



<b><u>Decision Ref:</u></b>	2023-0268
<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>	Rejected

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

##### **Background**

This complaint relates to a mortgage loan account held by the Complainant with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainant's private dwelling house.

The mortgage loan amount was €195,000.00 and the term of the loan was 25 years. The **Offer of Mortgage Loan** signed by the Complainant on **15 September 2008** outlined that the initial interest rate was fixed for 2 years.

The Complainant's 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 account and the mortgage loan account was deemed to be impacted under that Examination.

By letter to the Complainants dated **09 March 2018**, the Provider detailed that it found that the Complainant's mortgage loan account "*was affected by a failure on our part*" as follows:

"...

*The terms and conditions of your mortgage account state that at the end of a fixed rate period you had the option to choose the then prevailing fixed, variable or tracker interest rates.*

*The interest rate on your account was fixed for a period and when this expired (between October 2008 and December 2013), we had withdrawn tracker rates. Because of this, you did not have the option of choosing the then prevailing tracker rate at the time.”*

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

*“...any prevailing tracker rate that would have existed at the end of your fixed rate period would have been more expensive than the variable rates that were available during that time. Based on best available information, it is estimated that the prevailing Private Dwelling House (PDH) tracker rate would have averaged circa 7.9% (9.0% for Buy to Let (BTL)). Whereas, the PDH standard variable rate averaged 3.3% (4.4% for BTL). As such, you did not suffer any financial detriment as a result of the prevailing tracker not being available during that period. However, we recognise that this option should have been available to you and we apologise for our failure...”*

The Provider made an offer of €1,615.00 to the Complainant by letter dated **9 March 2018**, which comprised the following:

1. Compensation of €1,000.00 for the failure on the mortgage loan account; and
2. Independent professional advice payment of €615.00.

In **January 2019**, the Complainant appealed the redress and compensation offering to the Provider’s Independent Appeals Panel. The basis of the Complainant’s appeal was the inadequacy of the redress and compensation offered.

In **July 2019**, the Independent Appeals Panel decided that the Complainant’s appeal was unsuccessful for the following reasons:

*“*  
*...the Panel was satisfied that arguably, the Bank was contractually obliged to offer him a tracker mortgage at the end of his fixed rate period in October 2010.*

*However, the Panel was satisfied that, had the Bank offered a tracker mortgage at this time, it was contractually entitled to offer the then prevailing interest rate at*

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*the end of the fixed rate period. The Panel was satisfied that the Bank did not have an obligation to offer any element of the rates prevailing when the mortgage was first entered into.*

*The Panel was satisfied that, had [the Complainant] been offered a tracker mortgage in October 2010, when his fixed rate period came to an end, the prevailing rate of such a tracker mortgage at that time would have equalled or exceeded the standard variable rate or fixed rate. Accordingly, the Panel determined that [the Complainant] had suffered no loss as a result of the Bank not having offered them a tracker mortgage, at the then prevailing rates, when their fixed rate period came to an end.*

*Over the course of its deliberations, the Panel agreed that certain documentation from the Bank to [the Complainant] could have been clearer, however, the Panel noted the compensation payment of €1,000 made to [the Complainant] and agreed that, in the circumstances, no further compensation should be awarded.”*

As the Complainant had been through the Provider’s internal appeals process, this Office was in a position to progress the investigation and adjudication of the complaint.

This complaint was subsequently placed on hold between **March 2020** and **December 2020** as a result of a Preliminary Decision issuing from this Office in respect of another complaint against the Provider which dealt with similar issues to those arising in relation to this complaint. When the legally binding decision issued in relation to that complaint, the Provider indicated that it accepted that legally binding decision in full and intended to apply the direction to other mortgage loan account holders who were also affected by that particular conduct of the Provider. The Complainant was one of these mortgage account holders.

The Provider wrote to the Complainant on **21 August 2020** detailing as follows:

“...

*We wrote to you on 10 July 2020 regarding your mortgage account [ending 7263]. In that letter we advised that the Financial Services & Pensions Ombudsman (FSPO) recently upheld an individual FSPO complaint on an account on the same terms and conditions and circumstances as yours. He awarded what he deemed to be a fair and proportionate remedy for the wrong that he considered had been suffered by that customer.*

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*We have decided to apply the award in this FSPO decision to your account and to other accounts having the same terms and conditions and circumstances. This will provide a fair and proportionate remedy in your circumstances.*

*..."*

The Provider's letter dated **21 August 2020** further detailed:

***"What does this mean for you?***

*In line with the FSPO decision we have taken the following steps:*

- We have applied a 12% reduction of €22,385.30 on your mortgage balance. Your new mortgage balance is €102,913.25.*
- As your balance has changed, your repayments have also changed. Your revised repayment is €793.61. If you would like to keep your current repayment amount the Q&A will outline the benefits and tell you what you need to do.*
- We calculated the balance reduction based on the capital balance as it stood when your fixed rate period ended and you did not have the option to choose a tracker rate. When your fixed rate period ended on 01/10/2010, the capital balance on your mortgage account was €186,544.20.*
- We have also calculated an interest refund of €7,871.12. This refund is based on the interest charged on the 12% balance reduction from the date your fixed rate period ended.*
- Included with this letter is a cheque or a Payment Instruction Form. Where there is a Payment Instruction Form enclosed, you need to complete and return it so that we can send the payment of €7,871.12.*

*..."*

The Complainant indicated to this Office on **16 December 2020** that he was dissatisfied with the Provider's further offer of redress and wished for his complaint with this Office to progress. In this regard the Complainant detailed:

*"I have always believed that I should receive further compensation than offered and that I be put on a tracker rate for the rest of my mortgage. Then current calculate[d] rate of interest paid back to me is also wrong".*

In a further e-mail to this Office dated **29 June 2021**, the Complainant stated that he was no longer seeking for a tracker interest rate to be applied to his mortgage loan account and was satisfied that a 12% reduction of €22,385.30 had been applied to the mortgage balance. The Complainant however noted that he was not satisfied with how the interest refund was calculated by the Provider. In this regard, the Complainant detailed as follows:

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*"I have been advised that the 12% write down plus interest is a fair resolution of the issue and so I am no longer seeking a review as to why I was not offered a tracker rate.*

*The only issue to be determined now by your office for me is to whether [the Provider] should have paid my interest on the write down based on simple interest or compound interest".*

Therefore, the conduct complained of that is being adjudicated on by this Office is that the Provider has not offered adequate redress to the Complainant in terms of the amount of interest refunded to the Complainant in **August 2020** by consequence of the Provider's failure in relation to his mortgage loan account.

### **The Complainant's Case**

The Complainant submits that he is satisfied *"that the 12% write down plus interest is a fair resolution to the issue"* and that the only issue to be determined by this Office is whether the Provider *"should have paid [his] interest on the write down based on simple interest or compound interest"*. The Complainant asserts that the Provider applied a balance reduction of €22,385.30 to his mortgage loan and calculated the refund interest payment of €7,871.12 on the basis of simple interest. The Complainant is of the view that the interest refund payment *"should have been calculate[d] as compound interest."*

The Complainant submits that *"the 12% write down represents a quasi-loan to the [Provider] and that loan, as in any other loan, would accrue interest on a compound basis on a reducing balance until it is fully repaid"*. The Complainant is of the view that given this amount was an *"over charge to my account therefore it should be paid back with compound interest"*.

The Complainant maintains that he has never been charged simple interest in respect of his mortgage loan and has always been charged *"compound interest"*.

The Complainant is seeking the following:

1. A review of the interest paid from simple interest to compound interest; and
2. Any additional monies owed to be transferred to the Complainant's personal account or in the form of a cheque.

### **The Provider's Case**

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The Provider submits that the Complainant drew down a mortgage loan under mortgage loan account ending **7263** on **30 September 2008** on a 2-year fixed interest rate of 5.2%.

The Provider refers to General Condition 3.2 of the General Terms and Conditions of the **Offer of Mortgage Loan** dated **08 September 2008** which outlines what would occur at the end of the fixed interest rate period. The Provider states that a fixed interest rate expiry letter issued to the Complainant on **09 September 2010** and the Complainant's mortgage loan account converted to the Provider's standard variable interest rate of 3.25% on **01 October 2010** as the Complainant did not contact the Provider to request a specific interest rate.

The Provider submits that although mortgage loan account ending **7263** has never availed of a tracker interest rate and no tracker margin was referenced in Part 1 of the Particulars of Offer of Mortgage Loan in the loan offer dated **08 September 2008**, the Provider recognises that the Complainant may have had an expectation that the choice of a then prevailing tracker interest rate should have been offered to him in accordance with Condition 3.2 of the General Terms and Conditions.

The Provider submits that the Complainant "*was aligned with a group of customers who had Condition 3.2 as part of the General Terms and Conditions*" of their mortgage loan account. The Provider notes that customers within this group:

"

- *were never on a Tracker interest rate; and*
- *their General Terms and Conditions (the 2006-2009 T&C's) included Condition 3.2 [...] which outlined that at the end of a Fixed interest rate period, the customer may choose between a further Fixed interest rate period, or a Variable interest rate or a Tracker interest rate, at the Bank's then prevailing rates; and*
- *their Fixed interest rate period expired between October 2008 and December 2013 when there was no Tracker interest rate option to select".*

The Provider submits that two separate payments of compensation were provided to the Complainant, in **March 2018** and in **August 2020**. In this regard, the Provider notes that in **March 2018**, it provided the Complainant with the sum of €1,615.00 by way of compensating the Complainant for its service failure. The Provider states that it reconsidered the Complainant's complaint following the legally binding decision of this Office in another matter and given that the Complainant had similar circumstances and terms and conditions to that particular case, the Provider notes that it applied the directions of this Office in that decision to the Complainant's mortgage loan account in **August 2020**.

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In **August 2020**, the Provider submits that it applied the following to the Complainant's mortgage loan account:

- a) A 12% reduction off the capital balance that being an amount of €22,385.30 on the Complainant's mortgage balance as it stood at the end of the fixed interest rate period which expired on **01 October 2010**; and
- b) A refund of interest in the sum of €7,871.12 which is based on the difference *"between (1) the amount of interest he actually paid from 1 October 2010 (Date of Expiry of Fixed Interest rate period) to the end of July 2020, and (2) the amount of interest that he would have paid on the reduced (written down) capital balance from 1 October 2010 (Date of Expiry of fixed Interest rate period) to the end of July 2020."*

The Provider submits that a total of €55,372.70 interest was charged by the Provider from **01 October 2010**, when the fixed interest rate period ended, to **July 2020**. The Provider states that the interest that would have been charged on mortgage loan account ending **7263** from **01 October 2010** to the end of **July 2020** if the capital balance of the mortgage loan was 12% less on **01 October 2020** would have been €47,501.58. The Provider maintains that this has been calculated *"based on the payments actually made by the complainant over the relevant period."*

The Provider explains that the interest that would have been charged on the 12% portion of the loan balance *"is deducted from customer payments in order to determine the amount of interest that would have been charged on the reduced (written down) capital balance."* The Provider notes that the calculated refund is €7,871.12 and this *"refunds any interest charged on the 12% portion of the mortgage (a capital amount of €22,385.30)"* which in the Provider's view *"is the intent of the FSPO decision"*.

The Provider maintains that the Complainant has been adequately compensated.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider has not offered adequate redress to the Complainant in terms of the amount of interest refunded to the Complainant in **August 2020** by consequence of the Provider's failure in relation to his mortgage loan account.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and

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information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on **08 November 2023**, 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.

While this complaint relates to the adequacy of the redress paid to the Complainant by consequence of the Provider's failure in relation to his mortgage loan account, it is important to note at the outset that the Complainant is not seeking for a particular tracker interest rate to be applied to his mortgage loan account and is satisfied that a 12% reduction of €22,385.30 has been applied to the mortgage balance. The Complainant however is not satisfied with how the interest refund was calculated by the Provider.

In order to adjudicate on this complaint, it is necessary to consider how the redress in the form of the interest refund amount of €7,871.12 was calculated by the Provider in **August 2020** and the Complainant's mortgage loan journey.

The **Offer of Mortgage Loan** dated **08 September 2008** details as follows:

" ...

**PART 1**  
**PARTICULARS OF OFFER OF MORTGAGE LOAN**

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Offer Date 08 September 2008  
Customer Name [the Complainant]  
Mortgage Loan Amount €195,000.00  
Loan Term 25 years/300 months.

Repayment Details as at date of Offer

	<b>Term</b>	<b>Loan Type</b>	<b>Interest Rate Description</b>	<b>Rate</b>	<b>Margin</b>	<b>Net Rate</b>	<b>Amount of Each Instalment</b>
1	2 Years	Fixed Annuity	2 Year Fixed	5.2%	0%	5.2%	€1,160.56
2	23 Years	Variable Annuity	Variable Rate	5.5%	0%	5.5%	€1,192.81

..."

Part 4 of the **General Terms and Conditions of Offer of Mortgage Loan** outlines as follows:

"

**3.2 FURTHER FIXED INTEREST RATE OPTIONS/CHOICE**

At the end of any fixed interest rate period, the Customer may choose between:

- (a) a further fixed interest rate Mortgage Loan, or
- (b) conversion to a variable interest rate Mortgage Loan, or
- (c) conversion to a tracker interest rate Mortgage Loan,

at the [Provider's] then prevailing rates appropriate to the Mortgage Loan. If the Customer does not exercise this choice, then the Mortgage Loan will automatically convert to a variable interest rate Mortgage Loan".

Part 5 of the **General Terms and Conditions of Offer of Mortgage Loan** outlines as follows:

"

**5.2 CHARGING**

- (a) It is a fundamental term of this agreement that interest on the Mortgage Loan shall be compound interest and all interest debited to the loan

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*account, including surcharge interest, shall of itself be subject to compound interest until paid in full. The foregoing is strictly without prejudice to any other right of the Bank to recover any arrears from the Customer and to apply a surcharge thereto in accordance with the terms of this Offer of the Mortgage over the property.”*

The **Acceptance and Consent** section at **Part 7** of the **Offer of Mortgage Loan** was signed by the Complainant and witnessed by a solicitor on **15 September 2008** on the following terms:

“...

*I/We acknowledge and accept that the rate of interest which applies to the Mortgage loan may be different from the rate shown in the Offer, and in the case of fixed interest rates, the rate which prevails at the date of drawdown is the rate which will apply for the period of time stated in the Particulars.*

*I/We hereby confirm, that I/we have read the within Terms and Conditions attaching to this Offer, and acknowledge that I/we have received a copy thereof.”*

The **mortgage loan account statements** for mortgage loan account ending **7263** show that the mortgage loan was drawn down on **30 September 2008** on a fixed interest rate of **5.2%**.

Prior to the expiry of the 2-year fixed interest rate in **2010**, the Provider wrote to the Complainant on **09 September 2010** detailing as follows:

“...

*The fixed rate period on your above mortgage loan expires on 01/10/2010 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply [the Provider’s] current Standard Variable Rate of 3.250% APR 3.3050% with monthly repayments of €962.03 (plus the existing agreed adjustment of 0.00%) will be applied. This may later be changed with our agreement to another available rate. The payments quoted below do not include any PPP cover which you may have taken out upon draw down of the mortgage loan.*

*Here is a sample of the rates currently on offer from [the Provider]. Complete the attached tear-off section with your selected rate description and return it to [the Provider] at the above address. **Please note that the rates quoted are valid as of todays date, and are subject to variation prior to the rollover date above.** If you*

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require further information, please refer to your local [Provider] branch for details on all our mortgage interest rate options.

<u>Rate Description</u>	<u>%</u>	<u>APR</u>	<u>Repayment</u>
a.PDH LTV Var <=50%	3.090	3.1420	946.63
a.PDH LTV Var >50%<=80%	3.290	3.3460	965.90
a.PDH LTV Var >80%	3.490	3.5500	985.39
1 Year Fixed	3.590	3.3380	995.21
3 Year Fixed	3.890	3.4830	1025.00
5 Year Fixed	4.390	3.8050	1075.70
10 Year Fixed	5.200	4.7720	1160.53
..."			

In circumstances where the Complainant did not make an interest rate selection, a variable interest rate of 3.25% was applied to the mortgage loan account on **01 October 2010**.

It is accepted by the parties that the Provider did not give the Complainant the option of a tracker interest rate on his mortgage loan in **October 2010** and it is this date from which the Provider later applied the 12% write down of the capital balance.

The **mortgage loan account statements** show that the variable interest rate decreased to 3.00% on **23 November 2011** and increased to 3.5% on **04 September 2012**.

The Provider wrote to the Complainant on **15 October 2012** outlining the fixed interest rate options available at the time, detailing as follows:

"...

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

...

<u>RATE</u>	<u>%</u>	<u>APR</u>	<u>REPAYMENT</u>
a.PDH LTV Var<=50%	3.340	3.3860	969.48
a.PDH LTV Var>50%<=80%	3.540	3.5910	987.44
a.PDH LTV Var>80%	3.740	3.7970	1005.58
1 Year Fixed	4.150	3.6200	1043.34
2 Year Fixed	4.650	3.7910	1090.38

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3 Year Fixed	4.880	3.9710	1112.39
4 Year Fixed	5.150	4.2040	1138.51
5 Year Fixed	5.350	4.4390	1158.06
10 Year Fixed	5.900	5.4820	1212.68
..."			

There is no evidence to suggest that the Complainant availed of the interest rate offerings available at this time.

I note from the **mortgage loan account statements** that the variable interest rate increased to 4.00% on **13 November 2012**. The variable interest rate changed to 3.90% on **02 June 2015**.

The evidence shows that the Complainant contacted the Provider in **November 2016** to query why the Provider never offered him a tracker interest rate in **October 2010** at the end of the 2-year fixed interest rate period. The Provider informed the Complainant by way of letter dated **13 December 2016** that his mortgage loan was being considered as part of the Central Bank of Ireland's directed Tracker Mortgage Examination.

The Provider issued a letter to the Complainant dated **09 March 2018**, indicating that it had identified a failure on the Complainant's mortgage loan account as follows:

*"The terms and conditions of your mortgage account state that at the end of a fixed rate period you had the option to choose the then prevailing fixed, variable or tracker interest rates.*

*[...]*

*To compensate you for this failure we are making a payment of €1,615. This payment is made up of €1,000 in compensation and €615 towards independent professional advice. Where there are multiple parties to an account, the payment will be split equally between all parties.*

*As we did not offer you a prevailing tracker interest rate at the end of your fixed rate period, we are giving you the option of our prevailing tracker interest rate now. That is, the prevailing European Central Bank interest rate on the main refinancing operations as set by the ECB (currently 0%) plus the prevailing margin as set by [the Provider] (currently 3.32% for a PDH or 4.32% for a BTL property)."*

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The evidence shows that in **March 2018**, the Provider initially offered redress of €1,615.00 (€1,000.00 compensation and a €615.00 professional advice payment) to the Complainant for its failure on the Complainant's mortgage loan account.

This Office issued a legally binding decision in **March 2020** in respect of another complaint against the Provider which dealt with similar issues to those arising in relation to this complaint.

The Provider wrote to the Complainant on **21 August 2020** detailing as follows:

" ...

*We wrote to you on 10 July 2020 regarding your mortgage account [ending 7263]. In that letter we advised that the Financial Services & Pensions Ombudsman (FSPO) recently upheld an individual FSPO complaint on an account on the same terms and conditions and circumstances as yours. He awarded what he deemed to be a fair and proportionate remedy for the wrong that he considered had been suffered by that customer.*

*We have decided to apply the award in this FSPO decision to your account and to other accounts having the same terms and conditions and circumstances. This will provide a fair and proportionate remedy in your circumstances.*

" ..."

The Provider submits that in relation to the Complainant's mortgage loan account it:

- "a) applied a once off reduction (write down) of 12% off the capital balance on the mortgage loan account as it stood at the end of the fixed interest rate period which expired on 1 October 2010; and*
- b) repaid the Complainant, to an account of his choosing, the difference between (1) the amount of interest he actually paid from 1 October 2010 (Date of Expiry of Fixed Interest rate period) to the end of July 2020, and (2) the amount of interest that he would have paid on the reduced (written down) capital balance from 1 October 2010 (Date of Expiry of Fixed Interest rate period) to the end of July 2020."*

The Provider calculated a 12% reduction of €22,285.30 on the Complainant's mortgage loan account balance from the end of the initial fixed interest rate period on **01 October 2010**. The Provider also calculated an interest refund of €7,871.12 based on the interest charged on the 12% reduction to the capital balance. The Complainant appears to be of the view that Provider incorrectly calculated the interest refund on a simple interest basis instead of a compound interest basis.

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For the purposes of clarity, simple interest is the interest based on the initial principal amount of the loan whereas compound interest is interest earned on the initial principal amount and on accumulated interest from previous periods.

I will now consider whether the redress provided to the Complainant in the form of the interest refund of €7,871.12 is adequate by consequence of the Provider's failure in relation to his mortgage loan account.

From a review of the **mortgage loan account statements**, I note that the capital balance on the mortgage loan account as of **01 October 2010** which marked the end of the initial fixed interest period, and the beginning of the impacted period was €186,544.20. This is the same capital balance identified in the summary figures used to calculate the redress given to the Complainant. The 12% reduction amounted to €22,385.30 (12% of €186,544.20) and this was applied to the Complainant's mortgage loan account on **07 July 2020**, which left a capital balance of €102,913.25 on the mortgage loan account.

In addition to applying the 12% reduction to the capital balance, the Provider made an interest refund payment of €7,817.12 directly to the Complainant. In terms of the interest refund payment which is the subject of this complaint, by way of letter to the Provider dated **22 September 2021**, this Office requested the Provider to set out (A) the interest actually charged and paid on mortgage loan account ending **7263** from **01 October 2010** (the date the fixed interest rate period ended) to **July 2020** (when the 12% mortgage balance reduction was applied to the Complainant's mortgage loan account) and (B) the interest that would have been charged on mortgage loan account ending **7263** from **01 October 2010** (the date the fixed interest rate period ended) to **July 2020**, if the capital balance of the mortgage loan was 12% less on **01 October 2010**. The first column of the table below details the total amount of interest charged by the Provider and paid by the Complainant between **01 October 2010** and **07 July 2020** (the date on which the 12% mortgage balance reduction was applied to the Complainant's mortgage loan account). The second column shows the interest amount that the Complainant would have been charged on the reduced capital balance in the same period. The third column shows the difference between both amounts.

<b>Total interest charged and paid between 01 October 2010 and July 2020 (A)</b>	<b>Interest that would have been charged between 1 October 2010 and July 2020 if the capital balance was 12% less on 01 October 2010 (B)</b>	<b>The difference between (A) and (B)</b>
€55,372.70	€47,501.58	€7,871.12

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The Complainant views the 12% write down amount of €22,385.30 as a “quasi-loan” to the Provider as it was an “over charge” to his account and therefore it should be paid back with compound interest. I do not agree with the Complainant in this respect. There was no “quasi-loan” given to the Provider by the Complainant.

The 12% write down in fact represents a once off reduction (write down) off the capital balance of the Complainant’s mortgage loan from the date that a breach of contract occurred in **October 2010**. The write down of the capital balance by the Provider at this level has the effect of reducing the capital sum owed by the Complainant, thereby reducing the interest he will pay on the remaining 22 years of that mortgage from **October 2010**.

The interest amount of €55,372.70 has been calculated based on the total amount of interest actually charged and paid between **01 October 2010** and **07 July 2020**. The interest amount of €47,501.58 represents the amount of interest that the Complainant would have paid between **01 October 2010** and **07 July 2020**, had the capital balance stood at €102,913.25 at the end of the fixed interest rate period on **01 October 2010**. I have considered the interest amount charged by the Provider between **01 October 2010** and **July 2020** and the interest amount that would have been charged over the course of the same period if the capital balance was 12% less on **01 October 2010**. I am satisfied that the interest refund amount of €7,871.12 correctly represents the difference between these two amounts and that the method used by Provider in calculating the interest refund amount is fair and appropriate in the circumstances of this particular matter. Therefore, I accept that by having made a payment of €7,871.12 directly to the Complainant in **August 2020**, the Provider has correctly repaid the Complainant the difference between (1) the amount of interest actually paid by the Complainant from the end of the 2-year fixed interest rate period on **01 October 2010** to the date the 12% mortgage balance reduction was applied to the Complainant’s mortgage loan account in **July 2020** , and (2) the amount of interest that the Complainant would have paid on the reduced (written down) capital balance from **01 October 2010** to **July 2020**. I do not agree that any additional interest refund payment is required to be made by the Provider to the Complainant.

In light of the foregoing, I accept that the amount of redress paid by the Provider in the form of the interest refund amount of €7,871.12 is reasonable in the circumstances of this particular matter.

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

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## Conclusion

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

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

*Liam Sloyan*

**LIAM SLOYAN  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

30 November 2023

## **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,

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

