



<b><u>Decision Ref:</u></b>	2020-0043
<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 and an overcharge of interest in the amount of €19,943.24 on that mortgage loan account.

The mortgage loan was initially secured on the Complainant's private dwelling house in 2003. From September 2010 the Complainant no longer resided in the property and held the property as an investment.

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

The Provider wrote to the Complainant on **22 January 2018** advising her of the failure. The Provider detailed how it "got things wrong" as follows;

*"In our review, we found that when you moved from a tracker rate to the staff non-standard variable rate and then a fixed rate, we failed to provide you with*

*sufficient clarity as to what would happen at the end of that fixed rate and the language used by us in communications to you may have been confusing and/or misleading.*

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 [the Provider's] failure, we can confirm that you were charged an incorrect interest rate between 19 Jan 2009 and 07 Dec 2014."*

The Provider made an offer of redress and compensation to the Complainant. The offer of €24,034.44 made by the Provider to the Complainant comprised the following;

1. Redress of €20,940.40 covering;
  - Total interest overpaid by the Complainant of €19,943.24
  - Interest to reflect time value of money of €997.16
2. Compensation of €2,094.04 for the failure on the mortgage loan account.
3. Independent Professional Advice payment of €1,000.00.

The Provider did not restore a tracker interest rate to the Complainant's mortgage loan account as the mortgage loan account had been redeemed in full on **08 December 2014**.

The Complainant signed the Acceptance Form on **28 January 2018** and the amount of €24,034.44 was paid into the Complainant's nominated bank account.

In **February 2018**, an appeal was submitted to the Independent Appeals Panel by the Complainant. The basis for appeal was *"the level of balance adjustment refund, compensation or independent advice payment offered, for example compensation to reflect any lost opportunity for capital appreciation."*

The Appeals Panel decided on **23 March 2018** that the appeal was upheld and awarded additional compensation of €7,000.00 to the Complainant. The key factors in determining the decision by the Appeals Panel was as follows;

*"The Panel had regard to the significant level of the overpayment and its impact on the customer's specific financial, personal and family circumstances as supported in the customer's appeal. The Panel considers that on the balance of probability this was a factor in the customer's decision to sell the customer's property subject to the redress".*

The Complainant signed the Acceptance Form on **23 April 2018** and the amount of €7,000 was paid into the Complainant's nominated bank account.

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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.

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

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

The Complainant submits that she is in *"disagreement with the [Provider's] assessment that the "compensation is reasonable and fair and therefore adequate."*

The Complainant outlines that the mortgage loan came off a two year fixed interest rate at the start of **2009** and she should have been offered a tracker interest rate on the mortgage loan, but was not. The Complainant says that she had to take a variable interest rate which was cheaper than the fixed interest rate at the time. The Complainant outlines that as the variable rate was increasing, the Complainant then elected to fix the rate in **March 2010**.

The Complainant submits that her family (husband and two children) resided at the property until **September 2010**, when they moved to a larger *"more appropriate"* home to cater for the family's needs. The Complainant outlines that they decided to keep the property that was the subject of the mortgage as an investment for the future, as they could use the excess rent as a small source of income and they had hoped that the property would rise in value.

The Complainant outlines that they had three different tenants during the period the property was rented. She submits that the first two tenancies produced a rental income of €950 per month and the third €990 per month.

The Complainant submits that the repayment amount on the mortgage loan from **November 2010 to April 2013** was €820.80 per month, while the rent was €950 per month and she was able to hold onto the house as it was a *"net cost"*.

The Complainant details that when the fixed interest rate period ended in **April 2013**, the mortgage loan moved to a variable rate of 4.89%. The Complainant details that the *"high variable rate did not make much sense"* as the ECB had been reducing rates and the cost of borrowing to the bank had dropped. The Complainant says that at this time the property was *"a net cost"*. The Complainant submits that *"we really wanted to try and hold on to the property as prices were going up as were rents and it was very easy to rent it as it was a good location"*.

The Complainant submits that she agreed on an interest only arrangement with the Provider in **December 2013** for a twelve-month period. This resulted in the repayments now

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amounting to €792 per month and that the Complainant again had a “*net income*” from the subject property. The Complainant submits that if the correct interest rate had been applied then the “*whole stress of applying for interest only could have been avoided as well as the financial stress that forced us into the predicament.*”

The Complainant details that she knew that the full repayments would be restarting in **December 2014** and the Provider had advised that the repayments on the variable rate would be an estimated €950.22 per month. The Complainant submits that with rent at the time at €990 and the other costs of “*maintenance costs, fees to letting agency, management fees, household charge, property tax, life insurance and house insurance*”, that she could not afford “*the net cost of keeping the property despite the rising property prices. We were forced into selling the property in December 2014.*”

The Complainant details that they were “*pessimistic*” on their chances to get the Provider to agree another further reduced capital period and given the rises in interest rates the Complainant was “*worried*” that the payments would continue to rise and so, took the decision to sell the property in **December 2014** for €224,000.

The Complainant submits that, since the sale of the subject property “*rents have gone up dramatically as have property prices*”. The Complainant further submits that, had the correct tracker interest rate been applied to the mortgage account, she would have been able to keep the property and would have benefited from a net income as a result of the rental income. The Complainant details that she and her family have “*lost out on a large capital appreciation on the property.*”

The Complainant estimates that looking at the property price register that the property has increased in value by “*at least*” €50,000 from **December 2014** to **March 2018**. In this regard the Complainant submits: “*I held onto the property for as long as I could afford to and then was forced to sell the property at a significant discount to what it is worth today.*”

However, the Complainant has indicated that she felt she had no option but to sell. In a submission made by the Complainant’s husband, he states:

*“We showed our resolve in holding on to the property by applying for interest only and keeping the property throughout this period. After 1 year the period of lower payments was up and we were forced into a decision we did not want to take.”*

The Complainant details that their household income between 2015 and the start of 2018 would have been adequate to enable the Complainant to keep the property during those years and benefit from the increase in rents. The Complainant submits that in **2018**, her husband changed jobs for health reasons which resulted in a guaranteed but much smaller

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salary. The Complainant submits that they rent a room to a student but overall household income has dropped massively. The Complainant submits that they could really do with the extra rental income from the property and she would still have it if she was not “forced” into a decision to sell it. The Complainant details that at times of financial stress, like they are experiencing it is “nice to know” you have a valuable asset to give piece of mind or the option to sell.

The Complainant is seeking to be “adequately and fairly compensated” and the compensation should reflect the “capital appreciation” of the property from the forced sale in December 2014 and also reflect the loss of income from difference between the rent receivable and the mortgage payable.”

### **The Provider’s Case**

The Provider submits that the Complainant drew down a mortgage of €209,000 on **11 December 2003** for a term of 35 years under Mortgage Loan Offer Letter dated 1 July 2003, which was signed and accepted by the Complainant on 7 November 2003.

The Provider details that the letter of offer provided for an introductory fixed rate of interest of 2.49% for 12 months thereafter reverting to a standard variable rate. The letter of offer did not provide for a tracker rate of interest. The Provider submits that the Complainant made a number of changes to the interest rate applicable to the mortgage loan as follows;

- The Complainant signed a Mortgage Form Authorisation on **1 December 2004** choosing to apply a Tracker Variable ECB + 1.3% (3.3%) to the mortgage loan.
- On **04 January 2005**, the Complainant signed a Staff Application for Change to Tracker Mortgage Form Authorisation, which reduced the margin to “no more than 1.10% above” the ECB. This reduced the rate of interest to 3.1% at that time and was implemented on **11 January 2005**.
- On **27 August 2006**, the Complainant signed and accepted an Application to Change to Staff Non-Standard Variable Rate Mortgage, which was implemented on 29 August 2006. This had the effect of reducing the rate from 3.85% to 3.5%. The Provider submits that in its view this MFA definitively ended the contractual right to a tracker rate or the option to move to one in the future.
- On **15 January 2007**, the Complainant signed and accepted an Application to Change to a Staff 2 Year Fixed Rate Mortgage of 3.95%.
- On the expiry of the 2 year fixed rate in **January 2009** the mortgage account rolled to a Standard Variable Rate
- On **30 March 2010**, the Complainant signed and accepted a Mortgage Form of Authorisation choosing a “3 Year Fixed” rate at 3.6%.

- On **24 March 2013**, the Complainant signed and accepted a Mortgage Form of Authorisation choosing a “*3 Year Fixed (PDH)*” rate at 4.89%.
- On **08 December 2014** the mortgage loan account was redeemed in full.

The Provider outlines that the Complainant’s mortgage loan was included in the Examination because it was formerly on a tracker interest rate. The Provider submits that it found that when the Complainant moved from a tracker rate to the staff non-variable rate and then to a fixed rate, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed rate period and the language used by the Provider may have been confusing and misleading.

The Provider submits that it “*has not breached any contract*” with the Complainant and that there was no positive representation made by the Provider before the Complainant entered the two year fixed rate that the mortgage loan could move to a new tracker rate on the mortgage loan at the end of the fixed rate period. The Provider outlines that it does not seem that there “*would have been a natural expectation to return to the tracker rate after the fixed rate ended, given the Complainant was not a tracker customer on her mortgage loan account when she entered the fixed rate.*” The Provider outlines that the failure on its part was to “*identify any type of variable rate that would apply at the end of the fixed rate period*” and the Provider submits that this “*is significantly less serious as a shortcoming in terms of conduct than (say) a breach of contract or miss-selling a fixed rate through positive misrepresentation that a new tracker rate would be provided when it ended.*”

The Provider submits that the Complainant’s submission that she “*should have been offered a Tracker mortgage but was not*” is not “*quite accurate*”. The Provider details that the Complainant has been given “*the significant benefit of any doubt about what could have been in her mind about a tracker rate when she moved from the Staff Non Standard Variable Rate to the 2 year fixed rate*” in **January 2007**.

The Provider asserts that the redress and compensation paid to date is “*fair and reasonable*” and that the Complainant has not “*made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel have already provided for.*”

The Provider submits that the Complainant has offered no evidence to support the contention that the tracker issue was in any way proximate or even an indirect cause of the Complainant’s “*personal decision*” to sell the property.

The Provider details that the mortgage loan had never been in arrears and all contractual payments were met by the Complainant. The Provider outlines that the Complainant made one lump sum payment towards the capital balance on **14 May 2009** of €10,000. The Provider submits that the Complainant requested forbearance on one occasion throughout

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the term of the loan in **November 2013** and that the contemporaneous evidence shows that the reason given for the request was *“Drop in income”*, which is an entirely different circumstance personal to her and unconnected to the disputed rate. The Provider submits that the Complainant had indicated her intention to sell the property during her request for forbearance with the Provider in November 2013 and the Complainant did not seek to extend the alternative payment arrangement to facilitate retention of the investment property or make any contact in relation to financial difficulties preceding the sale in **November/December 2014**.

The Provider details that it is of the *“strong view”* that the non-availability of the tracker mortgage was not the cause of loss of ownership in the property. The Provider is of the view that the consequences ie. *“loss in value and loss of income from the difference between the rent receivable and mortgage payable for the same period and too remote from the question of tracker and dependent on any number of factors someone may consider when making the financial decision to sell an investment property”*.

The Provider submits that *“it is not fair or reasonable for the Complainant to link her decision to sell with any complaint about the rates of Interest on the mortgage loan accounts ex post facto.”*

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider has not offered adequate compensation to the Complainant by consequence of the Provider’s failure in relation to her mortgage loan account.

### **Decision**

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

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

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also

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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 **03 January 2020**, 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.

Following the issue of my Preliminary Decision, the Complainant made a further submission by email to this Office on **19 January 2020**, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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

At the outset I note that the Provider has made lengthy and detailed submissions about its view that there was no breach of contract and no misrepresentation in the sale of a fixed rate. I will not be making any determination in this decision as to the nature of the Provider's failure as I do not think that this is necessary in the circumstances of this matter.

The issue for decision is whether the Provider has offered adequate compensation to the Complainant by consequence of the Provider's failure in relation to her mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainant dated **22 January 2018**.

The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress. The redress payment of €20,940.40 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €997.16 to reflect the time value of money. The Provider also paid the Complainant €1,000 for the purposes of seeking legal advice and compensation of €2,094.40. The Provider submits that the Provider paid 10% compensation under the framework and the Appeals panel added a further sum of €7,000 which the Provider is bound by. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel has already provided for and was paid by the Provider to the Complainant.

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

The Complainant's mortgage loan was drawn down on a 12 month fixed interest rate of 2.49% on **11 December 2003** for the term of 35 years. The amount of credit advanced under the Mortgage Loan Offer Letter was €209,100, which was also the purchase price/value of the property.

The fixed interest rate applied to the loan until **December 2004**, when a tracker interest rate of ECB + 1.30% (3.30%) was applied to the loan. A staff tracker interest rate of ECB + 1.1% (3.1%) was applied to the mortgage loan from **January 2005**. In **August 2006**, the Provider at the Complainant's request moved the mortgage loan from the tracker interest rate of 3.85 (ECB + 1.1%) to a staff non-standard variable rate of 3.5%. In **January 2007**, the Provider at the Complainant's request applied the staff 2 year fixed rate of 3.95% to the mortgage loan.

It was at this time that the failure that was subsequently identified in **January 2018** as part of the Examination occurred on the Complainant's mortgage loan account, in that, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed rate. The Provider found that the language used may have been confusing as to whether the tracker interest rate or a variable interest rate would apply at the end of the fixed interest rate period.

At the time in **January 2009**, the mortgage loan rolled onto a standard variable rate of 3.75%. The Complainant has not indicated that there was any difficulty in servicing the mortgage loan repayments at this time. It is understood from the Complainant's submissions that the mortgaged property remained the Complainant's private dwelling house at this time.

The difference in interest charged on the variable rate and interest that would have been charged on the tracker interest rate of ECB + 1.1% between **January 2009** and **March 2010**, is represented in the below table;

Date Range	Rate Charged (Variable)	Rate that would have been charged (Tracker)	Difference in Rate	Amount of overcharged interest per month
23 Jan 2009	3.75%	2.85%	0.90%	€13.69
23 Feb 2009	3.25%	2.85%	0.40%	€78.08
20 Mar 2009	2.75%	2.35%	0.40%	€73.04
23 Apr 2009	2.50%	2.10%	0.40%	€66.31
23 May 2009 – 23 March 2010	2.25%	1.85%	0.40%	Between €54.09 and €62.97

The Complainant applied a fixed interest rate of 3.6% to the mortgage loan effective from **April 2010**. The Complainant has not given any rationale for applying a fixed interest rate to the mortgage loan at this time, in circumstances where the evidence shows that the variable interest rate that had applied to the mortgage loan had been continually reducing in the 15 month period between **January 2009** and **March 2010**. The **mortgage loan statements** which have been furnished in evidence show that the monthly repayments that were made on the mortgage loan from **May 2009** to **March 2010** on the variable interest rate of 2.25% were €761.00 per month. In any event, had the tracker interest rate been applied during this period it appears that the monthly repayments due on the mortgage loan would have been €661.68 (approx. €100 per month less).

I understand that the Complainant moved out of the mortgaged property and commenced renting out the property from **November 2010**. The Complainant has submitted that the rent received on the property between **November 2010** and **April 2013** was €950 monthly. I have not been furnished with any evidence to support this rental receipt, but I accept that it was received by the Complainant.

The difference in interest charged on the fixed rate of 3.6% and interest that would have been charged on the tracker rate between **April 2010** and **March 2013**, is represented in the below table;

Date Range (inclusive)	Rate charged	Rate that would have been charged	Difference in Rate	Amount of overcharged interest per month
23 April 2010 – 23 Mar 2011	3.60%	1.85%	1.75%	Between €203.40 and €259.06
23 April 2011 – 23 Jun 2011	3.60%	2.10%	1.50%	Between €211.93 and €244.88

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23 Jul 2011 – 23 Oct 2011	3.60%	2.35%	1.25%	Between €175.59 and €200.06
23 Nov 2011	3.60%	2.10%	1.50%	€196.88
21 Dec 2011 – 23 Jun 2012	3.60%	1.85%	1.75%	Between €219.27 and €252.62
23 Jul 2012 – 23 Mar 2013	3.60%	1.60%	2.00%	Between €252.61 and €284.13

The actual monthly repayments on the mortgage loan account from **April 2010 to March 2013** were €820.80 per month. The difference in monthly repayments if the tracker interest rate had been applied, is represented in the below table:

Date Range (inclusive)	Actual monthly repayments	Monthly repayments on tracker rate	Difference per month
23 April 2010 – 23 Mar 2011	€820.80	€661.68	€159.12
23 April 2011 – 23 Jun 2011	€820.80	€682.77	€138.03
23 Jul 2011 – 23 Oct 2011	€820.80	€704.13	€116.67
23 Nov 2011	€820.80	€682.85	€137.95
21 Dec 2011 – 23 Jun 2012	€820.80	€662.30	€158.50
23 Jul 2012 – 25 Mar 2013	€820.80	€642.23	€178.57

The fixed interest rate of 3.60% that applied to the Complainant's mortgage loan account expired in **April 2013**.

The Complainant submits that a variable interest rate of 4.89% was applied to the mortgage loan at the time. However the evidence shows that a **Mortgage Form of Authorisation** issued to the Complainant on **04 March 2013**, which gave the Complainant the following interest rate options;

"Description	Rate	Estimated Standard Repayment
Existing Variable LTV Rate PDH	4.35%	€889.51
2 Year Fixed (PDH)	4.69%	€921.51
3 Year Fixed (PDH)	4.89%	€940.60
5 Year Fixed (PDH)	5.29%	€979.36
10 Year Fixed Rate	6.19%	€1,069.25"

The Complainant selected the 3 year fixed rate option by signing the MFA on **24 March 2013**. The Complainant submits that the property became a "net cost" to her at this time as the monthly fixed repayments on the mortgage loan were €940.13 from **April 2013** to

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**November 2013.** The Complainant submitted a **Standard Financial Statement** (“SFS”) to the Provider signed on **26 November 2013**. The SFS contained details with respect to the Complainant and her husband. The “*Reason for Review/Arrears*” was noted in the SFS as “*Drop in income*”. The SFS noted the monthly rental income on property at that time as €990 and monthly expenditure on the property, outside of the mortgage repayment as €70.

The **Branch SFS Checklist** in the Summary of Discussion with customer(s) section, details as follows;

*“Request: reduced Repayments/ 12 months*

*Reason for forbearance: Reduced Income*

*...*

*Relevant Info/Background:....Married couple, two children...[Complainant’s husband] a self employed.....Has had a substantial drop in income from circa 500k pa to 91k pa. Advises business is improving, expected salary for 2013 circa 121k. Youngest daughter has been very ill since born and [the Complainant] has taken a career break from [Name] to mind her, now in good health and [the Complainant] intends to return to work in mid year. They have had exceptional medical expenses over last three years which are not expected to reoccur. Request is for 12 months interest and part cap. Based on the figures submitted, and discussed with [the Complainant’s husband], I would recommend 12 MONTHS INTEREST PLUS PART.”*

The **ASU Forbearance Summary** in the Case Summary section also details that “*Customers advised...that if income does not increase in the next 12 months they will sell the property.*” The Complainant was offered reduced payments of €792.00 per month for 12 months and signed the **Mortgage Form of Authorisation** accepting this on **16 December 2013**.

The next communication received by the Provider in relation to the mortgage loan account was a letter from the Complainant’s solicitor on **29 August 2014** enclosing an Authority to release the title deeds to the property on accountable trust receipt to the Complainant’s solicitor.

The Provider wrote to the Complainant on **19 September 2014** and outlined that the current repayment on the loan of €792.00 were due to end on **18 December 2014** “*after which the repayments will be the full principal and interest amount due*”. It was estimated in the letter on the basis of the application of a 3 Year Fixed PDH rate of 4.890% that the repayments would be €950.22. The letter further outlined;

*“If you foresee any difficulties in making your mortgage repayments, please contact your branch. [The Provider] is committed to working with you in relation to any mortgage repayment difficulties you may encounter.”*

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The Complainant's solicitor wrote to the Provider on **02 October 2014** seeking redemption figures for the mortgaged property. A redemption figure of €162,667.38 was outlined in the Provider's letter of **07 October 2014**. Further redemption figures were sought by letter dated **17 November 2014**. A redemption figure of €162,420.42 was outlined in the Provider's letter of **19 November 2014**.

The difference in interest charged on the fixed rate of 4.89% and interest that would have been charged on the tracker rate between **April 2013** and **December 2014**, is represented in the below table;

Date Range (inclusive)	Rate charged	Rate that would have been charged	Difference in Rate	Amount of overcharged interest per month
23 Apr 2013	4.89%	1.60%	3.29%	€403.09
23 May 2013 – 23 Oct 2013	4.89%	1.35%	3.54%	Between €459.88 and €491.38
23 Nov 2013 – 23 May 2014	4.89%	1.10%	3.79%	Between €469.14 and €524.05
20 Jun 2014 – 23 Aug 2014	4.89%	1.00%	3.89%	Between €505.45 and €532.60
19 Sept 2014 - 07 Dec 2014	4.89%	0.90%	3.99%	Between €262.37 and €544.91

The difference in monthly repayments for the same period (**April 2013** and **December 2014**) if the tracker interest rate had been applied, is represented in the table below:

Date Range (inclusive)	Actual monthly repayments	Monthly repayments on tracker rate	Difference per month
23 Apr 2013	€940.13	€642.23	€297.90
23 May 2013 – 23 Oct 2013	€940.13	€623.14	€316.99
25 Nov 2013	€940.13	€604.92	€335.21
23 Dec 2013 – 22 May 2014	€792.00	€604.92	€187.08
22 June 2014 – 24 Aug 2014	€792.00	€597.78	€194.22
23 Sept 2014 – 24 Nov 2014	€792.00	€590.81	€201.19

The mortgage loan balance when the mortgage loan was redeemed on **08 December 2014** was €162,043.24. If the tracker interest rate had been applied to the mortgage loan when the mortgage loan was redeemed, it appears that the balance on the mortgage loan would have been €153,154.20, which is €8,889.04 less than the mortgage loan balance at the time.

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I note that the overcharge on the Complainant's mortgage loan account occurred over approximately a six year period (**January 2009 – December 2014**). The period that is most significant is the period which led up to the sale of the Complainant's property in **December 2014** as the Complainant has sought additional compensation because she is of the view that the sale of the property would not have taken place had the mortgage loan been on the tracker rate of interest at the time. The evidence shows that in the 12 months leading up to the sale, the Complainant had sought forbearance from the Provider, in the form of reduced payments. By that time in **November 2013**, the difference between the monthly repayments being made and the monthly repayments that would have been required to be made had the tracker interest rate applied to the mortgage loan account had reached in excess of €300 per month. I am of the view that this is significant over payment for a mortgage holder to bear on a monthly basis.

I also note the contemporaneous evidence contained in the SFS submitted by the Complainant at that time. That evidence shows that there were a number of other personal factors that were at play in the Complainant's own life at the time that had an impact on the level of funds available to her, the Complainant was on a career break from her employment at the time, the Complainant and her husband had increased medical costs owing to their child's illness, and the Complainant's husband's income had dropped from "circa 500k pa to 91k".

Since the preliminary decision issued, the Complainant made a further submission with respect to her husband's income as follows;

*"Income for years 2010 to 2014 were*

*2010: €41000*

*2011: €59000*

*2012: €91000*

*2013: €120000*

*2014: €131000"*

The Complainant further submits as follows

*"If the [rental property] had been charged at tracker rate then we would have had a boost to our income when we needed it most and for us that would obviously have meant there was no need to sell.*

*The fact that there was an upward trend in our income in the years 2010 onward was not apparent from our previous correspondence and I believe is an important fact. It shows that we would be more likely to want to keep our investment and highlights the*

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*fact that the decision to sell was based on the property being a net monthly cost to us rather than an immediate need for a lump sum.”*

I have not been furnished with any evidence to support Complainant's husband's income as outlined above. However, I have no reason to doubt that it is not correct.

In any event, I cannot accept that the sale of the property was solely attributable to the incorrect interest rate being charged on the mortgage loan account at that point in time. I accept that the level of mortgage repayments as against the rent receivable would have been a factor in the Complainant's decision to sell the mortgaged property at the time, however I am of the view that it is not the only relevant factor. It is of note that the Complainant's husband's income had reduced by circa 75% from the level it was at prior to 2010. It appears to me that this would have been a more significant factor in the decision to sell the Complainant's investment property at the time, as it had a direct impact on the funds available to the Complainant's family at the time.

I note that between 2010 and 2014, the Complainant's husband's income, as represented, had been rising upwards. As outlined above the Complainant had outlined in **November 2013** when she was seeking an ARA that if her husband's income had not increased in the next 12 months that she would sell the property. The income had in fact increased and the Complainant nonetheless sold the property. The evidence does not support the Complainant's submission that she would not have sold the property at that time had the mortgage loan been on the tracker interest rate. On the basis of all of the evidence before me, I cannot accept that it was a “*defining fact*” in the Complainant's decision to sell.

The Complainant has also submitted that the mortgaged property has appreciated by “*at least*” €50,000 from **December 2014** to **March 2018** and that during this time, she would have benefitted from rising rents. These are matters that the Complainant would not have known at the time of making the decision to sell in December 2014. Any fluctuation in the value or rental value of the property is not something that can be accurately predicted.

I also note that by the time the Provider had contacted the Complainant in **September 2014**, in relation to the reduced repayment period coming to an end the Complainant had already engaged a solicitor to proceed with the sale of the property. The Complainant did not seek to engage, at all, with the Provider to explore any further options with the Provider. As such, there is no evidence that the Complainant was “*forced*” to sell the property.

The Provider has paid compensation of €9,094.04 to the Complainant, together with redress of €20,940, (interest overpaid €19,943.24 and time value of money payment of €997.15)

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and an independent professional advice payment of €1,000. I accept that the compensation paid by the Provider to be reasonable in the circumstances.

For the reasons set out above, I do not propose to uphold the complaint.

### **Conclusion**

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

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

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 February 2020

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.