decline in recent times. [Redacted] business in a rural market town like [Location] has suffered badly and [First Complainant] has done some local advertising to try and increase his share of the available business in [Location]. (2) **[Second Complainant] is only receiving illness benefit of €147.30pw at present as she is out of work due to her illness** (see outline below). She is hoping once she is fit enough to be able to return to [location] as a ..Community Employment participant.

❖ **Has the short term debt been restructured; is there an opportunity to do so?**

- I asked [the Complainants] to approach the Credit Union to seek restructure of their **€9,973** Credit Union Debt. I am unsure as to the outcome of these discussions. However I have contacted [the First Complainant] today (19/6/12) to seek update on this. Left v/m and will put note on [internal notes] as to the reply when [First Complainant] reverts to me

❖ **Is there an ongoing illness / medical issue impacting monthly outgoings?**

- [Second Complainant] was diagnosed recently with a rare form of [serious illness]. She has only completed (in the last few months)[treatment]. This means she will be out of work for some time as she has been very unwell. [Second Complainant] has had 2 surgeries in [summer] 2011 and [treatment] in 2011 and Jan 2012. Some of the treatments have been in the UK thus required travel/ overnight stays in Dublin and the UK in addition to the cost of treatment not covered by Health Insurance.

❖ **What is the path to long-term sustainability?**

- At present it is important that we support the [Complainants] during this difficult time with [Second Complainant's] illness. As [Second Complainant] recovers from her recent treatments she should be able to return to employment with [Employer].

*This may take some time – over the next 12 months or so – maybe sooner depending on the rate of her progress.*

- *Employment income should be more than the current Social Welfare Illness Benefit of €638.30pm (€147.30pw). Even at €10ph [Second Complainant] should be earning a net €1600 gross pm (say €1250 net). This additional income over and above SW benefits would allow the [Complainants] to return to close on full Mortgage repayments.*

**What is your recommended approach and rationale for the forbearance option recommended?**

- *Although there is a large home mortgage of €189,571 with standard repayments of €1219pm the [Complainants] do have unencumbered investment property (estimated by the [Complainants] to be currently worth €400,000) which in the longer term can be sold to clear Home mortgage.*

*However due to the relation's right to reside in part of this property it may be difficult in the short to medium term to realise cash from a possible sale of this investment property.*

- *I am recommending Interest Only at €639.59pm for the next 12 months to allow [Second Complainant] recover from her surgeries and ongoing [serious illness] treatment.*

**How will your recommended solution lead to long-term sustainability?**

- *I believe that we need to allow [the Complainants] this forbearance of I/O on compassionate grounds while [Second Complainant] is going through this very difficult time. I appreciate that there is no possibility to extend the term based on the term currently remaining and their respective ages but the opportunity to clear mortgage from future sale of the [Location] Investment property is a long term option.*
- *In the meantime [Second Complainant] will concentrate on her recovery for now and return to employment as soon as her Doctors recommend.*

**Additional Information**

**Please add any other information relevant to the application that isn't captured elsewhere on the checklist**

- *There is a savings account [account number] at [Provider] [Location] with a current balance of €20,032.22. These funds are the proceeds of a Serious Illness claim when [Second Complainant's] [serious illness] was diagnosed. Proceeds of €44,449.04 were credited to this account on 6/9/12.*
- *The [Complainants] have ringfenced the proceeds of this Serious Illness Claim (remaining funds in savings account above) to be used to cover the Costs associated with [Second Complainant's] illness i.e. Travel and overnight costs in addition to the costs of treatments not covered by their health insurer. As you can imagine [Second Complainant's] treatment is their priority at present."*

The Complainants signed and accepted a **MFA on 12 July 2012** to apply a 12-month interest only repayment period to their mortgage loan account.

The Provider's internal notes dated **03 August 2012** detail that the Provider received a call from the First Complainant noting that he received an arrears letter which stated that €635.39 was due on the Complainants' mortgage loan account from **01 April 2012**. The internal notes also detail as follows:

*"Customer had lodged 498.94 to a/c at the time on NAM advice. 3 mths temp FB was set up but per note back in April seems [to have been from] 01/05 – 01/07. However I/o approved for 12 mths be[ga]an on 01/07. Cust wants to [know] could a/c be backdated to the April pay to be covered. I will sen[d] through req to see can this be done but if approved customer will still owe an amt for April as didn't lodge full I/O amt. Also req utd statement be issued..."*

*...IBC from cust to req a/c to go back on DD. Cust has been paying cash since Apr. Adv him new mandate necessary. Form/prepaid envelope in post to him today. Did not discuss arrears as colleague dealt with this in earlier call (see prev)."*

The Provider's internal note dated **20 September 2012** details as follows:

*"IBC from [First Complainant] looking to gt information on his int rate change. I advd cust he would need to speak to [department of Provider] as he was querying the Fixed rate mortgage.. cust arrs of 636.77 due since 1/04/12.*

/Cont'd...

*Cust was granted 3mths temp forbearance from 1/05/12 to 1/07/12 inclusive but i/o was applied to the a/c the 24/04/12 but full C+I payment of 1134.33 was due the 1/04/12. Cust lodged less than i/o of 498.94 leaving 636.77 outstanding. Cust advd he requested the a/c be backdated and email request was put through but no response from underwriter as colleague advd cust was granted 12 mths i/o from 07/12 to 19/07/13 so a/c couldn't be...*

*...cont> backdated to April as new i/o offer overwrite the old temp forbearance. Cust refused to accept the arrs on the a/c. I tried to advise customer he lodged less than the i/o amount anyway so if a/c was backdated he would still owe (639.28 – 498.94 = 140.31)...”*

It does not appear that the arrears that accrued in **April 2012** were discharged by the Complainants therefore letters advising the Complainants of the arrears outstanding on the mortgage loan account continued to be issued by the Provider.

The Complainants, in their post Preliminary Decision submissions dated **01 November 2021**, submit that the “*very upsetting meeting*” with the Provider’s employee took place in a branch of the Provider on **3 February 2013**. The Complainants maintain that they are “*grossly dissatisfied*” with how the Provider’s employee conducted this meeting and that they felt they were being “*interrogated*” and the atmosphere was one of “*fear*”. The Complainants state that the employee was “*brash, insulting, showed no effort to understand our circumstances.*” The Complainants assert that they were so shocked with how the meeting was conducted that they sought consolation from family members. The Provider does not appear to have any record of this meeting.

The tracker interest rate that should have been applied from **July 2012** was ECB + 1.30%. Between **July 2012** and **May 2013**, the overall tracker (ECB + margin) rate fluctuated between a rate of 2.05% and 2.30%.

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

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **July 2012** and **May 2013**, is also represented in the table below:

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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
Jul 2012	1.75%	€639.59	€359.11	€280.48
Aug 2012 – Oct 2012	2%	Between €637.59 and €639.10	€319.81	Between €317.78 and €319.29
Oct 2012 – May 2013	2.5%	€718.80	€319.81	€398.99

The amount of interest overcharged on the Complainants’ mortgage loan account steadily increased from **July 2012** to **May 2013**. As detailed above, I am of the view that it is likely that the Complainants may have requested forbearance regardless of the interest charged. Nevertheless, if the Complainants had been making interest only repayments on a tracker rate of interest, the Complainants’ financial difficulties would have been substantially alleviated given they were overcharged interest of just under €400 per month.

The Provider’s internal notes dated **22 May 2013** detail as follows:

*“Meeting held at [Provider] [Location] re [named Provider] mortg. Customers have advised they will require a further period of i/o if possible as financial circumstances have not changed. New SFS and guide provided to customers to complete & return with supporting doc’s. Customers advised they would complete form within the next 2 weeks and either drop in the forms or post them directly.”*

The Complainants completed and signed a **SFS** dated **25 June 2013** detailing as follows:

		Borrower 1	Borrower 2
	...		
A3	Outstanding Mortgage Balance (€)	€190,000	
A4	Estimated Current Value of Primary Residence (€)	320,000 – 340,000	
A5	Monthly Mortgage Repayments Due (€)	€718,80	

/Cont’d...

	...		
A16	<i>Employed Y/N: if self-employed give details</i>	<i>Self employed [redacted]</i>	<i>[redacted]</i>
	...		
A20	<i>Reason(s) for Review/ Arrears</i>	<i>Business NOT busy enough &amp; lots of personal issues</i>	<i>Such as health etc.</i>

<b>Section B: Your Monthly Income</b>				
		<i>Borrower 1</i>	<i>Borrower 2 per/mth</i>	<i>Total</i>
B1	<i>Gross Monthly Salary (before tax and any other deductions at source)</i>	<i>Please refer to audited recent accounts enclosed</i>	<i>C.E. 832.00 [Name of employer] 280.00</i>	<i>€1,112.00</i>
B2	<i>Net Monthly Salary (after tax and any other deductions at source)</i>	<i>Estimated €320</i>	<i>CE €832.00 [Name of employer] €274.40</i>	
	...			
B9	<i>Monthly Income from Property assets (other than primary residence)(see E5)</i>	<i>Letting 1 €520 Letting 2 €800</i>	<i>N/A</i>	<i>€1,320 Per mth</i>
	...			
<b>B11</b>	<b><i>Total Monthly Income (sum of B2 to B10)</i></b>	<b><i>€1,640</i></b>	<b><i>€1,320.00</i></b>	<b><i>€2,960</i></b>

<b>Section C: Monthly Household Expenditure</b>			
		<b><i>Average Charge Per mth</i></b>	<b><i>Arrears (where applicable)</i></b>
	<b><i>Utilities</i></b>		
C1	<i>Electricity</i>	<i>€55.00</i>	
C2	<i>Gas/ Oil</i>	<i>€140.00</i>	
C3	<i>Phone (Landline &amp; Internet)</i>	<i>€20.00</i>	
	...		
C5	<i>Mobile Phone</i>	<i>€65.00</i>	

/Cont'd...

C6	<i>Refuse Charges</i>	€20.00	
C7	<i>TV Licence</i>	13.30	
...			
C10	<i>Food/Housekeeping/Personal Care</i>	€400	
C11	<i>Clothing and Footwear</i>	€40	
C12	<i>Household Repairs/Maintenance</i>	€20	
...			
C13	<i>Petrol</i>	€100 ->	€100 for [Second Complainant]
C14	<i>Motor Insurance/Tax/NCT</i>	For [Second Complainant] €63.50	
C15	<i>Rail/Bus/[redacted] Costs (including school transport costs for children)</i>	N/A	
C16	<i>Car Maintenance/ Repairs</i>	€30 for [Second Complainant]	
...			
C18	<i>Mortgage Protection/ Endowment Premium</i>	69.44	
...			
C20	<i>House Insurance</i>	30.00	
...			
C26	<i>Medical Expenses and Prescription Charges</i>	€7.50	
C27	<i>Health Insurance</i>	182.56	
...			
C28	<i>Lifestyle Expenses (e.g. family events, Christmas, Birthdays, eating out etc.)</i>	€60	
...			
C36	<i>Monthly expenditure on property assets (see E5)</i>	€100	
...			
C38	<b>Total Monthly Expenditure (sum of C1 to C37)</b>	1,416.30	

**Please provide details of any steps you have already taken to reduce your monthly expenditure and the savings you have achieved:**

We have looked for a reduction on refuse which we got, we have cut down on our heating & fuel electricity etc. Our social life is one night per month.

/Cont'd...

*We have no other charges. We watch our food bill & clothes etc. I always do a lot of my own household repairs also I maintain my rental property also saving some money.*

***Please provide details of any steps you propose to take to reduce your monthly expenditure and the savings you expect to achieve:***

*We are always looking for ways to reduce our monthly expenses, I don't see what more we can do. We are always looking for ways to reduce our bills.*

*Our rental review is coming up later in 2013 so hopefully we can get a little extra rent from our tenants. also, we have a commercial yard @ the rear of our 2 retail units we are hoping to put this up for rent also."*

In "Section D: Your Current Monthly Debt Payments" of the SFS, the Complainants detailed their current monthly debts to include mortgage repayments of €1,400 with €718.80 being paid monthly and a credit union loan of €6,773 with €200 being paid monthly. It would appear therefore that the Complainants were successful in restructuring their credit union loans. The Complainants outlined that they were repaying €100 per month on their credit card. The total monthly outgoing debt was €918.80.

"Section E: Property Assets (other than Private Residence)" of the SFS details as follows:

	<i>Property (give details below)</i>	<i>Property Type (e.g. Buy to let)</i>	<i>Owner-Ship Type</i>	<i>Current Value (est) € (Divided)</i>	<i>...</i>	<i>Monthly Rental Income – €</i>	<i>Monthly Expenditure (e.g upkeep, maintenance)</i>	<i>...</i>
<i>E1</i>	<i>1</i>	<i>Retail unit</i>	<i>Sole</i>	<i>400,000</i>		<i>800</i>	<i>€50</i>	
<i>E2</i>	<i>2</i>	<i>Retail unit</i>	<i>Sole</i>			<i>520</i>	<i>€50</i>	
<i>E3</i>	<i>3</i>							
<i>E4</i>	<i>4</i>							
<i>E5</i>	<b><i>Total</i></b>			<i>400,00</i>		<i>1,320</i>	<i>€100</i>	

...

“Section F: Non-Property Assets” of the SFS details as follows:

<b>Section F: Non- Property Assets</b>					
	<b>Asset Type</b>	<b>Original Cost/ Value €</b>	<b>Current Estimated Value €</b>	<b>Net Monthly income</b>	<b>Please give any relevant details</b>
F1	Savings/deposits/current account	11,583	11,583		€11,583 is money left of a serious illness policy which my wife
F2	Shares				Needs for ongoing medical treatment for[serious illness].
F3	Motor Vehicle (s)	14,000 9,000	8,000 5,000		She is always in need of special attention re her illness. This costs money from time to time and it is
...					a little security for her towards that.
F8	Total (sum of F1 to F7)	€34,583	€24,583		

**Please list other liabilities, for example any guarantees given with respect to company borrowing or borrowing by a family member.**

**Please provide any other information which you believe to be relevant to above:**  
*as I have explained before my wife is coping with a very [serious illness] ...currently in remission. She does her best, to work a little & earn some income which is a great help to us. Unfortunately my trade is very poor but I always look very hard for extra business. Unfortunately last year I had 2 operations which was very difficult for us and I'm presently preparing for another operation, so unfortunately we both cant help our situation because we are limited with what we can do."*

As the Provider failed to furnish the SFS submitted in **June 2012**, it is difficult to fully assess the difference between the two SFSs furnished. However, on reliance of the Provider's internal notes, it appears that the Complainants' income increased from €2,334.07 to €2,960. This appears to be a result of the monied received by the Second Complainant on foot of a [redacted] scheme and other part time work. The restructuring of the credit union loans reduced the Complainants' credit union repayments from €385.93 to €200. As detailed above, the First Complainant was also experiencing medical issues at that time.

/Cont'd...

The Complainants therefore appear to have made every effort to reduce all expenses, however minimal.

The Complainants have submitted that the restructuring of the two credit union loans reduced the Complainants' chances of successfully applying for another loan with the credit union. I note that the Complainants were making two separate credit union loan repayments of €224.48 and €131.76, the overall repayment being €356.24. While I accept that the restructuring of the credit union loans may be taken into consideration in future credit union loan applications, the Complainants' reduced financial income and the financial difficulties they were experiencing were eased somewhat by the restructuring which, in my view, would have been an issue regardless of the Provider's error.

The Provider's internal notes dated **05 July 2013** detail as follows;

*"SFS received.....At section E customers state current estimated value for both properties is 400,000.00, was unable to split this amount across two section E lines. As per SFS reason for arrears is business not busy enough + lots of personal issues.."*

The Provider's internal notes dated **12 July 2013** detail as follows:

*"Summary; CCMA; Balance 189,506.03, arrears 636.77, CG 2, LTV 81%, Previous FB 36m i/o adhered to, arrears carrying since 04/12 from FB expiry. [First Complainant] [age redacted] and [Second Complainant] [age redacted], married with no dep's. Financial difficulty due to reduction in income as [Second Complainant] unable to return to work f/t due to [serious illness] since 2011, only case of this [serious illness] in Ireland therefore no treatment/ prognosis available, info provided in relation to same. This has obviously been a very difficult time for customers as well as a time of financial difficulty. [Second Complainant] currently in remission working p/t with [redacted] on ave. 431epm, also doing [redacted] scheme earning 901.99epm.. ...*

*..due to finish 2m time. [First Complainant] S/E [occupation] advises earning 320epm on ave (evidence from 2011), also in receipt of r/i from two Comm Units (unencumbered, inherited from relation) r/i 1,320. 2011 Acc's/ Self assess evidenced showing 1.5kpa net [business] inc and 9.6k net r/i, more or less in line with current inc. Total inc 3,047e when r.i included and once [redacted] scheme finishes [Second Complainant] intend to apply for invalidity which if successful is just slightly less than ..income, will not improve financials. M/I ratio of earnings 41% not incl r/i. [First Complainant] is also unwell, had a few operations last yr and due more...*

/Cont'd...

*..ext'n i/o 12m given sensitive nature of case. [Second Complainant] unable to receive accurate prognosis health therefore unable to [guarantee] if return to work. They intend to dispose of assets (ie sell commercial unit worth 400k) as their I/t proposal to reduce/clear debt however condition that relation reside in apt (living above both units) therefore unable to consider at present. Acknowledge 36m FB to date, however given the circumstances in that assets held propose to sell in future, LTV 81%, that both customers have been ill, [Second Complainant] in particular, would be agreeable to extend FB on this basis. Note FB was approved prior << contd...*

*..to illness and that previous FB proposed increase in income from [redacted] scheme however this has not improved affordability. ...L/T sustainability appears to rely on [Second Complainant] return to work, not [guaranteed], or sale of assets, not possible at present. Notwithstanding this, feel the overall risk to Bank is low, customers have a good rpyt record and would be willing to facilitate customers at this time. Overall budget surplus 613.92e however note [Second Complainant] [redacted] scheme income will cease in Sep and has to apply for Invalidation benefit, also majority of income is rental STD has been..*

*..Scope for TE 2 yrs however would not reduce rpyts significantly."*

The Provider's internal notes dated the same date, detail as follows:

*"Rationale reviewed, case discussed with assessor, acknowledge 36m previous forbearance..sensitive case.. approving 12 months @ 1/0 to allow time for customer 2 to return to employment, may need to look at split mortgage option @ next review..note commercial units in background re equity(see notes) taking RINC into account surplus however expenses below [Provider] guidelines and believe RIL expenses understand, 12 months I/O approved, recommend NAM discusses split at next review if no ch[ange] in financials...MFA to issue."*

The Provider's internal notes detailed above indicate that, upon a review of the Complainants' request and their special circumstances, the Provider offered the Complainants a further 12-month interest only repayment period. On **25 July 2013**, the Complainants signed and accepted a **Mortgage Form of Authorisation** to apply the 12-month interest only period to the mortgage loan account. The Provider's internal notes indicate that the MFA was returned and put in place on **01 August 2013**.

/Cont'd...

The tracker interest rate that should have been applied from **May 2013** was ECB + 1.30%. Between **May 2013** and **January 2014**, the overall tracker (ECB + margin) rate fluctuated between a rate of 1.8% and 1.55%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **May 2013** and **January 2014**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
May 2013 – Nov 2013	2.75%	Between €718.28 and €718.80	€280.79	Between €437.49 and €438.01
Dec 2013 – Jan 2014	3%	€718.28	€241.86	€476.42

The above table shows that a substantial monthly overcharge of interest was being paid by the Complainants. During this period, the Complainants were experiencing serious financial difficulty on foot of both of the Complainants' health issues, the decline in the First Complainant's business and the medical expenses having significantly depleted their savings. The Complainants clearly endeavoured to reduce every expense possible during this time. I am of the view that the Complainants' financial circumstances would not have been completely resolved if they did not have to incur this overcharge of approximately €450 per month, however, the Complainants' situation would have improved considerably and indeed their struggles lessened, quite a lot, if the overcharge did not occur.

The Provider's internal notes dated **13 January 2014** indicate that the First Complainant contacted the Provider to inform the Provider that the tenants of his commercial properties had left and therefore would not be able to meet the mortgage repayments. The First Complainant also noted that the Second Complainant had lost her job.

/Cont'd...



The Provider's internal note dated the same date details as follows:

*"Email from [redacted] NAM who had dealt with customer previously, He would appear to need further forbearance. I will contact him and post out the necessary documentation for completion".*

The Complainants' main source of income at the time was the rental income from the two commercial units. The Complainants were undoubtedly placed in serious financial difficulty in circumstances where the rental income and the Second Complainant's income had come to an end.

The Complainants completed and signed a **SFS** dated **26 January 2014**, detailing as follows:

		<i>Borrower 1</i>	<i>Borrower 2</i>
	...		
A3	<i>Outstanding Mortgage Balance (€)</i>	<i>€190,263.21</i>	
A4	<i>Estimated Current Value of Primary Residence (€)</i>	<i>€320,000</i>	
A5	<i>Monthly Mortgage Repayments Due (€)</i>	<i>€718.80</i>	
	...		
A16	<i>Employed Y/N: if self-employed give details</i>	<i>Self employed [occupation]</i>	<i>Yes (Part time)</i>
	...		
A20	<i>Reason(s) for Review/ Arrears</i>	<i>Loss of rental income &amp; end of [redacted] Scheme for [Second Complainant]</i>	<i>Same issues as previous</i>

/Cont'd...

<b>Section B: Your Monthly Income</b>				
		<i>Borrower 1</i>	<i>Borrower 2</i>	<i>Total</i>
<i>B1</i>	<i>Gross Monthly Salary (before tax and any other deductions at source)</i>	<i>Audited accounts remain same as previously submitted</i>	<i>See payslips attached.</i>	
<i>B2</i>	<i>Net Monthly Salary (after tax and any other deductions at source)</i>	<i>€320 per month</i>	<i>€455.79</i>	
<i>B3</i>	<i>Monthly Social Welfare Benefits</i> <i>Please list</i>		<i>€485.60</i> <i>p/m</i>	<i>€485.60</i>
	<i>Benefit</i>		<i>Job seekers</i>	<i>526.06</i>
	<i>...</i>			
<i>B9</i>	<i>Monthly Income from Property assets (other than primary residence)(see E5)</i>	<i>Unit 1 Vacant</i> <i>Unit 2 Vacant</i>	<i>N/A</i>	
	<i>...</i>			
<b><i>B11</i></b>	<b><i>Total Monthly Income (sum of B2 to B10)</i></b>	<b><i>€320 per mth</i></b>	<b><i>€941.59</i></b>	<b><i>€1, 261.39</i></b>

*Total €1,261.39 \**  
*1301*

<b>Section C: Monthly Household Expenditure</b>				
		<b><i>Average Charge Per MTH</i></b>	<b><i>Arrears (where applicable)</i></b>	
	<b><i>Utilities</i></b>			
<i>C1</i>	<i>Electricity</i>	<i>€70 per mth</i>		
<i>C2</i>	<i>Gas/ Oil</i>	<i>€150 per mth</i>		
<i>C3</i>	<i>Phone (Landline &amp; Internet)</i>	<i>€20 p/m</i>		
<i>...</i>				
<i>C5</i>	<i>Mobile Phone</i>	<i>€65 p/m</i>		
<i>C6</i>	<i>Refuse Charges</i>	<i>€20 p/m</i>		
<i>C7</i>	<i>TV Licence</i>	<i>€13.60 p/m</i>		
<i>...</i>				
<i>C10</i>	<i>Food/Housekeeping/Personal Care</i>	<i>€400</i>		
<i>C11</i>	<i>Clothing and Footwear</i>	<i>€40</i>		
<i>...</i>				
<i>C13</i>	<i>Petrol</i>	<i>€100</i>		

/Cont'd...

C14	Motor Insurance/Tax/NCT	[Second Complainant] €51.00	
C15	Rail/Bus/[redacted] Costs (including school transport costs for children)	N/A	
C16	Car Maintenance/ Repairs	[Second Complainant] €30.00	
...			
C18	Mortgage Protection/ Endowment Premium	€69.44	
...			
C20	House Insurance	€30.00	
...			
C26	Medical Expenses and Prescription Charges	€187.33	
C27	Health Insurance	215	
...			
C38	<b>Total Monthly Expenditure (sum of C1 to C37)</b>	<del>€1,246.27</del> * 1494	

\* [Strike out by Complainants and/or with the agreement of the Complainants].

**Please provide details of any steps you have already taken to reduce your monthly expenditure and the savings you have achieved:**

Same as previous. We are giving up refuse payments. We are not spending @ present and our necessary spending comes from savings which you can see from our current account/ saving acc.

We have cut back on everything & cut out money expenses also.

**Please provide details of any steps you propose to take to reduce your monthly expenditure and the savings you expect to achieve:**

Refuse. ESB. Mobile Phone, Fuel. Sell one car, which is presently on the internet for sale @ a reasonable €5,000.

/Cont'd...

*We hope our commercial units will be let soon. I have re-decorated both units recently to give them the best chance of letting they are currently with local auctioneers. We are currently looking @ every option and cutting back on everything.”*

In “**Section D: Your Current Monthly Debt Payments**” of the SFS, the Complainants detailed their current monthly debts to include mortgage repayments of €1,400 with €718.80 being paid monthly and a credit union loan of €5,643.75 with €200 being paid monthly. The total monthly outgoing debt is detailed as €918.80.

In “**Section E: Property Assets (other than Private Residence)**”, the Complainants detail as follows:

	<i>Property (give details below</i>	<i>Property Type (e.g. Buy to let)</i>	<i>Owner-Ship Type</i>	<i>Current Value (est) €</i>	<i>...</i>	<i>Monthly Rental Income – €</i>	<i>Monthly Expenditure (e.g upkeep, maintenance)</i>	<i>...</i>
<i>E1</i>	<i>1</i>	<i>Retail unit</i>	<i>Sole</i>	<i>250,000</i>				
<i>E2</i>	<i>2</i>	<i>Retail unit</i>	<i>Sole</i>	<i>150,000</i>			<i>Insurance €104</i>	
<i>E3</i>	<i>3</i>							
<i>E4</i>	<i>4</i>							
<i>E5</i>	<b>Total</b>			<i>400,00</i>			<i>€104</i>	

...

“**Section F: Non-Property Assets**”, detailed as follows:

<b>Section F: Non- Property Assets</b>					
	<b>Asset Type</b>	<b>Original Cost/ Value €</b>	<b>Current Estimated Value €</b>	<b>Net Monthly income</b>	<b>Please give any relevant details</b>
<i>F1</i>	<i>Savings/deposits/current account</i>	<i>7,000</i>	<i>7,000</i>		<i>Is supposed to be kept for expenses towards my wives [Second Complainant]</i>

/Cont’d...

F2	Shares				<i>Illness but is currently being used to pay bills etc. This is money which she got from an illness insurance policy</i>
F3	Motor Vehicle (s)	14,000 9,000	8,000 5,000		<i>[Second Complainant] lost her job we lost 2 [rental] incomes and my</i>
...					<i>[redacted] trade is very slack.</i>
F8	Total (sum of F1 to F7)	€30,000	€20,000		

**“Section G: Financial Statement Summary (for office use only)”** details as follows:

G1	Total Monthly Income (B11)	1301
G2	Less Total Monthly Expenditure (C38)	1494
G3	Sub-Total (G1 minus G2)	(193)
G4	Less Mortgage Repayments Due (D1)	719
G5	Less Other Monthly Debt due (D22)	216
G6	Total Surplus/Deficit (subtract G4 and G5 from G3)	(1128)

The Complainants’ income was significantly reduced as they lost their main source of income which came from renting the two retail units together with the fact that the Second Complainant lost her job. The Complainants’ income was reduced from €2,960 to €1,261.39. Furthermore, their savings were reduced to €7,000. The Complainants, in their post Preliminary Decision submissions dated **1 November 2021**, state that they are “very annoyed” that the Provider referred to their savings and how the Provider believes they “should have spent that money”. The Complainants maintain that “All our finances were transparent to the Providers”.

At this time, the Complainants’ mortgage loan account was on interest only repayments and the arrears that accrued in **April 2012** had not yet been discharged. The expenditure and monthly debts remained roughly the same. I note that the Complainants indicated in the SFS that they intended to sell one of their cars in an attempt to reduce expenditure. The outgoings on the mortgage loan account at this time were €2,412.80. The above figures resulted in a deficit of €1,151.41.

/Cont’d...

The Provider's internal note dated **30 January 2014** details as follows:

*"SFS NOTES: Reason for request / unemployment and loss of rental income. Married, no dependants. [First Complainant] is a self-employed [occupation] but has very little work.*

*He says he has advertised extensively and done everything to get work but to no avail. He does not have a [redacted] and cannot afford to buy one. He says he is not trained for any other type of work although they did run a [other business] at the time of the mortgage application. [Second Complainant] has a rare form of [serious illness] and needs to go for [..]scans every few months. [Health Insurer] does not fully cover these and there is the expense of travelling to [location]...*

*... so it is likely to be a constant expense for her. She got an insurance payout when diagnosed but there is only E4.8K left out of this. [Second Complainant] gets casual work from [named company] and gets jobseekers when not working. Her weekly income averages at E180/190 pw between the two. This mortgage was being funded by rental income from 2 retail units which were given to [First Complainant] by his relation. Both retail units were vacated at Christmas and are advertised again with a local auctioneer for letting. They are quite near a new [named retailer] in [Location] so [the Complainants] are hoping that this may help with letting...*

*....[First Complainant's] relation is living in an apartment over the units so they cannot be sold. His relation is well off and [First Complainant] is his sole beneficiary so they will be ok in time.2. Were there any other specific areas of challenge? [Second Complainant] has a [Provider] credit card which [First Complainant] knows nothing about. The balance is E2789 and her mother is going to help her clear it down. 3Has the short term debt been restructured; is there an opportunity to do so? Credit union loan of E5643 with attached savings E1100 they are paying E50 weekly to this and apparently it has been restructured. I told them they will have to get it reduced again...*

*...Cont.4. Is there an ongoing illness/ medical issue impacting monthly outgoings? [Second Complainant] has a [serious illness] as previously stated which requires ongoing treatment. 5. What is the path to long-term sustainability? This mortgage is currently on an arrangement until July. However, now that rental income has completely dried up they are requesting a 3 month moratorium until such time that they can rent the units again. They are confident that they will have one or both rented in this time...*

/Cont'd...

*...Cont..Branch Recommendation & rationale: They have very little income at the moment and cannot afford the interest amount. I am recommending a mortgage break for 3 months to give them time to rent out the units again. [Second Complainant] is trying to get more work in between her scans.*

*If the units are rented, they could look at a possible split mortgage or failing that, they will have to consider selling the property as there is equity in it. Additional Information: Fin accounts for 2011 handed in. These are the most recent produced as [First Complainant] cannot afford to pay the Acct. Notice of Assessment is also for 2011 but dated March 13...*

*...SFs + supporting documents... Copy of SFS and MARP brochure given to customers. Requested a lodgement today but they have no capacity to lodge at the moment."*

The Provider's internal notes dated **04 February 2014** detail as follows:

*"Reviewed. Customers currently on forbearance. Forbearance supported by rental income on gifted commercial units. Advised now that rental income has ceased and units are empty. Customers cannot now afford int only. Irrespective of current request, the sustainability of this mortgage is not established. Long term sustainable repayments cannot be established. Long term sustainable repayments cannot be established even with rental income in place and overall, asset disposal will be required. Noting customers particular circumstances and potential difficulty in selling the commercial units (advised worth E400K). In view of the above, agree the following. Given immediate lack of capacity for any mortgage repayments, agree a 3 mth mora to allow customers time to rent out commercial units. Given the long term sustainability issue, when this account rolls off int only in July 2014, would only support an additional period of int only on basis that customers agree to a legal charge over the retail units – if customers agree same, potential asset disposal would provide sustainability for this loan and would support up to 3 yrs int only on this basis. If customers do not agree same, would recommend no further forbearance and deem account unsustainable. NAM to advise customers of decision..*

*Instruction to Fulfilment account no [account number]: Please issue MFA for: Moratorium. FB period: 3 months. Commencing: 03/03/2014. There is an existing arrangement on this account. ..Number of previous Forbearance: 5"*

/Cont'd...

The Provider's internal note dated **10 February 2014** details as follows:

*" [Second Complainant] was happy to get moratorium and said she will discuss the rest with [First Complainant]. I told her a/c will have to revert to full C&I in July unless I/charge over retail units be considered. She understood. I asked her to sign and return MFA which she promised to do."*

As detailed above the Provider agreed to offer the Complainants a 3-month moratorium on their mortgage loan account. The Complainants signed and accepted a **MFA on 17 February 2014** to defer their mortgage repayments for a 3-month period.

The tracker interest rate that should have been applied from **January 2014** was ECB + 1.30%. Between **January 2014** and **May 2014**, the overall tracker (ECB + margin) rate was 1.55%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **January 2014** and **May 2014**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
Jan 2014 – Feb 2014	3%	€718.28	€241.86	€476.42
Mar 2014– May 2014	3%	€0	€0	€0

The loss of rental income, the loss of the Second Complainant's job and the decrease in trade in the First Complainant's business clearly resulted in a significant reduction in the Complainants' overall income. I note that the Complainants had a moratorium on repayments from **March 2014** to **May 2014**.

/Cont'd...



As previously stated, I am of the view that the Provider's failure in respect of the Complainants' mortgage loan account aggravated this difficult time for the Complainants, with roughly €400 being overcharged on a monthly basis.

The Provider's internal notes dated **23 May 2014** detail as follows:

*"...SFS completed over phone. Cust offered assistance & advised of seeking ind fin & legal advice (MABS etc.).*

*SFS Phone process/time schedule/right of Appeal explained to cust. D/D in place. Arrears of A636.77 Cust not in a position to make a payt against arrs today...*

*...SFS (completed over phone) posted to cust with guide + MARP + CIS.."*

The Provider has submitted a copy of an undated "**Branch SFS/FRF Checklist**" in evidence detailing the "**Summary of Discussion with customer(s)**" which details as follows:

*"...*

*HISTORY:-*

*SFS OVER PHONE CALL with [Second Complainant] May 26 2014  
3M MORA expired May 6 and they now have 2 mths to run an I/O which expires July 25 therefore Aug 6 d/d would be due to revert to Full C + I or approx. 1400PM, which they can't afford.*

*[Second Complainant] has a [serious illness] & has to get CT scans every few mths. She is currently on illness benefit and spent a week min hospital during May.*

*..*

*The rational for a Split is that they own 2 commercial properties which can at some point be sold. Also they have potential to downsize PDH, although [Second Complainant] said house has been modified somewhat and has a/stairs bathroom to suit her medical situation.*

*Section B: Monthly Income*

*[First Complainant] has just got a [new piece of business] and gets 200 net p wk for this.*

*This contract started mid April 2014. He has no expenses other than to declare it in his tax statement....[Second Complainant] is currently on illness benefit of 526PM. She was in hospital during May for 1 week re her[serious illness]. She is on to SW in hope of getting her weekly payt incr to 188.*

/Cont'd...

*[First Complainant] inherited 2 adjoining commercial units from a relation, who lives over one of them. He can't entertain selling either while the relation is still alive, as if he did, he would cut himself off from any future inheritances from any of the rest of the family. Both properties recently vacant. There is a strong enquiry in with [Name of Auctioneers] from a ..couple who want to rent the bigger unit for a ...grocery shop, at 207PW. They are currently being checked out re references etc and [Second Complainant] v hopeful it will work out.*

*The other unit they will hope to rent out also as soon as possible. This would likely get a rent of 100PW much smaller unit.*

*What does customer want? 12M I/O to allow them chance to move up to LT solution which might be MAX TE + MAX Split.*

### ***Branch Recommendation and Rationale***

*I acknowledge Assessor comments at last Assessment*

*I also appreciate there has been substantial.*

*Forb to date*

*\*\*\* However no risk of any loss in this case and [Second Complainant's] medical situation sufficient to warrant this as a special consideration case.*

*I recommend 12 mths I/O to start Aug 6 (on expiry of current I/O) with customers to then move to LT solution of MAX TE + MAX Split (currently approx. 954PM v I/O 726 V Full C + I 1395 v MAX TE 1295). I feel this is a very suitable case for MAX TE + MAX Split but just at the moment, they may not be ready for that step up."*

The Complainants sent a letter to the Provider dated **02 June 2014** detailing as follows:

*"When considering our financial situation we trust and hope you look at it with some empathy as this is a very challenging time for us.*

*We want to make our repayments but at present this is impossible.*

*Under our present circumstances we will endeavour to make interest only payments for 24 months.*

*We need this time in order for our property to regain rental income and [Second Complainant] to hopefully return to employment or an increase in her illness payment and the [redacted] business to increase revenue.*

/Cont'd...

We do look forward to a more positive future and being good clients with [previous Provider]

We do appreciate your understandings and cooperation.”

The Complainants enclosed a copy of a signed **SFS** dated **02 June 2014**, with this letter, which details as follows:

“

		Borrower 1	Borrower 2
	...		
A3	Outstanding Mortgage Balance (€)	€189,608.00	
A4	Estimated Current Value of Primary Residence (€)	€340,000.00	
A5	Monthly Mortgage Repayments Due (€)	€1,219.30	
	...		
A16c	If self-employed, give details	[redacted]	
A17	Occupation (If unemployed give previous occupation)		[redacted]
	...		

<b>Section B: Your Monthly Income</b>				
		Borrower 1	Borrower 2	Total
B1	Gross Monthly Salary (...)			€0.00
B2	Net Monthly Salary (..) 200 p.wk	€866.00		€866.00
B3	Monthly Social Welfare Benefits –please list			
B3(a)	- Benefit 1 ILLNESS B		€526.00	€526.00
	...			
B8	Estimated Income from Own [business] after all expense	€70 p/w Income from [business] after expenses (not including 200 p.wk income)		€0
	...			

/Cont'd...

B11	Total Monthly Income (sum of B2 to B10)			€1,392.00
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<b>Section C: Monthly Household Expenditure</b>			
		<b>Average Charge</b>	<b>Arrears (where applicable)</b>
	<b>Utilities</b>		
C1	Electricity	€70.00	
C2	Gas/ Oil	€150.00	
C3	Phone (Landline & Internet)	€13.00	
...			
C5	Mobile Phone	€60.00	
C6	Refuse Charges	€20.00	
C7	TV Licence	€14.00	
...			
C10	Food/Housekeeping/Personal Care	€400.00	
C11	Clothing and Footwear	€40.00	
C12	Household Repairs/ Maintenance	€20.00	
...			
C13	Petrol/ Diesel	€80.00	
C14	Motor Insurance/Tax/NCT	€51.00	
...			
C16	Car Maintenance/ Repairs	€30.00	
...			
C18	Mortgage Protection/ Endowment Premium	€70.00	
...			
C20	House Insurance	€30.00	
...			
C26	Medical Expenses and Prescription Charges	€12.00	
C27	Health Insurance	€215.00	
...			
C28	Lifestyle Expenses (e.g. family events, Christmas, Birthdays, eating out etc.)	€20.00	
...			
C35a	Property Service/ Management Charges	€0.00	

/Cont'd...

C35b	Other – Please specify	Local Property tax	€39.00	
...				
C38	<b>Total Monthly Expenditure (sum of C1 to C37)</b>			€1,328.00

“Section D: Your Current Monthly Debt Payments” of the SFS details the Complainants’ monthly debts comprised mortgage repayments of €983 with €724 being repaid and a credit union loan of €5,000, with €110 being paid each week. The total monthly outgoing debt is €834.

“Section E: Property Assets (other than Private Residence)” of the SFS detailed “Commercial Property (2 Retail Units).” The Complainants detailed as follows:

Property (give details below)	Property Type (e.g. Buy to let)	Owner Ship Type	Current Estimated Value €	Monthly Rental Income €	Monthly Expenditure (e.g upkeep, maintenance) €	Currently Restructured? Y/N	...
E1 1	Retail unit	Sole	€250,000.00	€0.00	€20.00	20	
E2 2	Retail unit	Sole	€1,500,000.00	€0.00	€90.00	87.15	
E3 3							
E4 4							
E5	<b>Total</b>			<b>€0</b>	<b>€110.00</b>		

“Section F: Non-Property Assets” detailed as follows:

<b>Section F: Non- Property Assets</b>					
	<b>Asset Type</b>	<b>Original Cost/ Value €</b>	<b>Current Estimated Value €</b>	<b>Net Monthly Income €</b>	<b>Please Give Any Relevant Details</b>
F1	Savings/deposits/current account	€20,000.00	€1,500.00		CU Loan 600 v Loan
F2	Shares				
F3	Motor Vehicle(s)	€15,000.00	€15,000.00	€0.00	
...					
F8	<b>Total (sum of F1 to F7)</b>			<b>€0.00</b>	

/Cont’d...

**“Section G: Financial Statement Summary (for office use only)”** detailed as follows:

G1	Total Monthly income (B11)	€1392.00
G2	Less Total Monthly Expenditure (C38)	€1,328.00
<b>G3</b>	<b>Sub-Total (G1 minus G2)</b>	<b>€64.00</b>
G4	Less Mortgage Repayments Due (D1)	€0.00
G5	Less Other Monthly Debt due (D22)	€110.00
G6	<b>Total Surplus/Deficit (subtract G4 and G5 from G3)</b>	<b>-€46.00</b>

Upon a review of the above SFS, the Complainants' income increased from €1,261.39 to €1,392. This was primarily due to an increase in the revenue from the First Complainant's business. The Complainants further reduced their expenditure from €1,494 to €1,328 and their monthly debt outgoings reduced from €918.80 to €834. The Complainants were in a deficit of €46 when paying the interest only repayments and were still in arrears at this time which had accrued in **April 2012**.

The Provider's internal note dated **19 June 2014** details as follows:

*“Referring case to NAM – SC case Need further details before case can be fully assessed. SFS received via [Location] – Based on figures provided borrowers mortgage is unsustainable – with repayment capacity to pay 460 against IO payments of 724e pm. borrower are proposing IO for 12m...Require update on [Second Complainant] social welfare. It is expected to increase to 188e will need verification. Also mentioned they have a potential tenant for rental unit –Potential income c800e pm will need further infor on this. assessor.”*

The Provider's internal note dated **23 July 2014** details as follows:

*“FAO Assessor [redacted] Meeting Background Info Meeting Location (where): [Provider] [Location] phone meeting Meeting Attendees (who): [Complainants] Meeting Date (when): 24/7 Meeting Reason (why): mortgage arrears Meeting Summary [First Complainant] is a [occupation] and his work has started to pick up in the last few weeks...200 euro p.w. [Second Complainant] has a [serious illness] and is receiving illness benefit. They inherited two commercial premises in [location] Both of these have been repainted and they are hoping to have these rented ou[t]...”*

/Cont'd...

*...They inherited two commercial premises in [Location] both of these have been repainted and they are hoping to have these repainted out shortly. They are unable to sell these properties as one of [First Complainant's] relations are currently living over one of these commercial premises. Address questions raised by assessor Are they expecting to get an increase in s/w payment...There is no specific tenant. They recently painted both the inside and outside of the commercial premises and are confident they will have a tenant shortly...*

*Customer Proposal Remain on interest only the maximum they can afford is 500pm, if they cannot rent out the premises [Second Complainant] intends to set up a small gift shop in one of them. Nam recommendation Copy recommendation & rationale According to the sfs this mortgage is unsustainable unless they can rent out or sell the commercial premises Nam can see these properties are on the market A/c to be moved to MRT re assisted sale or lease Confirm recommended option fully explained to cm: yes recommendation fully explained to cm Detail cm response: he understood Payment requested & Outcome: yes unable to make a payment."*

The Provider submitted a document which appears to outline a meeting held between the Complainants and representatives of the Provider on **24 July 2014**, which details as follows:

" ...

***Meeting Summary***

*Customer situation summary:*

*[First Complainant] is a [occupation] and his work has started to pick up in the last few weeks ..200 euro p.w.*

*[Second Complainant] has a [serious illness] and is receiving illness benefit. They inherited two commercial premises in [Location]. Both of these have been repainted and they are hoping to have these rented out shortly. They are unable to sell these properties as one of [First Complainant's] relations are currently living over one of these commercial properties.*

**Address questions raised by assessor**

*Are they expecting to get an increase in s/w payment*

*No*

/Cont'd...

*Who is the likely tenant for the property*

*There is no specific tenant. They recently painted both the inside and outside of the commercial premises and are confident they will have a tenant shortly.*

**Customer Proposal**

*Remain on interest only the maximum they can afford is 500pm*

*If they cannot rent out the premises [Second Complainant] intends to set up a small [redacted] shop in one of them*

**Nam recommendation**

**Copy Recommendation & rationale**

*According to the sfs this mortgage is unsustainable unless they can rent out or sell the commercial premises*

*A/c to be moved to MRT re assisted sale or lease*

*Confirm recommended option fully explained to cm: yes recommendation fully explained to cm*

*Detail cm response: he understood*

*Payment requested & Outcome: yes unable to make a payment*

*Non DD paying customer request change to DD: yes requested DD to be set up*

**Meeting Next Steps**

*Adv cm of next steps & timelines: once decision has been made*

*Adv cm of non co-op consequences: yes*

*Perm given for next call: (on xxx date) once decision has been made*

*Confirm copy of SFS given to cm and copy retained on file: Y*

*Confirm MARP brochure given to customer: Y*

*Confirm SFS & all docs sent to ASU: 23/7/14"*

The Provider's internal notes dated **29 July 2014** detail as follows in relation to the Provider's decision to deem the Complainants' mortgage loan as unsustainable:

*"..Borrower circumstances have not improved since last assessment 02/14 – Borrower confirmed to NAM they have recently painted their commercial Unit and hope to secure tenants. ...Strategy/ condition – Acknowledge borrower have been through a difficult time with regards to [Second Complainant] illness. However based on detail provided by borrower they are not in a position to maintain a sustainable level of payment.*

/Cont'd...



*With income at 1780e per month and household expenditure at 1328 this leaves 452e to service mortgage and other debt. –Borrowers do not have capacity to meet IO payments of 724e pm on their mortgage...With 51m previous forbearance and no step up available to borrowers. Therefore mortgage has been deemed unsustainable and will be referred to MRT for case management. Failure to secure tenants for commercial properties will result in borrowers having to sell assets – NAM to advise borrower to continue making their proposed payment until property is sold or tenants are secured for properties –NAM to advise borrower that if they secure tenants for commercial property and are in a position to pay more on their mortgage they should do so.*

*...Payment of approximately 940e pm are the minimum sustainable payment levels which involve a term extension and split mortgage. Payment at this level or more will need to be maintained for a period of 6m before case can be assessed for sustainability in the future... Deem mortgage to be unsustainable. Borrowers are not in a position to maintain a sustainable level of payment. No repayment capacity to meet interest only. Case being referred to MRT for case management... No step identified to a sustainable level of payment at this time... Difficult to see borrower getting back to full C&I payment. Potential also to TE and apply split if borrowers could secure rental income for retail units. Max split and TE to 2033 cir940epm. Residual being clear from sale of retail units..”*

The Provider sent a letter to the Complainants on **01 August 2014** declining to provide further forbearance as the mortgage loan was deemed unsustainable. The letter details as follows:

*“I am writing to you under the Mortgage Arrears Resolution process (MARP).*

*We have now completed an assessment of your full circumstances including:*

- (a) Your personal circumstances*
- (b) Your overall indebtedness*
- (c) The information you provided in the standard financial assessment form (SFS) or subsequently submitted*
- (d) Your previous repayment history*
- (e) Your current repayment capacity*
- (f) Each alternative repayment arrangements (ARA) is described in the “Guide to Dealing with Mortgage Difficulties” we sent you with an earlier letter (it can also be viewed on the Arrears Support section of [Provider website])*
- (g) The effect of the ARA on your financial circumstances.*

/Cont’d...

*We have decided not to offer you an ARA because your mortgage loan is not sustainable.*

*For a mortgage to be sustainable, you have to be able to meet all of your repayments in full and on time so that the mortgage loan is repaid in full over the life of the mortgage.*

*It is unlikely, based on our assessment of your circumstances that you will be able to repay the mortgage loan in full over its life. We do not believe any ARA we offer will change that position (for example, even if we used an ARA to reduce your payments to the maximum you can afford).*

*You have the right to appeal the decision to our Mortgage Appeals Board within the next 25 business days. This is our internal appeals board, which will consider and independently review the decision made about your mortgage loan. If you wish to appeal, please set out your reasons for appealing in writing and send them to: [address].*

*Your mortgage loan is now being dealt with outside of MARP and the protections of MARP no longer apply. This means that where arrears exist and you do not repay them, we are entitled to commence legal proceedings for possession of the property three months from the date of this letter or eight months from the date the arrears arose, whichever date is later. Irrespective of how we repossess your property, if we sell it for less than the amount you owe us under your mortgage, you will still be liable to pay us the remaining amount you owe us under the mortgage loan, including any accrued interest, any unpaid arrears and charges. You will also be liable for the costs of selling the property.*

*If you are in arrears and wish to avoid legal proceedings there are other options open to you. These and other information are outlined in the Important Information Concerning Mortgage Arrears set out in the appendix set out in the appendix to this letter (the appendix). In our view, these options would be better for you and us than legal proceedings.*

*If you are in arrears we show you how much your arrears are on page 1 of this letter. If you choose one of the other options described in the appendix you will have to clear any arrears as part of the option. For example, you would have to clear any arrears from the proceeds of sale or, if necessary, from other resources if you choose a voluntary sale. Leaving arrears unpaid will have an adverse impact on your credit rating (see the appendix for more details).*

/Cont'd...

*We strongly recommend that you get independent financial and legal advice in relation to the options set out in the appendix. Your local MABS Office can provide free and independent financial advice. Their contact details are set out in the appendix.*

*You have the right to consult a Personal Insolvency Practitioner (or "PIP") PIPs are regulated by the Insolvency Service of Ireland and can advise you on your options under the Personal Insolvency Act 2012, for example, on whether you are eligible for a personal insolvency arrangement and if a proposal for one can be made to your creditors (those you owe money to, including us). You can find out more from the Insolvency Service of Ireland website [website]..."*

The Complainants have submitted that the Provider issued stressful and distressing letters during the impacted period. They have indicated that the Provider's letter dated **01 August 2014** was one such letter. They contend that the reference to the MARP and Credit Reference Agency "sickened" them with stress and that the arrears were a mere sum of €1,361.10 at this time.

The Provider relies on the **Code of Conduct for Mortgage Arrears 2013 ("CCMA 2013")** to support its decision to issue this letter to the Complainants. **Provision 45** of the **CCMA 2013** details as follows:

*"45. If a lender does not offer a borrower an alternative repayment arrangement, for example, where it is concluded that the mortgage is not sustainable and an alternative repayment arrangement is unlikely to be appropriate, the lender must provide the reasons, on paper or another durable medium, to the borrower. In these circumstances, the lender must inform the borrower of the following:*

- a) other options available to the borrower, such as voluntary surrender, trading down, mortgage to rent or voluntary sale and the implications of each option for the borrower; and his/her mortgage loan account including:
  - (i) an estimate of associated costs or charges where known and, where not known, a list of the associated costs or charges;*
  - (ii) the requirement to repay outstanding arrears, if this is the case,*
  - (iii) the anticipated impact on the borrower's credit rating, and (iv) the importance of seeking independent advice in relation to these options;**

/Cont'd...

- b) the borrower's right to appeal the decision of the lender not to offer an alternative repayment arrangement to the lender's Appeals Board;*
- c) that the borrower is now outside the MARP and that the protections of the MARP no longer apply;*
- d) that legal proceedings may commence three months from the date the letter is issued or eight months from the date the arrears arose, whichever date is later, and that, irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case;*
- e) that the borrower should notify the lender if his/her circumstances improve;*
- f) the importance of seeking independent legal and/or financial advice;*
- g) the borrower's right to consult with a Personal Insolvency Practitioner;*
- h) the address of any website operated by the Insolvency Service of Ireland which provides information to borrowers on the processes under the Personal Insolvency Act 2012; and*
- i) that a copy of the most recent standard financial statement completed by the borrower is available on request."*

Having considered the Provider's letter dated **1 August 2014**, I accept that the Provider acted in compliance with the provisions of the **CCMA 2013**.

While I would not necessarily describe the letter as threatening, it is certainly devoid of any empathy or understanding of the Complainants' predicament. It was a clear change of tone and approach, compared to the previously empathetic and accommodating approach.

/Cont'd...

**Provision 8.3 and 8.4** of the **Consumer Protection Code 2012** (“**CPC 2012**”) outlines as follows:

*“8.3 Where an account is in **arrears**, a **regulated entity** must seek to agree an approach (whether with a **personal consumer** or through a third party nominated by the **personal consumer** in accordance with Provision 8.5) that will assist the **personal consumer** in resolving the **arrears**.”*

*8.4 Where an account remains in **arrears** ten **business days** after the **arrears** first arose, a **regulated entity** must immediately communicate clearly with the **personal consumer** to establish in the first instance why the **arrears** have arisen.”*

**Provision 8.6 and 8.8** of the **CPC 2012** state as follows:

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

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

...

/Cont’d...

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

Under **Provision 8** of the **CPC 2012** the Provider is obliged to issue correspondence to customers in arrears. Having considered the evidence, despite my reservations about the tone and approach of the Provider, I accept that the Provider issued arrears correspondence to the Complainant in accordance with its obligations under the **CCMA 2013** and **CPC 2012** in circumstances where arrears were accruing at the time.

The Provider’s internal notes dated **14 August 2014** detail as follows:

*“>>>Borrower a/c has since reverted to IO and borrowers have missed their June payment. Reason for moratorium was borrower loss of rental income from 2 retail units they own in [Location]. SFS Assessment: The last SFS assessment was July 2014 and the mortgage was deemed unsustainable. Engagement: both borrowers are fully engaged Correspondence: 01.08.2014 I lender decline. Provision: auto provision of 76,756 which is deemed appropriate at this review. Action Plan: Contact [Second Complainant] to discuss account.”*

The Provider’s internal notes dated **14 August 2014** details as follows:

*“...Reason for arrears: Health issues. Property: The security is not in a tax designated area.*

*...OBC to [Second Complainant] – she is very upset about the ltr she received. she has discussed the situation with her family and they are prepared to help them financially until at least one of the units can be rented. She also stated that downstairs she has been adjusted for her needs as she is no longer able to go up stair[s]. I outlined that the first step would be to appeal the decision and put in writing what she has told me. She will do same and gave her bank a/c details to make manual payment for the I/O. She has my direct line if any queries and I told her that I would contact her when the appealed has been reviewed.”*

The Complainants sent a letter dated **25 August 2014** to the Provider which details as follows:

*“We are appealing a decision regarding our Mortgage Arrears Resolution Process (MARP).*

/Cont’d...

*The decision you reached decided not to offer us an ARA because our mortgage loan in your opinion is not sustainable.*

*We understand how this conclusion was reached as we are experiencing a Cash flow problem at present. This problem is mainly due to our Commercial Premises being currently vacant.*

*We are confident this situation will change as we have the premises redecorated internally and externally and this should make a real difference to their future letting potential.*

*We were very distressed when we received the letter and had to explain our financial difficulties to our families.*

*Our Family has offered to help us raise the monthly interest repayments which we have accepted with gratitude.*

*My husband is looking forward to a new [business] contract shortly that will increase our finances.*

*I have also applied to the Social Welfare for an increase in my payments and I am waiting on a decision, this would increase my weekly payment from €116.00 to €198.00.*

*It is very important to us that we can remain in our property as my illness is of great concern to me.*

*My [redacted] diagnosis is a complex rare condition and the [redacted] along with the [redacted] kindly built me a Bedroom and Bathroom at ground level to meet my needs.*

*As you can appreciate my mental state of dealing with such a serious illness and the distressing financial situations we are in at present.*

*The letter from you stating, our Mortgage is not sustainable made me feel very ill and weak and caused me great worry and upset. I am not sleeping at night with the worry.”*

/Cont'd...

The Provider's internal note dated **26 August 2014** details as follows:

*“Appeal Admin Update – appeal letter recd from customer 26/08 – ASU assessed decision decline forbearance mort unsustainable – illness known at the time of assessment – customer per appeal letter seeking 12 mths ARA in order to get commercial premises rented and circumstances improve – proceed to the appeals board.”*

The tracker interest rate that should have been applied from **May 2014** was ECB + 1.30%. Between **May 2014** and **August 2014**, the overall tracker (ECB + margin) rate fluctuated between a rate of 1.35% and 2.3%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.3%) had been applied to mortgage account between **May 2014** and **August 2014**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
Jun 2014	3%	€724.33	€242.99	€481.34
Jul 2014 – Aug 2014	3.1%	€727.14	€227.12	€500.02

The Complainants appear to have defaulted on their **June and August 2014** monthly mortgage repayments. The Complainants were unable to meet the interest only repayments at this time and could only meet a maximum of €500 per month. The Complainants' mortgage loan was deemed unsustainable by the Provider during this period. It is clear from the above table that there was a substantial overcharge of interest of up to €500 per month at this time.

/Cont'd...



The mortgage loan account was transferred from the Complainants' previous Provider to the current Provider on **01 September 2014** as per the **Scheme of Transfer under Part III of the Central Banks Act 1971 (as amended, the 1971 Act)**. I note that **Section 33** of the **Central Bank Act 1971** details as follows:

*"(b) the transferor and transferee shall, not less than one month before the transfer date, publish notice of the transfer in at least one daily newspaper published in the State"*

I accept that the consent of the Complainants was not a prerequisite for the transfer of their mortgage loan account and the Provider was only required to advertise the transfer in at least one national newspaper. I note that the Provider submits that it issued courtesy notifications to the Complainants in **June 2014** and a confirmation letter on **01 September 2014** to confirm that the transfer has taken place. This is the least I would expect in the circumstances.

The Provider's internal notes dated **10 September 2014** detail as follows in relation to the Complainants' appeal to the Mortgage Appeals Board:

*"APPEAL HEARD 10/09/2014... Case reviewed & discussed in detail.*

*...>>>>>>>Noting the Borrowers good repayment history, the Board approved interest only payments x 6 months to afford Borrowers an opportunity to sell 2 units at [Location] as sustainability of PDH account is dependent on disposal of assets. Borrowers to furnish a letter of authority to deal with Auctioneers & evidence both units at [location] placed on market within 1 month. APPEAL CLOSED."*

It appears from the above notes that the Complainants' appeal was upheld subject to them selling the two commercial units.

The Provider issued the Complainants a letter dated **11 September 2014** which detailed as follows;

*"Our Mortgage Appeals Board has completed its consideration of your letter of appeal dated 25<sup>th</sup> of August 2014 relating to a decision of the Arrears Support Unit (ASU).*

*Having considered all the facts of your case and based on your full circumstances, the Board has decided to approve an alternative repayment arrangement of interest only repayments for a period of 6 months to afford you an opportunity to sell your 2 unencumbered properties at [location] and to improve your financial circumstances to allow you to clear the outstanding arrears on your home loan account and to support a step up to full capital and interest repayments at the expiration of this 6 month forbearance period.*

*It is the Board's strong view that the sustainability of your home loan is dependent on disposal of the Properties as your home loan repayments must be prioritised.*

*Please note that the alternative repayment arrangement offered is subject to you providing the following to the Bank within 1 month of today's date:*

- (a) Evidence satisfactory to the Bank that the Properties are placed on the open market for sale.*
- (b) A letter of authority which authorises the Bank to contact your nominated Auctioneer/ Estate Agent relating to the sale of the Properties...."*

The Complainants described this letter as “*extremely worrying*” in their submissions to this office as it mandated the sale of the commercial property comprising of the two retail units. This clearly posed an issue for the Complainants in circumstances where the First Complainant's relation held a right of residence in the property and had gifted the properties on the condition that he could live there for the remainder of his life. It is clear from the previous communications referred to earlier between the Provider and the Complainants that the Complainants were not in a position to sell the commercial property and had advised the Provider of this on several occasions. However, it appears from the Provider's internal notes that the only reason the appeal was upheld was on the condition that the commercial property be sold, something which the Complainants would not be in a position to do until such time as the First Complainant inherited the commercial property in full.

The Provider's internal notes dated **12 September 2014** detail as follows:

*“...OBC to [Second Complainant] – she got the letters from appeals board, she was querying the conditions as she cannot sell but will look to rent the units and revert to full C&I in 6 months time, they inherited the units but person who gave them still lives over the units and issue now with selling.*

/Cont'd...

*MFA will issue, told her to sign and get the i/o in place and if someone contacts in regards to the sale then it can be dealt with at that stage. Diary out for return of the MFA”.*

It appears that the Provider advised the Complainants to go ahead with the offered forbearance despite not being able to fulfil the main condition, that is disposing of the commercial property.

The Provider’s internal note dated **15 October 2014** details as follows:

*“...Sorry also with regards this one and the following part of the condition: evidence that both units at [Location] are placed on the market within 1 month. This has to be approved from the legal department and the correct wording sent to us for the MFA, and notes put on CACS. Thanks.”*

The Provider’s internal note dated **22 October 2014** details the following telephone call from the Second Complainant:

*“...she said she got an arrears letter but had paid the I/O explained as arrears on a/c she will continue to get arrear ltrs but she also has not got the MFA to sign so its still charging the full annuity repayments so I get the paperwork issued as soon as I can.”*

The Complainants were issued a **MFA, “Application for Change to Interest Only Loan”** dated **30 October 2014** which detailed as follows:

*“ ...*

***I wish to apply to change the terms and conditions of my Mortgage Loan (the “Loan”) so that I make repayments of INTEREST ONLY for a period of 6 months (the “Agreed Period”). The Lender estimates the interest only repayment amount will be €722.00 per month.***

*...*

***Special Conditions***

*To commence 03/10/2014*

*Letter of Authority for Lender to liaise with the Selling Agent and Solicitor  
By signing this form the Borrower agrees to authorise the Selling Agent to sell the property known as [commercial property].*

/Cont’d...

*The Borrower must provide the Lender with signed letters of authority, in the form required by the Lender, or a third party agent appointed by the Lender, to liaise with the Selling Agent and Solicitor in order to achieve a sale of the property applied in this clause.*

*Evidence that both units at [Location] are placed on the market within 1 month."*

It does not appear from the above internal notes that the Complainants' request to remove the selling condition was dealt with accordingly, as the Provider issued a second MFA requesting the sale of the commercial property despite being advised that this was not possible.

The Provider's internal note dated **06 November 2014** details as follows:

*"OBC to mobile –she does not want to sign the LOV because of the special condition about selling the units – our security is over their PDH so we cannot enforce a sale, they want it removed...advised I will look into it and revert".*

The Provider's internal note dated **13 November 2014** details as follows:

*"OBC to [Second Complainant] – the units were never up for sale. [First Complainant] inherited the units from his relation who is still living and part of the condition of the inheritance is that [First Complainant] cannot sell the units, written into his will but the units have been put into the name of [First Complainant] although his relation is still living. Looking for a DDM to be sent out. Asked if ok to pay I/O the 20<sup>th</sup> of the month, I confirmed that it was."*

The Provider's internal note dated **14 November 2014** details as follows:

*"...Update: MFA issued for 6 months I/O but there was a condition for a LOA to be received for the selling agent on 2 shop units they inherited, as they cannot sell the units the borrowers are looking for that condition to be removed, case referred back to appeals/complaints. Provision: Auto provision which is deemed appropriate at this review as no trigger to amend. Update: Await decision from appeals to remove condition".*

The Provider's internal note dated **24 November 2014** details as follows in relation to a second appeal hearing:

*"Appeal Heard for 2<sup>nd</sup> time 21.11.2014 The case was fully considered and discussed by Board on the 10<sup>th</sup> of September 2014 (Chairperson [name] Retail Credit Member [name] & Independent Member [Name]) ...*

*UPDATE 21 November 2014: Upon receipt of documentation for execution the Borrowers contacted Case Manager to inform that they are not selling the 2 commercial units at [Location] and accordingly cannot comply with special condition to furnish a letter of authority or evidence both units are on the market as requested and that interest in property relates to rental/lease rather than sale. The Board (Chairperson [redacted] Retail Credit Member [redacted] & Independent Member [redacted]) re-considered the case & the new information provided & noting that there is no evidence from the Land Registry that properties are registered in borrowers names and it appears elderly relative may have right of residence, the Board approved 6 months x interest only payments without the requirement that the Borrowers provide an LOA or evidence of sale to allow time for the one/both of the units to be rented/leased and assess for a long term solution (if appropriate) at the expiration of the 6 month forbearance period."*

Following the second appeal, the Provider decided to offer the Complainants a 6-month interest only repayment period without the requirement to sell the commercial property. The Provider issued the Complainants with a letter dated **25 November 2014**, which detailed as follows;:

*"We refer to our letter dated the 11<sup>th</sup> of September informing you of the determination of the Mortgage Appeals Board having considered your letter of appeal dated 25<sup>th</sup> of August 2014.*

*Further to same and in response to your recent telephone call advising our Case Manager that the 2 units at [Location] are not for sale however there is interest expressed in renting same, the Board has re-considered this matter and confirmed its previous decision to approve interest only payments for a period of 6 months without the requirement that you provide evidence that the Properties are for sale of your letter authorising the Bank to contact your nominated Auctioneer/ Estate Agent relating to the sale of the Properties.*

/Cont'd...

*The Board concluded that this 6 month forbearance period will afford you an opportunity to rent the Properties and improve your financial circumstances to support a step up in your monthly repayments on the expiration of this forbearance period to allow for assessment for a long term sustainable option (if appropriate) at that time.*

*The details of this alternative repayment arrangement will be sent to you in a separate letter and form. To accept this alternative repayment arrangement, please sign and return the form to us.”*

The Complainants signed and accepted the **MFA on 08 December 2014** to apply a 6-month interest only repayment period to the mortgage loan account which appears to have been applied from **October 2014**.

The tracker interest rate that should have been applied from **September 2014** was ECB + 1.30%. Between **September 2014** and **December 2014**, the overall tracker (ECB + margin) rate fluctuated between a rate of 1.35% and 2.3%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **September 2014** and **December 2014**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
Sep 2014	3.1%	€750	€750	€0
Oct 2014 – Dec 2014	3.2%	Between €718 and €720	Between €718 and €720	€0

During this period, there does not appear to have been any overcharge in interest paid by the Complainants.

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The Complainants signed an “**Agreement for Letting of Business Premises**” in **December 2014**, which has a handwritten note detailing “[r]eceived on 4/12/2014 €936 cash and included is half cost of lease €243.00” in respect of one of the retail units and details as follows:

“ ...

*3. THE LANDLORD AGREES WITH THE TENANT that the Tenant paying the rent and performing and observing the Agreements on the Tenant’s part hereinbefore contained may peaceably hold the premises during the term without any disturbance by the Landlord or any person lawfully claiming under or in trust for the Landlord.*

“ ...

**Term Rent and Manner in Which Payable**

*1 year from the 5<sup>th</sup> December 2014 to 4<sup>th</sup> December 2015*

*Deposit payable €693.33.*

*€346.66 per month (€80.00 per week) payable monthly in advance directly into the account of [Complainants] at [Provider address], account number [number] and monthly in advance thereafter to the same bank account or otherwise as the Landlord may from time to time direct.*

*The first rental payment shall fall due on **5<sup>th</sup> day of December 2014.**”*

The Provider’s internal note dated **04 March 2015** details as follows:

*“...the current arrangement is up in March so asked her to gather income verification and any statements outside [Provider] and to submit and then I will ring her to complete an I&E. She said one of the shops is rented out and they can step up the mtg payments to 900pm, full C&I is circa 1400, outlined I would review flg as might need to be higher...”*

The Provider’s internal note dated **18 March 2015** records the following telephone call with the Second Complainant:

*“..she got a letter to say full C&I due from 27.03.2015 but she has another month of I/O for March – I asked that she leave this with me and I will revert. She said is sending in the supports for the I&E call.”*

/Cont’d...

The Complainants sent the Provider a letter dated **19 March 2015** detailing as follows:

*“Enclosed please find documents showing increase of our income since last financial review.*

- *Copy of lease for Property at [Location] weekly rent of €80.00*
- *Confirmation from Social Welfare indicating [First Complainant’s] Carer’s allowance for his Parents [names] with a weekly payment to him of €306.00*
- *I am receiving invalidity pension with a payment of €183.50 you can see from my bank account [account number] with [Provider]*
- *[First Complainant] has regular customers from his [redacted] business that enable him to earn approximately €120.00 weekly.*
- *I sold my car and [First Complainant] upgraded his car to a Diesel that is much more efficient and cost effective.*

*We believe we could make a monthly payment to our mortgage of 900 with the hope that we could agree on a split mortgage payment term...”*

The Complainants contend that the sale of the Second Complainant’s car was a consequence of the Provider’s failure in relation to their mortgage loan account. The Provider has outlined that the Second Complainant sold the car because it was not compliant with regulations which was required for the First Complainant’s business and not due to the overcharge of interest. I note that the Complainants detailed that they were looking to sell the Second Complainant’s car to reduce expenses in their **SFS in January 2014**. It is reasonable to conclude that the Complainants sold the car in an attempt to reduce expenses and also to ensure the First Complainant’s car was in compliance with regulations as his business depended on it.

The Provider’s internal note dated **24 March 2015** details as follows:

*“Call made to the borrower at 4pm as agreed. INCOME: [First Complainant] – carers allowance of 306pw. S/e income of A120pw – this varies, funds lodged into the post office, expenses for car and petrol to be paid out of that and the income varies. [Second Complainant]: Invalidity pension on 183.50 pw – lodged into the [Provider] current account. EXPENSES: Household expenses are below the guide and low for 2 adults but she outlined that they have cut back. OTHER LOANS: only other loan is credit union and 4500 o/s and pays 25pw...The borrower is looking for an arrangement of 900 per month.*

/Cont’d...



*The last arrangement was I/O for 6 months and they hoped to be able to return to annuity but could only get one of the 2 retail units rented. NB – They cannot sell these units that were inherited because their relation has a right of residency on the apartment above the shop units). LONG TERM PLAN: [First Complainant] has also inherited another house, at present they cannot sell it, again part of the inheritance but there long term plan is to renovate the house and move into it and sell this security and clear the mortgage in full this will be some...to put a time frame on it but ideally a split mortgage would be suitable. PREVIOUS REPAYMENT: The borrower did meet the last I/O arrangement, error on the banks part on setting up direct debit, made error twice when setting it up and I/O expired a month early, so DDM that was only successfully set up in March has not been cancelled and manual payment to be paid, borrower is going to pay in 900 instead to show affordability for the step up.”*

The Provider’s internal note dated **25 March 2015** details as follows:

*“NOTE RE PAYMENT HISTORY: The Direct Debit mandate was signed on 08.12.2014 and DD was to be set up for 27<sup>th</sup> of the month, payment didn’t come out in Dec or Jan and the direct debit not set up, error on our part. Borrower made manual payment in Jan of 1438 which was for Dec and Jan. Case manager contacted relevant dept to set up the DDM correctly for Feb, again it was not set up, error on our part so the borrower made the manual payment for Feb in March. The direct debit was to be set up 27.03.2015 for i/o payment for march, DDM was set up correctly this time but a/c reverted to C&I a month early, again error on our part, it was looked for it to be amended to call for I/O but it was not changed and instead the difference was deducted from the arrears. The borrower[s] are not in a position to make full C&I so DDM now cancelled and 900 will be paid manually. This is all noted on the account. The borrower[s] have maintained the full 6 months interest only, not consecutively but that is an error on behalf of the bank.”*

The Provider’s internal note dated **31 March 2015** details as follows:

*“...*

*-history of FB...change in circumstances as comm premises now rented.*

*\*\*\*Customer background\*\*\**

*-BWRs seek split...largely to be funded by rental income of 2 commercial premises ([location]) . these belong to a relation who resides over the comm property + has lifetime right of residency ...BWRS now adv third non CCMA property (residential) again inherited which they intend to rent (.. notes 25/3/15)...*

/Cont’d...

...**Customer Background**...

-appeals board did land reg search on the commercial property and could not locate anything in BWRS names...while they take rent + have provided a rental agree as proof of income it is assumed that the actual title is still the relations...BWRS unable to rent during 2014 however 1 of the 2 premises is now rented...

...

...**Recommendation**...

- 1. Approve reduced repymts x 6 mths @E960.10pm to commence from 27/4/2015
- 2. These repymts are in line with a T/E (36 mths) to new mature date 27/8/2033 with a split (40/60)
- 3. If BWRS maintain x6 mths [Provider] to review for cap of exist arrears (E1228.34).

...**Recommendation**...

- 4 AS AT 1/4/2015: bal E193870.64...int rate 4.55...new mature date 27/8.2033
- 40% cap = E77548.26...repaid @ E519.04pm
- 60% int = E116322.38...repaid @ E441.06pm

...**Recommendation**...

-NAM to adv that LT T/E + split FB is based on the sale of the PDH property @ maturity to CIF the residual balance...

**\*\*please note figures are indicative and that actual figures are to be determined @d/down\*\***...

**Strategy/Conditions**

...noted majority of income is various SW however Mrs adv LT sick + now OOW completely also noted that BWRs adv 3 properties inherited (although appears change title to be completed) BWRs adv relation holds lifetime right of residency however they intend to sell asap to CIF their mortgage debt...

**Strategy/Conditions**

...OOM...declined unsustainable in July 2014 + FB thereafter from appeals board...file to be signed off by one up

-noted only 1 of the 2 commercial premises is currently rented...h/hold income will improve if second success rented...

**Sustainability**

-based on current financials this mortgage is sustainable noted that majority of income is SW carers allow + OOM so will require 1 up sign off

-LTV 73% MIR 32% maintain grade 6 with possible future upgrade once repymt cap proven @ LT FB level current provision @ E72652.77 to remain in place.

...**Step up**...: Sale of other assets. LT BWRs intend sale of inherited properties to CIF the PDH debt ahead of schedule

/Cont'd...

*\*\*\*End state\*\*\*: WIP*

*...\*\*\*Provision info\*\*\*... Rationale: Mortgage long term sustainable – pending outcome of action plan outlined in assessment.”*

The tracker interest rate that should have been applied from **January 2015** was ECB + 1.30%. Between **January 2015** and **March 2015**, the overall tracker (ECB + margin) rate was 1.35%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **January 2015** and **March 2015**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
Jan 2015 – Mar 2015	3.20%	Between €750 and €1446.99	Between €750 and €1,438.66	Between €0 and €546.99

The Complainants were on interest only repayments during this period. The overcharge as detailed in the above table was a substantial amount, however there was no overcharge when the mortgage was in the previous interest only repayment arrangement. The Complainants were in a position to increase their repayments as their income had increased due to the rental of one of the retail units. Nevertheless, the income had only increased to €900 therefore the Complainants were not in a position to meet their capital and interest only repayments at this time.

The Provider’s internal note dated **09 April 2015** records the following telephone call with the Second Complainant:

*“.. I rang to clarify the situation in regards to the inherited properties. 2 shop units with a PDH attaching. ...*

/Cont’d...

*Neither the shop units or PDH are fully signed over to [First Complainant]. He is allowed rent the shop units for rental income but he is not in a position to sell the shop units or even given a charge to the bank as they are not in his name. The full inheritance transaction will be completed when the relation dies, the relation has a full right of residence as part of the agreement, he is unable to sell or give as additional security while the relation is alive and unable to anyways as title is not in his name. I said that I would revert back to credit with the information and then revert back to her."*

The Provider's internal note dated **09 April 2015** details as follows:

*"...The borrowers reverted stating they could not adhere to the condition as the shop units were not for sale and they were not in a position to sell them. This was investigated and that condition was removed because there was no evidence that the properties were registered in the name of [First Complainant] on the land registry. The house or sold units cannot be assigned to the bank..."*

*..... The borrowers cannot agree to give first legal charge over the shop units or adjoining house. The details were provided to put it on file of the borrowers long term plan. They require a long term f/b like a split mtg, it will not be for the term of the mtg because once they fully inherit the shop units and adjoining property, they will sell the [Provider] security and clear the mortgage in full. Case to be considered for long term f/b"*

The Provider's internal notes dated **10 April 2015** detail as follows in relation to the Provider's decision to deem the Complainants' mortgage loan to be unsustainable:

*...\*\*\*Recommendation\*\*\* 1. decline unsustainable...unable to assess for LT FB due to irreg form of income...*

*...\*\*\*Recommendation\*\*\**

*-2. with 57 mths prev ST FB to date not appropriate to continue offer ST solutions + unable assess for LT as c.71% h/hold income is SW + c.11% of h/hold income made up of what is essentially a gift from a relation which could cease at any time and the remain c. 18% is unconfirmed from [First Complainant business].*

*-3. File to MRT for on-going management...*

*...\*\*\*Strategy/Conditions\*\*\**

*-unsustainable noted majority of income is various SW however Mrs adv LT sick + now OOW completely*

/Cont'd...

*-noted that BWRs adv 3 properties to be inherited in the future from BWRs relation...but no info held on relation re age/health etc other than he holds lifetime right of residency over all 3 properties.*

*-OOM...declined unsustainable in July 2014 + FB thereafter from appeals board...*

*...\*\*\*Arrears Plan/ Step up\*\*\* cap policy to be met...*

*...\*\*\*Sustainability\*\*\**

*-based on current financials this mortgage is unsustainable noted that majority income is SW carers allow*

*-BWRs are seeking LT FB based on the rental income of properties they do not own but adv will inherit from an relation at some unknown time.*

*-LTV 73% MIR 32% maintain grade 6 current provision @ E72652.77 to remain in place... loss to [Provider] is likely in this case.*

*...*

*...\*\*\*Provision info\*\*\*...Rationale: Mortgage is deemed long term unsustainable and high LTV indicates that property sale proceeds will not clear mortgage debt in full”.*

The Provider’s internal note dated **08 May 2015** records the following telephone call with the Second Complainant:

*“...outlined that the mortgage has been deemed affordable based on the financials provided. She said that 900 is the max and that is even a stretch. I outlined that given the level of carers allowance, long term that is not sustainable. She said that if [First Complainant] was not caring for his parents that he would be able to put more time into his business and increase... his income but unfortunately he is not in a position to do that. I agreed to get the case reviewed on the basis of the bigger picture, due inheritance of 2 shop units and house so our security will be sold. Even to see if we can give a 12 month arrangement to see.. if other shop unit could be rented? Advised I would revert in due course, before the end of the month...*

*...IBC from [Second Complainant] – she was thinking further about the case and said that she got the mortgage on the back of a [business] lease. we discussed in detail how the arrangements now has to be reviewed on the persons current situations, she understood. Discussed again what was discussed previously. She said that it is causing a lot of stress to her. She has been back in hospital recently for more tests, she has a rare [serious illness] prognosis is not good and all she is asking is for a long term resolution. I stated again that i will get it reviewed and that I will revert.”*

/Cont’d...

The Provider subsequently issued the Complainants a letter dated **20 July 2015**, offering an alternative repayment arrangement as follows:

*“We have carefully assessed your mortgage loan to see if there is an alternative repayment arrangement (ARA) to suit your individual circumstances.*

***Offer of an Alternative Repayment Arrangement***

*The attached Arrangement to Amend the Mortgage Loan Offer Letter (the “Form”) sets out the full details of the ARA that we are offering to you at Section A of the Form. This Form includes any special conditions that may apply and also in General Terms and Conditions. This letter and the attached Form together contain all the information the Bank has to provide you in accordance with Provision 42 of the Code of Conduct on Mortgage Arrears.*

*Your revised repayments will commence 27/07/2015.*

*This alternative repayment arrangement is for the Agreed Period only and is offered on the basis that you repay your mortgage loan **from the sale of other assets that you have identified with us.***

*...”[My emphasis]*

I note that a complete copy of this letter has not been furnished in evidence and there is a handwritten note by the Complainants on this letter which details as follows:

*“Spoke “name of employee” re above paragraph on the 29<sup>th</sup> /July 2015- 12.20. [name of employee] said she doesn’t understand why this was included and its not a condition on the term. the plan is in 3 years to review our financial situation.”*

It is clear that the Provider had been advised on several occasions that the Complainants could not sell the commercial property and had confirmed with the Land Registry that neither of the Complainants’ names appeared on the title to the commercial property.

The Complainants, in their post Preliminary Decision submissions dated **1 November 2021**, state that they were “shocked” to discover how the Provider checked the land registry for “proof of ownership” in relation to the First Complainant’s “gifted properties”, and they feel that this is a “total breach” of their privacy. The Complainants submit that if the First Complainant “succumbed” to the Provider’s demands to sell the properties “the properties would have been sold during a period of downturn, the properties wouldn’t have realised their full potential”.

/Cont’d...

In relation to the Complainants' concerns regarding the Provider's access to the Land Registry, I wish to highlight that the Land Registry is a database available to the public and by accessing the digital register, users of the service can view details of all property registered in the Land Registry.

In their post Preliminary Decision submissions, the Complainants state that there was *"extreme undue stress and harassment put upon us by the Providers"* as they constantly focused and implicated *"the gifted properties relative to them offering an Alternative Repayment Arrangement"*. The Complainants state that the First Complainant would get *"very upset, stressed and anxious and very fearful"* when reading the Special Conditions. The Complainants maintain that the atmosphere in their home *"was very unhappy with feelings of hopelessness and frustration."*

On review of the Provider's internal notes, it would appear to me that the reference to *"sale of other assets"* in the above letter referred to the long-term plan for sustainability whereby the Complainants would sell the commercial unit *"once they fully inherit the shop units and adjoining property"* and discharge the mortgage. However, I am of the view that this was not made clear to the Complainants in the Provider's letter. Therefore, the letter may have caused unnecessary stress to the Complainants and may have been perceived as forcing the sale of the commercial property despite the Provider having been advised previously of the Complainants' inability to sell this particular property.

The Provider's internal note dated **28 July 2015** records the following call with the Second Complainant:

*"OBC to [Second Complainant] – just had a query about the cover note on the MFA – it had a paragraph 'This alternative repayment arrangement is for the Agreed Period only and is offered on the basis that you repay your mortgage loan from the sale of other assets that you have identified to us'. I outlined that is not on the special conditions and not a condition of the approval, it was just to inform them that the mortgage would be required to be cleared when they are in possession of additional properties but i outlined that we are well aware that she is not the owner of the stop units and attaching hse. Happy to proceed."*

The Provider's internal note dated **04 August 2015** records the following call with the Second Complainant:

*"OBC to [Second Complainant] as requested – she wants the paragraph removed on the cover not ' This Alternative repayment arrangement is for the Agreed Period only and is offered on the basis that you repay your mortgage loan from the sale of other assets that you have identified to us'.*

/Cont'd...

*I outlined its not on the form they are signing but I can see if it can be removed as their sol read over forms and because of section D- 1. I confirm I understand both the Form and the information given to me in the letter that the Lender sent me with this Form'. They want the paragraph removed on the cover note, advised her to leave it with me."*

The Provider's internal note dated **10 August 2015** details that it was *"agreed to omit advisory paragraph"*. I accept that the Provider amended the reference to *"sale of other assets"* in the cover letter to the alternative repayment arrangement on the request of the Second Complainant.

The Provider subsequently issued the amended MFA for *"Interest Plus Fixed Repayments for 36 mths"* without the condition of the sale of assets.

The Complainants signed the **Agreement to Amend Mortgage Loan Offer Letter** on **09 September 2015**. The **Agreement to Amend Mortgage Loan Offer Letter** detailed as follows:

***"SECTION A: WHAT THIS FORM DOES:***

***1. THE ALTERNATIVE REPAYMENT ARRANGEMENT (ARA) IS AS FOLLOWS:***

***1.1 The Borrower and Lender agree that:***

*the Borrower will pay an amount of €183.00 towards repayment of the principal (capital) amount of the Loan in addition to the interest due for payment (the 'Regular Fixed Payment') in regular instalments for 36 months ("the Agreed Period") as calculated by the Lender. The Lender estimates that the Regular Fixed Payment amount will be €900.00 each month. If the interest rate on the Loan changes, the Regular Fixed Payment amount will vary.*

***1.2 What Happens when the Agreed Period Ends***

***1.2.1*** *When the Agreed Period ends the Borrower will be obliged to repay the Loan over the rest of the period of the Loan. The amount of the Loan then to be repaid will include all of the principal (capital) and other sums which the Borrower did not pay during the Agreed Period (and which the Borrower would have been obliged to pay if this Form did not come into force.)*

***1.2.2*** *The Lender will calculate the repayment instalments that the Borrower has to pay when the Agreed Period ends. The Borrower agrees to pay these repayments instalments in full as calculated by the lender.*



*The terms and conditions of the Mortgage Loan Offer Letter which provide for repayment of the Loan on an annuity basis will operate after the Agreed Period by reference to the amount the Borrower than owes under the Loan.*

**1.3 Capitalisation of arrears**

**1.3.1** *This Form does not capitalise the arrears if any*

**1.4 Maturity Date**

**1.4.1** *This Form does not change the maturity date of the Loan. This means the Loan must be repaid over the current mortgage term.*

...

*Your revised repayment will commence 29/07/2015”*

The Complainants paid their mortgage repayment in full in **September 2015** therefore the Provider’s internal note dated **08 October 2015** detailed that it could *“now issue out the MFA for capitalisation of the arrears as previously agreed.”*

The Provider’s internal note dated **12 October 2015** details as follows:

*“RCAT Review:....Interest Only plus fixed increment approved for 36 months at repayments of A900PM with strategy to cap arrears in 2 months. LT strategy: Sale of other assets. Mortgage loan to be cleared...*

*...Instruction to Fulfilment...MARP Letter: Forbearance Offer, Details: Interest plus fixed increment of A172.56 for 34 months. NO CHANGE TO MATURITY DATE Plus capitalisation of arrears to zero Now Est. repayment amount: A900.00 Commencement date 27/10/2015...”*

While I note that from the Provider’s internal notes that the Provider issued the above referenced **MFA on 16 October 2015**, I have not been provided with a copy of the MFA in evidence by the Provider which I find disappointing and unhelpful.

**As previously outlined, Provision 11.5 and 11.6 of the Consumer Protection Code 2012** (which was fully effective from **01 January 2012**) outlines that a regulated entity like the Provider must retain certain documentation for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.

The Complainants’ mortgage loan was incepted for a term of **25 years** commencing from **July 2005** and this MFA was completed in **October 2015**. The Provider is no doubt aware that it is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. It is therefore unclear to me, in the absence of any explanation, why this correspondence has not been furnished by the Provider.

/Cont’d...

The Provider's internal notes detail that the Complainants contacted the Provider on **28 October 2015** as follows:

*"...cust is looking to discuss the wording on cover pag of the MFA recently received. It states sale of assets as agreed she feels this is not part of the offer and requested a call back from the CM...call back request sent."*

The Provider's internal note dated **11 November 2015** details as follows:

*"The borrower is after receiving an MFA for 34 months & Cap of arrears. There is a condition attached about sale of the assets, this condition cannot be satisfied as per previous correspondence, we previously agreed to remove that condition from 2 previous MFAs so please can you re-issue the MFA and remove the condition about the sale of the assets as it cannot be agreed to as the properties are not in their names."*

The Provider's internal note dated **12 November 2015** details as follows:

*"No require[m]ent for reassessment here request to removed Long term condition noting previous assessment 07/2015...agreed to remove same –*

*cannot rely on these assets as not currently owned. Removed condition re same and ...to reissue MFA"*

I note from the Provider's internal notes that the amended **MFA** was issued on **27 November 2015** however the Complainants detail that they only received this **MFA** on **14 December 2015**.

I have no doubt that the Provider's persistent reference to the sale of the commercial property, which the Complainants did not own, as part of any forbearance arrangement with the Complainants would have caused unnecessary stress and worry to the Complainants, given they were being asked to sell a property which they told the Provider on several occasions that they did not hold title to. The Provider verified that the Complainants did not have title to the property.

The Complainants signed an **Agreement to Amend Mortgage Loan Offer Letter** dated **27 November 2015** on **21 December 2015** on the following terms:

**“1. THE ALTERNATIVE REPAYMENT ARRANGEMENT (ARA) IS AS FOLLOWS;**

*1.1 The Borrower and Lender agree that*

*1.1.1 the Borrower will pay an amount of €172. 78 towards repayment of the principal (capital) amount of the Loan in addition to the interest due for payment (the “Regular Fixed Payment”) in regular instalments for 34 months (the “Agreed Period”) as calculated by the Lender. The Lender estimates that the Regular Fixed Payment amount will be €900.00 each month. If the interest rate on the Loan changes, the Regular Fixed Payment amount will vary.*

*1.2 What Happens when the Agreed Period Ends*

*1.2.1 When the Agreed Period ends the Borrower will be obliged to repay the Loan over the rest of the period of the Loan. The amount of the Loan then to be repaid will include all of the principal (capital) and other sums which the Borrower did not pay during the Agreed Period (and which the Borrower would have been obliged to pay if this Form did not come into force).*

*1.2.2 The Lender will calculate the repayment instalments that the Borrower has to pay when the Agreed Period ends.*

*The Borrower agrees to pay these repayment instalments in full as calculated by the Lender. The terms and conditions of the Mortgage Loan Offer Letter which provide for repayment of the Loan on an annuity basis will operate after the Agreed Period by reference to the amount the Borrower then owes under the Loan.*

*1.3 If there are arrears on the Loan this Form capitalises them. That means the Lender adds the arrears to the principal (capital) amount of the Loan after the Borrower accepts this Form. If any more arrears arise between the date of this Form and the date the Lender capitalises arrears, the Borrower agrees the Lender may (but is not obliged to) add those arrears to the principal (capital) amount of the Loan.*

/Cont’d...

## 1.4 Maturity Date

1.4.1 *This Form does not change the maturity date of the Loan. This means the Loan must be repaid over the current mortgage term.”*

The Provider’s internal notes indicate that above agreement was subsequently implemented and the arrears of €2,546.82 were capitalised on **22 December 2015**.

The tracker interest rate that should have been applied from **April 2015** was ECB + 1.30%. Between **April 2015** and **December 2015**, the overall tracker (ECB + margin) rate was 1.35%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 1.30%) had been applied to mortgage account between **April 2015** and **December 2015**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
Apr 2015 – Dec 2015	3.20%	Between €900 and €1454.62	Between €900 and €1,438.66	Between €0 and €345.43

I note that the Complainants did not meet their mortgage repayment in **July 2015**. As in the previous amortisation table it would appear that there was no overcharge of interest in certain months as the Complainants were repaying a specific agreed amount.

The tracker interest rate that should have been applied for the remaining months from **January 2016** fluctuated between 1.30% and 1.35%. Between **January 2016** and **November 2017**, the overall tracker (ECB + margin) rate was 1.35%. The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

/Cont’d...

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 + 1.30%) had been applied to mortgage account between **January 2016** and **November 2017**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual Monthly Repayments</b>	<b>Monthly repayments if the mortgage was on the Tracker Rate</b>	<b>Overcharge per month</b>
Jan 2016 – Feb 2016	3.20%	€901.20	€901.20	€0
Mar 2016 – Nov 2017	3.25%	€901.20	€901.20	€0

There appears to have been no overcharge of interest paid by the Complainants from **January 2016 to November 2017**.

The Provider has submitted a table comparing the alternative repayment arrangement amount paid by the Complainants during the impacted period against the capital and interest repayments based on the tracker interest rate. The table sets out the following:

<b>Month of Forbearance Period</b>	<b>Alternative Repayment Arrangement (Billed)</b>	<b>Tracker Repayment (not Billed)</b>	<b>Difference per month</b>
January 2010	€409.13	€959.77	€550.64
July 2010	€700	€977.59	€277.59
September 2011	€498.54	€1,055.26	€556.72
April 2012	€639.28	€1,027.84	€388.56
July 2012	€639.28	€1,015.62	€376.34
July 2013	€718.28	€1,038.86	€320.58
February 2013	€0 - Moratorium	€1,045.82	€1,045.82
December 2014	€715.20	€1,089.77	€374.57
September 2015	€900	€1,129.98	€229.98

/Cont'd...

Given the seriousness of the Complainants' financial difficulties, it is likely that they would have sought forbearance during this time regardless of the Provider's failure. However, it is reasonable to conclude that if the Complainants had sought interest only repayments while being on a tracker interest rate, they would have been in a significantly better position than repaying interest only subject to a fixed or variable rate of interest. Therefore, I do not consider that the above table accurately represents the reality of the situation.

The Complainants highlight in particular that the Provider's failure in respect of their mortgage loan account prevented them investing in their commercial property during the impacted period. The Complainants have submitted a table in evidence which details the rental expenses and income of each retail unit from **2013** to **2017** which outlines as follows:

- **2013:** Retail unit 1 had monthly expenses of €2,658 and a monthly income of €200. Retail unit 2 had monthly expenses of €1,678 and a monthly income of €520, with €6,240 yearly rent.
- **2014:** Retail unit 1 had monthly expenses of €1,718.75 with no rental income. Retail unit 2 had expenses of €1,684.51 and a rental income of €320.
- **2015:** Retail unit 1 had monthly expenses of €2,385.02 with no rental income. Retail unit 2 has €400 in expenses and a rental income of €346.66 per month.
- **2016:** Retail unit 1 had monthly expenses of €2,679.43 with no rental income. Retail unit 2 had monthly expenses of €420 while the rental income was €4,200.
- **2017:** Retail unit 1 had monthly expenses of €1,252.57 and no rental income. Retail unit 2 had monthly expenses as €694.44 with rental income of €350 as of **06 January 2017**.

It would appear to me that the retail unit 2 was not vacant for a substantial period of time. The Complainants submit that both retail units became vacant in **December 2013**. The Complainants signed a lease for retail unit 2 in **December 2014** agreeing to €346.66 per month. However, retail unit 1 was not rented and remained vacant until the Complainants signed a "**Memorandum of Agreement**" on **11 October 2017**, which details as follows:

" ...

*3. THE LANDLORD AGREES WITH THE TENANT that the Tenant paying the rent and performing and observing the Agreements on the Tenant's part hereinbefore contained may peaceably hold the premises during the term without any disturbance by the Landlord or any person lawfully claiming under or in trust for the Landlord.*

/Cont'd...

4. IT IS HEREBY AGREED BETWEEN THE LANDLORD AND TENANT:-

...

(b) That if the Tenancy hereby should continue beyond the data specified herein it shall in the absence of a new Agreement be deemed to be a tenancy determinable by one calendar month's notice in writing by either party expiring on any gale day.

...

SPECIAL CONDITIONS

...

16. The Landlord hereby agrees that the Tenant may terminate the Tenancy on the second anniversary thereof subject to the Tenant furnishing at a minimum 3 months prior written notice to the Landlord or for intention to so terminate.

...

SECOND SCHEDULE

Term, Rent and Manner in Which Payable

**Term**

Four years and nine months from the 1<sup>st</sup> day of October 2017

**Rent**

Initial Rent €736.67 per calendar month for the first two years from commencement. First rental payment due 13.11.2017.

**€953.33** per month for the following two years and nine months.

**Manner payable**

By monthly Direct Debit into the account of the Landlord at [Provider] [Location]

...

"Correction" Rent to Start Mon 8/Jan 2018."

The auctioneer's letter dated **05 November 2018** submitted in evidence details the following in respect of the retail unit 1:

*"We wish to confirm that we had the above property up for letting from 2013 to 2017, unfortunately due to the condition of the property we failed to find a suitable tenant as it needed considerable upgrading.*

*In mid 2017 we found a suitable tenant who was willing to enter into an agreement to rent the property, renovate it and bring it up to meet her requirements. Due to this, the current tenant is there on a reduced rent for a period of time until she recoups what she has invested.*

/Cont'd...

*We would estimate that while the property was vacant there was a loss of rental income of approx. €10,000 per annum”.*

The Complainants appear to be of the view that in circumstances where they were not able to invest in renovations to the commercial property, in particular retail unit 1, and therefore were not able to put it on the market for rent, they suffered a loss in rental income of approximately €10,000 per annum from **2013** to **2017**. In addition, the Complainants contend that had the Provider advised of the redress and compensation owed to them sooner, they would not have entered into the lease of the retail unit 1 in **October 2017**. They submit that they would have commanded a higher rent and changed the terms of the lease. I note that the lease agreement was signed a month prior to the Provider’s issuing of the redress and compensation letter.

The Second Complainant asserts that she had to cease being a patient in two hospitals and had to secure her treatment in her local hospital in order to reduce transport expenses to these hospitals. The Complainants maintain that this was as a result of the Provider’s failure on their mortgage loan account. The Provider has submitted that despite extensive engagement between the Provider and the Complainants, it was not privy to any discussions held with the Second Complainant and her doctor.

The Provider appears to speculate that there could have been any number of reasons why the Second Complainant decided to cease being a patient of the hospital/doctor’s practice she was attending. The Provider contends that the Complainants have not provided any contemporaneous evidence to show their decision to cease being a patient at a particular hospital/doctor’s practice was connected to the issue of the interest rate on their mortgage loan account. It is irrelevant whether the Provider was aware of the decision-making process in relation to the Second Complainant’s decisions to cease to be a patient of a certain practice. I see no reason why the Complainants would or should have informed the Provider at the time. The issue for consideration is whether the Provider’s conduct in overcharging contributed to the decision.

The Second Complainant’s doctor furnished a letter dated **12 September 2018** to this office, detailing as follows:

*“The above lady is a longstanding patient of mine and has been attending my private rooms since 2011. [Second Complainant] had a diagnosis of [serious illness] at this time.*



*[Second Complainant] has had extensive investigations in Ireland and also in the UK. During the time these investigations were taking place [Second Complainant] was understandably under a lot of stress and financial pressure as a lot of these investigations were not covered by her health insurance.*

*I believe that [the Second Complainant] and her husband had a tracker mortgage during this time and this also would have impacted on [Second Complainant's] anxiety at what was a very difficult time in her life."*

The Second Complainant's doctor furnished a letter dated **05 September 2019**, to this office which details as follows;

*"[Second Complainant] attended me following a diagnosis of a very unusual type of [serious illness].*

*While she was well at the time that we were last involved in her care, there is certainly an uncertain future in any patient with [serious illness], a disease which does not have a propensity for late [redacted] relapse.*

*I hope you will keep this in mind when assessing her current circumstances and will be understanding of her need to avoid unnecessary stress."*

In their post Preliminary Decision submissions dated **1 November 2021**, the Complainants explain that the Second Complainant was referred to many "*private consultants*" and that they applied to the Health Service Executive to build a downstairs bedroom and bathroom. The Complainants assert that they "*paid a percentage of the grant*" including "*the furnishing and decoration of the extension.*" The Complainants are of the view that an additional €500 per month "*would have made a difference*" to them at that point in their lives. The Complainants state they felt very "*sad*" selling their home, particularly as it was designed for the Second Complainant's medical needs. The Complainants assert that it is "*grossly unfair*" that they had to endure suffering and fear from the Provider because of the way in which the Provider conducts its business.

There is no doubt that the Complainants' financial difficulties caused the Complainants a significant amount of stress and anxiety during this difficult time in their lives. Given the financial strain, the Second Complainant appears to have admirably taken it upon herself to find every way possible to reduce her medical expenses and in doing so sought treatment from a local hospital in an effort to reduce transport costs.

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The Second Complainant relied significantly on the serious illness benefit that she received to meet her hospital and other medical expenses and the Complainants also relied heavily on their savings to deal with household expenditure in an effort to maintain their mortgage repayments. The Complainants also looked at ways to reduce weekly and monthly expenditure to the extent that they stopped paying life assurance except for mortgage protection and considered ways to reduce household expenditure to include groceries, electricity, heating and refuse charges. The fact that the Second Complainant, in particular, had to worry about reducing such basic household expenditure given her serious illness undoubtedly caused her significant stress and inconvenience.

There can be no doubt that the Complainants had to make significant unpalatable decisions regarding their finances and moreover their personal circumstances and had to adjust their finances in order to ensure that they were able to meet their mortgage loan payments on their mortgage loan account. I have no doubt that these were difficult decisions for the Complainants to make.

Having regard to the evidence before me, it is clear that the Complainants made sacrifices in order to pay their mortgage loan repayments and adhere to the various alternative repayment arrangements offered by the Provider to ensure that their mortgage loan account did not fall into further arrears. Despite acknowledging its failings and awarding the Complainants compensation, the Provider does not appear to believe that the Complainants have demonstrated any inconvenience that warrants additional compensation. I am at a complete loss to understand how the Provider has arrived at this position. I am of the view that throughout a 9-year period, in the most difficult of circumstances, the Complainants were denied the opportunity of making informed decisions about their finances as they did not know the true position with respect to the repayments that were actually due and owing on their mortgage loan account.

I accept that the Provider, having identified its failures, gave redress and compensation to the Complainants as part of the review of the Complainants' mortgage loan account. However, I am satisfied that if the correct interest rate was applied to the mortgage loan account, the Complainants would not have been under as much financial stress and worry, resulting in considerable inconvenience.

I would point out to the Provider for the avoidance of any doubt, I have the power under **section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017** to direct compensation for any loss, expense and inconvenience sustained by the Complainants as a result of the conduct complained of. To me, there is clear evidence of very considerable inconvenience caused to the Complainants in the circumstances of this complaint.

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From **November 2008** to **November 2017** the Complainants were overpaying between €24.47 and €546.99 per month. It appears to me that the Complainants experienced significant financial difficulties because of various reasons to include the Second Complainant's serious diagnosis, illness and ongoing treatment as well as the decline in the First Complainant's business and the reduction in the Complainants' rental income. It is to be noted that the Complainants were proactive by engaging with the Provider at all times during the impacted period in an effort to reach a mutually agreeable sustainable solution. While it may be the case that the Complainants' financial situation was not good despite the overcharging, it cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused considerable additional hardship and inconvenience to the Complainants. In the circumstances of the Complainants' situation, I accept that an overpayment every month caused a level of inconvenience to the Complainants.

I note and welcome that at times, the Provider demonstrated some empathy and understanding for the Complainants when considering their forbearance requests. I found that no such empathy or understanding was evident in the manner in which the Provider dealt with their complaint, which I consider to be entirely unreasonable and otherwise improper on the part of the Provider.

I note that the Complainants have received a total of €13,734.47 (inclusive of the additional €10,000 awarded by the Independent Appeals Panel) by way of compensation in respect of their mortgage loan account. 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 Complainants, I do not consider the total amount of compensation awarded to the Complainants to be satisfactory to compensate the Complainants for the inconvenience suffered by them during the impacted period.

In my Preliminary Decision, I indicated my intention to direct the Provider to pay a sum of €20,000 in compensation. I note the Complainants have expressed a view that this sum is not adequate. While I acknowledge the difficulty the Complainants have encountered, I must point out that €20,000 is a considerable sum of compensation.

In light of all the foregoing, I substantially uphold this complaint and I direct pursuant to **Section 60(4) of the Financial Services and Pensions Ombudsman Act 2017** that the Provider pay a sum of €20,000 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered.

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For the avoidance of doubt, the total sum of compensation of €20,000 is inclusive of the €13,734.47 compensation already paid to the Complainants for the Provider's failure

### **Conclusion**

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

Pursuant to **Section 60(4)** and **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by:

- (i) Paying a sum of €20,000 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered as a result of the Provider's conduct to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. The total sum of compensation of €20,000 is inclusive of the €13,734.47 compensation already paid to the Complainants for the Provider's failure.
- (ii) I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

17 November 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.

