



<u>Decision Ref:</u>	2022-0287
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to the Complainants' mortgage loan held with the Provider. The mortgage loan the subject of this complaint was secured on the Complainants' private dwelling house.

The loan amount was €193,200.00 and the term of the loan was 30 years. Mortgage loan sub-account ending **8624(01)** drew down on **28 March 2006** on a tracker interest rate of ECB base rate of 2.50% plus a margin of 1.05%.

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

The Provider wrote to the Complainants on **30 May 2018** for the purposes of advising them of the error that had occurred. The Provider detailed "*Why your mortgage sub-account has been identified as impacted*" as follows:

“Through the review conducted under the Tracker Mortgage Examination, we have identified that you are a customer who inadvertently lost your tracker rate due to an internal processing failure by the bank.

We have determined that the loss of your tracker rate occurred as a result of an internal processing failure and we have identified that your mortgage sub-account was impacted from 15/07/2015 up to 22/12/2016. Impact occurred when the internal processing failure resulted in you losing your tracker.”

The Provider offered the Complainants the sum of €2,931.31 as redress and compensation for the error that occurred, made up of the following:

1. Total redress amount of €502.10 covering the following
 - a. Redress amount of €497.64
 - b. Time Value of Money of €4.46;
2. Compensation of €1,500.00;
3. Fees and Charges payment of €329.21;
4. Independent Professional Advice payment of €600.00

The Provider adjusted the Complainants’ sub-account by €6,545.24 to rectify the fact that they were on a higher interest rate on **18 May 2018**.

In **July 2018**, the Complainants’ appealed to the Provider’s Independent Appeals Panel.

The Independent Appeals Panel decided on **12 September 2018** that the appeal was not upheld, as follows:

“...having regard to the Tracker Mortgage Examination framework the Panel was satisfied that the Bank had put [the Complainants] back in the position they would have been in had the Bank’s error not occurred and therefore determined that the severity of detriment did not warrant additional compensation which had not been accounted for in the Bank’s offer of Redress and Compensation.”

The Complainants rejected the Independent Appeals Panel’s decision on **10 October 2018**.

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

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

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The Complainants' Case

The Complainants submit that their complaint concerns the *“derisory amount of compensation that has been given by [the Provider] for all the thefts, lies, stress and of course [the Provider] broke a contract and kept telling [the Complainants] lies for a continued 17 months about payment & redress.”* The Complainants are of the view that to give €1,500.00 in compensation *“is an utter insult”*.

The Complainants question how the Provider can *“justify paying €1500 comp for multiple thefts and breach of contract. This was not an ‘Internal Process Failure’ it is theft from vulnerable people.”* The Complainants submit that *“Someone physically and deliberately moved [their] mortgage from a tracker @ 1.05% to 4.5%, that’s nearly 3.50% hike.”* The Complainants submit that this *“had to be sanctioned by management and in so doing this they were fully aware that they were deliberately stealing from us.”*

The Complainants note that they received the first letter from the Provider concerning the impact on their mortgage loan account on **27 December 2016** *“even though it was dated 12/8/16.”* The Complainants submit that they were *“assured verbally”* by a staff member of the Provider that they would *“have a choice”* to keep the overpayment amount of €6,545.24 *“or have it taken off mortgage and reduce monthly payments to what they should have been”* prior to the Provider’s failings. The Complainants state that the Provider has avoided explaining *“why they adjusted [their] mortgage account on 18/05/18 by 6545.24e without any conversation or consent or notice to us.”* The Complainants submit that they were given this assurance on **December 2016, January 2017, and February 2017.**

The Complainants detail that they rang the Provider *“month after month after month”* and state that *“the stress & the pressure was unreal as [the Second Complainant] got very sick and [the First Complainant] was at the early stage of [his] new business and [they] had severe financial pressure.”* The Complainants submit that they were *“really depending”* on the refund of the overcharged amount and that they feel *“cheated”*.

The Complainants maintain that they contacted the Provider in **September 2016** for the purposes of entering a moratorium for a 6-month period from **01 November 2016 to 01 April 2017** as the Second Complainant sustained an injury on **16 September 2016** and would *“be out sick for 12 months”*. The Complainants state that the moratorium was agreed *“over the phone”* and that they have *“absolutely no recollection of an[y]] such papers from [the Provider]”*.

The Complainants state that they were informed by the Provider that they went into a moratorium **01 November 2016** and *“also stated [they] went into a moratorium on the 1/12/16 and also stated [they] went into a moratorium 1/1/17 and it was a 6 month*

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moratorium and then it was a 4 month moratorium and then it was a 6 month moratorium.” The Complainants explain that the letter from the Provider providing details of the moratorium is dated **19 January 2017**, which is *“nearly 3 months into the moratorium and some 4 ½ months after [they] done the financial statement over the phone”*. The Complainants explain that at the time of the First Complainant’s telephone call with an agent of the Provider on **01 December 2016**, a moratorium was already in place, and they were *“under stress because of [their] credit rating”*.

The Complainants detail that a different provider informed the First Complainant that their *“credit was affected because there was a moratorium”* on their mortgage loan account which prevented the First Complainant from getting a business loan at a rate of 5.5% from the different provider. The Complainants state that the First Complainant subsequently had to take a loan from a different provider at a rate of 13.2% APR. The Complainants contend that *“the ICB implication”* was never explained to them and refute the Provider’s assertion that they were furnished with correspondence from the Provider dated **19 January 2017**.

The Complainants are seeking additional compensation in respect of the following:

- i. That the Provider *“assured”* them in **December 2016** that they would be given a choice to either *“have overcharged amount taken off our mortgage acc”* or to *“keep it”*. The Complainants submit however that in **June 2018**, the Provider reduced their mortgage loan balance by €6,545.24 without any prior notice to them. They submit that *“[We] were really depending on that [lump sum payment] and [we] feel cheated.”*
- ii. That the Provider failed to clearly explain that their credit rating would be affected by entering a moratorium in respect of their mortgage loan account in **January 2017**.
- iii. That in or around **February/March 2017** they applied for a loan from another provider at a rate of 5.5% APR and were told by that provider that their credit rating was affected by the moratorium. As a result, the Complainants maintain that they had to accept a loan from a different provider at a higher rate of 13.2% APR.
- iv. That the Provider’s actions have caused them to suffer stress and severe financial pressure at a time when the Second Complainant was very sick, and the First Complainant was in the early stages of running a new business.

The Provider's Case

The Provider submits that the Complainants entered one *"forbearance arrangement with the Bank within the period of 2015 and 2018."* The Provider submits that on **29 September 2016**, the Provider noted in their system that a standard financial statement ("SFS") had been completed with the Complainants *"over the telephone"*.

The Provider details that the Complainants completed a SFS in **October 2016** and the mortgage loan account was due to go on a moratorium for six months commencing **01 November 2016**. However, the Provider notes that there was a delay in processing the SFS as the interest rate applicable to the mortgage loan account was incorrect. The Provider explains that this issue was resolved by having the moratorium backdated to **01 November 2016** and redress of €550.00 was provided to and accepted by the Complainants. The Provider states that a staff member made a telephone call to the First Complainant on **01 December 2016** and advised the First Complainant that the Complainants' Irish Credit Bureau ("ICB") record *"would be updated to reflect that the customers were in an arrangement"*. The Provider states that the First Complainant *"was also advised that the customers' credit rating remains on record with the ICB for the period of their arrangement plus a further seven years."*

The Provider states that an "M" on the ICB report *"means there is an agreement between the lender and the borrower to suspend all or part of the normal monthly repayment."* The Provider submits that the Complainants' credit rating *"is not necessarily adversely affected by the Bank reporting to ICB as 'M'."* The Provider outlines that each financial institution will review a credit report using its own criteria and deem what is positive and what is negative according to its own policies

The Provider submits that the Complainants' mortgage loan account was assessed as impacted under the Central Bank of Ireland directed Tracker Mortgage Examination. The Provider states that it issued a letter to the Complainants dated **30 May 2018** for the purposes of offering redress and compensation to the Complainants in the sum of €2,931.31. The Provider states that the Complainants decided to *"avail of the independent Appeals mechanism as they were dissatisfied with the Redress and Compensation they had received."*

The Provider maintains that it has no record *"of any telephone calls or correspondence informing the customers that when they received redress they would have an option of either reducing the balance on their mortgage loan or taking a lump sum payment."* The Provider submits that the Complainants had the option of using the compensation amount of €1,500.00 *"against the arrears present on their mortgage."* The Provider explains that by *"adjusting the customers' mortgage balance and refunding the amount incorrectly*

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collected from the customers, the Bank placed the customers' mortgage into the position it would have been had this issue not occurred in line with the Principles for Redress by the Central Bank of Ireland."

The Provider refutes any allegations of theft and states that the *"impact under TME was due to the failure by way of an internal processing failure leading to the loss of the customers' tracker interest rate."*

The Provider maintains it is satisfied that the redress and compensation payments offered to the Complainants were adequate to compensate them for the failure identified and that the offer *"places the customers in the position they would have been had the identified failure not occurred."*

The Complaint for Adjudication

The complaint for adjudication is the Provider has failed to offer adequate redress and compensation to the Complainants in respect of its failure on the Complainants' 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 **02 August 2022**, outlining the preliminary determination of this Office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this Office is set out below.

The Provider has detailed that the Complainants' mortgage loan account was reviewed in line with the requirements of the Central Bank of Ireland directed Tracker Mortgage Examination and the criteria adhered to the Central Bank of Ireland's Principles for Redress. The Provider has conceded that due to an "*internal processing failure*", the Complainants' mortgage loan account was moved from a tracker interest rate to a fixed interest rate of 4.3% on **15 July 2015** and remained on the fixed interest rate until **22 December 2016**. On that basis, the Provider provided a redress payment in the sum of €502.10, compensation in the sum of €1,500.00, a payment for fees and charges in the sum of €329.21 and a payment for independent professional advice in the sum of €600.00. The Provider also adjusted the Complainants' mortgage loan account balance by €6,545.24 in order to place the Complainants back in the position they would have been had the failure not occurred.

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

The Complainants' mortgage loan was drawn down on a tracker interest rate of 3.55% (ECB Base Rate 2.50% + 1.05% margin) on **28 March 2006** for a term of 30 years in accordance with the terms of the **Offer of Advance** dated **12 February 2006** which was signed and accepted by the Complainants on **21 February 2006**. The amount of credit advanced under the **Offer of Advance** dated **12 February 2006** was €193,200.00.

The **Special Conditions** attached to the **Offer of Advance** state as follows in respect of the applicable interest rate:

"The rate of the [Provider's product] tracks the ECB rate with a margin which is fixed for the life of the Home Loan term. The margin for this Home Loan is ECB rate plus 1.05%. This margin is dependent on the amount borrowed and the value of the property to be mortgaged".

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It appears from the submissions and evidence received by the Provider, that the Complainants entered an alternative repayment arrangement (“ARA”) with the Provider between **01 October 2012** and **01 September 2015** in order to assist the Complainants with their “*financial difficulties*” on foot of arrears having accrued on the mortgage loan account prior to **2012**.

While the Complainants’ mortgage loan account was subject to the ARA, the mortgage loan account was placed onto a fixed interest rate of 4.3% on **15 July 2015**. The Provider submits this was an error due to an internal processing failure on the part of the Provider. The mortgage loan account remained on the fixed interest rate in error until **22 December 2016**, at which time the error was identified, and the mortgage loan account was switched back to a tracker interest rate of ECB + 1.05%.

Prior to the error on the Complainants’ mortgage loan account having been identified and rectified by the Provider, the Complainants applied for a further ARA with the Provider in or around **September 2016**.

On **29 September 2016**, the First Complainant completed a standard financial statement (“SFS”) over the telephone with the Provider and the parties agreed to an ARA in the form of a 6-month moratorium to allow time for the Second Complainant to go back to work after a surgical procedure. The Provider’s internal system note from **29 September 2016** details as follows:

“Proposing a 6m MOT to allow time for [Second Complainant] to return to work after [redacted] operation.”

The 6-month moratorium would allow the Complainants to stop making their normal monthly repayments for a period of 6 months.

I have been furnished with a copy of a transcript of a telephone call that took place between the First Complainant and an agent of the Provider on **01 December 2016**, which details as follows:

“...

A – Agent

C – Customer

...

A - Excellent thanks for that [name of the First Complainant], it's just in relation to a standard financial statement that you completed just a couple of months ago basically I understand this has obviously gone through to a complaints case obviously I understand that [Second Complainant] now in hospital as well but

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before we can proceed again basically I just need to read you out some quick scripting just in regards to that just so I get your voice authorisation and then I can submit the Standard Financial Statement and issue any correspondence in regards to that ok

C- Ok

...

A – [the First Complainant], the arrangement is for 6 months. There is no change to your standard balance however the balance at the end of the arrangement will be higher as you will not make any repayments for the duration of the arrangement but because you will not be making any repayments for the duration of the arrangement you will accrue more interest during the arrangement and over the remaining term if your account is currently in arrears the remaining outstanding will need to be repaid. If interest rates remain the same your projected normal monthly repayment will be €976.2.

...

Your Irish Credit Bureau record (ICB) will be updated to reflect that you're in an arrangement. Your credit rating remains on record with the ICB for the period of your arrangement plus a further seven years. It's important to be aware that arrears may adversely affect your credit rating with the licensed credit reference agencies, included the ICB, and may limit your ability to access credit and loans in the future. [my emphasis]

Ok that's about it [First Complainant] as you are aware this call is being recorded which means it will not be necessary for you to sign any documentation and any decisions or options you make now will be regarded as legally binding. This also enables us to retain a record of your co-operation today, your confirmation that you will be able to maintain your repayments in the future subject to your circumstances not deteriorating and as it stands this arrangement is being submitted as a proposal to our underwriting team for further checks therefore it is not guaranteed. If other information is required we'll be contacting you within 5 working days to obtain this and also the bank may conduct a credit reference check. If an arrangement is approved on your mortgage account, your credit file may be updated to reflect this depending on the type of arrangement. Full details will be outlined in our confirmation letter to you as per current arrangement in place.

Once arrangement is approved you will receive a confirmation letter to your correspondence address. You will have a 20 day cooling off period in which you can consider the offer.

You will be entitled to appeal the arrangement offered to you and will be provided with the information on how to submit the appeal when the cooling off period

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expires. In order to do this you must write to us with 20 business days from the date you receive your arrangement confirmation letter and if you decide you no longer wish to proceed with the arrangement, we will reverse that arrangement and arrange for any refund availed. Ok [First Complainant] are you still happy to proceed with this option.

C – Yea that’s fine.

A - Thanks for your co-operation today and I do apologi[s]e for the delay in us I'm not too sure about the details surrounding that however I will submit that today and with your voice authori[s]ation you should hear correspondence from us in regards to that ok

*C - That's perfect thanks
..."*

The Provider has submitted that the moratorium in respect of the Complainants’ mortgage loan was due to commence on **01 November 2016**. However, due to fact that the interest rate being applied to the Complainants’ mortgage loan account was incorrect, there was a delay with the Provider processing the Complainants’ request. The Provider details that the delay issue was resolved by its internal complaints handling centre by having the moratorium backdated to commence on **01 November 2016** and a compensation payment of €350.00 was offered to the Complainants which was accepted by the Complainants. Having considered the Complainants’ submissions regarding the confusion concerning the correct date that the moratorium began and the Provider’s attempt to resolve its delay in dealing with the Complainants’ request for a moratorium, I consider the payment of €350.00 and backdating the commencement date of the moratorium to **01 November 2016**, to have been a reasonable attempt by the Provider to resolve this matter. In addition, I am satisfied from the evidence before me that the Complainants entered a 6-month moratorium period with the Provider from **01 November 2016** during which it was agreed that the Complainants could take a payment holiday and stop making their normal monthly repayments for a period of 6 months.

I note that the Provider issued correspondence to the Complainants on foot of having identified the internal processing error that had occurred on the Complainants’ mortgage loan account from **15 July 2015**. The letter appears to be incorrectly dated **12 August 2016** and details as follows:

“...I refer to your above account and the [redacted] arrangement we previously put in place on your behalf between 01/10/2012 to 01/09/2015, to support you in managing your financial difficulties.

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Before the [redacted] arrangement could reach its completion date, the rate on your account was changed in error. Your mortgage was placed onto a Fixed Rate of 4.3% on the 15 July 2015 but should have remained on the Tracker Rate of ECB + 1.05%.

In order to address this error and in line with your consent, I am writing to confirm that your mortgage rate has been changed from a Fixed rate to your original tracker interest rate with effect from 22/12/2016. The tracker interest rate is the European Central Bank (ECB) rate (currently 0%) plus your original margin of 1.05%.

In addition to the above you are now in an alternative Repayment Arrangement ("ARA"), agreed with our Arrears Support Unit, for a period of 4 months. This means your repayment amount during the agreed 4 month period will be €0.00 per month, commencing on the 01st January 2017.

Previous rate (Fixed)	4.3%
New rate (Tracker)* ECB (currently 0%) +1.05% margin 1.05%	1.05%
Commencement date of new rate	22/12/2016
Previous monthly repayment amount	€672.80
Current monthly repayment-Tracker Rate	€702.22

Also, you may be aware that the Bank is currently carrying out a detailed review of its mortgage portfolio required by the Central Bank of Ireland. This review known as the Tracker Mortgage Examination concentrates on our contractual and regulatory obligations to our tracker mortgage customers. Your account will be reviewed as part of this examination and you will be contacted later this year to confirm the outcome of the review.

We apologise sincerely for any impact this error may have caused and we would like to emphasise that your tracker rate will continue to apply to your above mortgage account.....

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The Complainants in their submissions maintain that they received the letter dated **12 August 2016** on **27 December 2016** "*Even though it was dated 12/8/16*". Having considered the contents of the letter dated **12 August 2016**, there appears to be a typographical error regarding the date of this correspondence, and it is reasonable to believe that the correspondence issued at some stage after the telephone call between the Provider's agent and the First Complainant on **01 December 2016**. I note that the Provider has not provided an explanation for this error.

While the letter states that a 4-month moratorium would commence on **01 January 2017**, I am satisfied that the Complainants had in fact already commenced a 6-month moratorium from **01 November 2016**.

In this regard, the Provider issued further correspondence to the Complainants dated **19 January 2017**, which details as follows:

"Alternative Repayment Arrangement information – please read carefully

...

<i>Your outstanding mortgage balance:</i>	<i>€148,092.14</i>
<i>Your remaining term:</i>	<i>19 yrs 3 months</i>
<i>Your arrears balance:</i>	<i>€0.00</i>

..Thank you for completing the Standard Financial Statement (SFS), a copy of which we have enclosed for you records. We've assessed your financial situation based on the information in the SFS and we would now like you to read this letter detailing your Alternative Repayment Arrangement (ARA).

...

Independent Advice

We advise you to seek independent legal and/or financial advice....

Arrangement details

This new arrangement, called a moratorium, allows you to stop your normal monthly repayments for an agreed period. When the arrangement ends, your repayments will increase in order to repay your mortgage within the remaining term.

The terms of the arrangement are:

- *Your monthly mortgage repayment during this arrangement: €0.00*

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- *This will apply for:* 6 month(s)
- *Your arrangement starts on:* 01/11/2016
- *Your arrangement ends on:* 01/04/2017

...

What you need to do now

- *Carefully read the details enclosed and on the pages below.*
- *Consider seeking independent advice (as above).*
- *If you're happy with this arrangement and pay by direct debit you don't need to do anything, and the new arrangement will start from the date given above. If you pay manually or by standing order please adjust your payment amount as soon as possible.*
- *If you change your mind and decide that you no longer want this arrangement, please contact us within 20 business days from the date of this letter and we'll reinstate your previous position.*
- *Alternatively, if you're not happy with the type of arrangement we have offered, you can appeal this within 20 business days from the date of this letter. Please see FAQs below for details on how to appeal.*

...

What can I do if I'm not happy with this arrangement?

If you're not happy with a decision we have made or with this arrangement being offered, you have the right to appeal it. To do this, please write to us within 20 business days from the date of this letter setting out the reason for your appeal. You can send it to [redacted address].

Frequently Asked Questions (FAQs)

What other impact could accepting this arrangement have?

Irish Credit Bureau

Your Irish Credit Bureau (ICB) record will be updated to reflect that you are in an arrangement. Your credit rating remains on record with the ICB for up to seven years. It is important to be aware that arrears may adversely affect your credit rating with licensed credit reference agencies, including the ICB, and may limit your ability to access credit and loans in the future.

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It is clear therefore that a 6-month moratorium was in place in respect of the Complainants' mortgage loan from **01 November 2016** until **01 April 2017**.

The Complainants appear to be of the view that the Provider failed to inform them that their credit rating would be affected because of the moratorium. It is clear from the transcript of the telephone discussion which took place between the agent of the Provider and the First Complainant on **01 December 2016**, that the agent of the Provider clearly informed the First Complainant that it would be noted on the Complainants' ICB record that a moratorium had been applied to their mortgage loan account and that their credit rating would remain on record with the ICB for the period of the moratorium plus a further seven years. The impact of accepting the moratorium arrangement was also detailed in writing by way of letter dated **19 January 2017**, as detailed above.

The Provider submits that it took appropriate steps in order for the records in relation to the Complainants' mortgage loan account that was deemed impacted as part of the Examination to be updated to reflect the correct credit record in respect of the mortgage, had the Provider's internal processing error not occurred. The Provider states that no correction was required for the Complainants' ICB record as a result of the Examination.

In this regard, it is important to note that certain obligations are placed on financial services providers to provide a record of a customer's credit agreements and transactions. Therefore, I am satisfied that the Provider correctly reported the moratorium arrangement in respect of the Complainants' mortgage loan account to the ICB.

The Complainants have submitted that because of the impact on their credit rating, they had to take out a loan with another provider at a rate of 13.2% APR. Each financial services provider has its own lending and eligibility criteria, and it is a matter for each financial services provider to review a credit report and assess any potential new customers based on its own policies and assessment criteria. In circumstances where this complaint is against the respondent Provider, it is not appropriate to comment on the lending criteria of another financial services provider.

It is important to highlight that it was at all times open to Complainants to seek independent legal and/or financial advice before entering the moratorium arrangement and it was ultimately a matter for the Complainants to decide whether to agree to this ARA, or not.

The Complainants made a separate complaint to the Provider in relation to the impact of the moratorium arrangement on the Complainants' ICB record. The Provider, having investigated the matter, issued a letter of response to the Complainants on **12 December 2017** and found that the Complainants were advised "*that your ICB would be affected for 7*

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years with applying this ARA to your mortgage account. This was also confirmed to you in your letter dated 19 January 2017". It appears that an agent of the Provider incorrectly informed the First Complainant during a telephone call that the Complainants' query regarding the ICB would be "fixed" and that "she would look to raise a query for your ICB to be amended to the month of November 2017". The query was later declined, and it appears from the telephone recording between one of the Provider's agents investigating the complaint and the First Complainant on **11 December 2017**, that that this was not communicated to the Complainants. The Complainants had to contact the Provider to seek an update regarding this query. I note from the letter dated **12 December 2017** that a compensation payment of €550.00 was offered to the Complainants for any distress and inconvenience experienced and to cover any costs that the Complainants may have incurred in bringing the matter to the Provider's attention.

The evidence shows that the Complainants drew down their mortgage loan with the Provider in **2006** and began experiencing financial difficulties in **2012**. The Complainants engaged with the Provider and entered an ARA with the Provider in **October 2012**. It appears that this ARA did not end until **September 2015**.

The Provider incorrectly removed the applicable tracker interest rate from the Complainants' mortgage loan account on **15 July 2015** and incorrectly applied a fixed interest rate to the mortgage loan account until **22 December 2016** at which time a tracker interest rate of 1.05% was applied. The Complainants were still in an ARA with the Provider when the Provider's failure on the mortgage loan account occurred. Consequently, it appears that certain indicators were being reported to the ICB for a period of almost 3 years before the error on the Complainants' mortgage loan account occurred. In the circumstances, I do not accept that the Complainants' credit rating was affected by the error arising on the Complainants' mortgage loan account in **July 2015**.

A fixed interest rate was incorrectly applied to the Complainants' mortgage loan account for approximately 17 months, until **22 December 2016**. In the period between **July 2015** and **December 2016**, a fixed interest rate of 4.3% was applied to the mortgage loan account whereas the overall tracker rate (ECB + margin) that should have been applied to the Complainants' mortgage loan account ranged between 1.05% and 1.10%. While the Provider attempted to rectify its error in **December 2016** by applying a tracker interest rate, the evidence shows that it was not until in or around **May/June 2018**, when the Provider concluded its Examination of the Complainants' mortgage loan account, that the Provider decided to backdate the restoration of the tracker interest rate of ECB +1.05% to **15 July 2015**.

The **Summary of Key Financial Transactions** enclosed with the **Redress and Compensation Letter** dated **30 May 2018** shows that the Provider reviewed the Complainants' mortgage

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loan account from **July 2015 to June 2018**. The **Summary of Key Financial Transactions** shows that during the impacted period from **July 2015 to December 2016**, the amount incorrectly collected from the Complainants and payable to them was €26 and the total amount overcharged during the impacted period was €6,936.77.

However, it subsequently transpired that the amount overpaid from **July 2015 to June 2018**, was €497.64. The Provider therefore refunded the sum of €497.64 to the Complainants, being the amount incorrectly overpaid by the Complainants between **July 2015 to June 2018**. The Provider identified that the total interest overcharged during the same period was €7,042.88. The term interest overcharged is used to denote interest that was charged to the mortgage loan when it should not have been. Where interest has been overcharged, a balance adjustment to the mortgage loan may be required as the mortgage loan would have amortised differently had the mortgage loan been on a different interest rate. As a result of being on a higher interest rate, the Provider allocated less capital to the mortgage loan account than it should have, had a tracker interest rate applied. The Provider therefore adjusted the mortgage balance by €6,545.24 to rectify this.

The Complainants in their submissions state that they were informed by the Provider in **December 2016** that when they received redress, they would be given the choice of either reducing the balance on the mortgage loan or taking a lump sum payment. I have reviewed the transcripts of the telephone call that took place between the Provider's agent and the First Complainant on **01 December 2016** and there is no discussion whatsoever in relation to redress or that the Complainants would be given a choice of reducing the balance on the mortgage loan or taking a lump sum payment. Rather, this telephone call concerned the Complainants' acceptance of the moratorium arrangement. In addition, the letter dated **12 August 2016** informing the Complainants of the Provider's error, which was received by the Complainants on **27 December 2016**, does not refer to how any redress offering would be applied. At that stage, the Provider had not completed its review of the Complainants' mortgage loan account under the Examination therefore the Provider would have been unable to inform the Complainants of any redress due back in **December 2016**.

From a review of the **mortgage loan statements**, I note that the Complainants' mortgage loan account was adjusted by €6,545.24 on **18 May 2018** resulting in reducing the mortgage loan balance from €140,674.99 to €134,129.75. Having considered this matter, I am satisfied that the Provider has taken the appropriate steps to correct the mortgage balance.

The Complainants submit that the Provider's actions have caused them to suffer stress and severe financial pressure at a time when the Second Complainant was very sick, and the First Complainant was in the early stages of running a new business. I note that the

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Second Complainant suffered an injury in or around **September 2016** and the Complainants informed the Provider that the Second Complainant might have to go on sick leave for 12 months. The Complainants sought forbearance from the Provider in or around the end of **September 2016** and the Provider facilitated this by agreeing to a 6- month moratorium arrangement from **November 2016**. In or around this time, the Complainants also received compensation in the sum of €550.00 for inconvenience caused to them in relation to the credit rating issue and they also received compensation in the sum of €350.00 in relation to delay in processing the SFS and implementing the moratorium.

While I acknowledge that this may have been a stressful time for the Complainants given the total household income might potentially decrease due to the Second Complainant's injury, it is to be noted that a tracker interest rate was restored to the mortgage loan account from **December 2016**, which marked the end of the impacted period. It appears to me that given the change in the Complainants' personal and financial circumstances an alternative repayment arrangement was likely to be required in any event, which was duly granted by the Provider.

As set out above, the issue for determination is whether the Provider has offered adequate redress and compensation to the Complainants by consequence of the Provider's failure in relation to their mortgage loan account.

The Provider has paid compensation of €1,500.00 to the Complainants, and further compensatory payments of €350.00 and €550.00 by reason of the delay in applying the moratorium and any confusion concerning the ICB issue, as outlined above. The Provider also offered redress of €502.10 (comprising interest overpaid €497.64 and time value of money payment of €4.46), an independent professional advice payment of €600.00 and a payment for fees and charges in the amount of €329.21. The Complainants' mortgage loan account was also adjusted by €6,545.24 on **18 May 2018**.

Having regard to all of the evidence before me in terms of the particular circumstances of the Complainants, the level of overcharging and the period over which the overcharging occurred, I accept that the amount of redress and compensation paid by the Provider is reasonable in the circumstances of this particular matter.

For the reasons outlined above, I do not uphold this complaint.

Conclusion

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

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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.

Jacqueline O'Malley

JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES

25 August 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.

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